

SEPTEMBER 2004

Notices to Members

Notices

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Notice to Members

SEPTEMBER 2004

SUGGESTED ROUTING

Corporate Finance
Legal and Compliance
Operations
Senior Management
Technology
Trading and Market Making
Training

KEY TOPICS

Debt Securities
Dissemination of Transaction Information
Operations
Rule 6200 Series
TRACE Rules
Transaction Reporting

GUIDANCE

Corporate Debt Securities

SEC Approves Amendments to TRACE Rules to Disseminate Transaction Information on All TRACE-Eligible Securities, Modify and Supplement Defined Terms, and Enhance Notification Requirements

Executive Summary

On September 3, 2004, the Securities and Exchange Commission (SEC or Commission) approved amendments to Rule 6250, Rule 6210, and Rule 6260 of the Trade Reporting and Compliance Engine (TRACE) rules, the Rule 6200 Series.¹ The most significant amendments, which are set forth in Rule 6250, effect a fundamental change in the corporate bond markets by requiring that information on *all* transactions in TRACE-eligible securities be disseminated, except those transactions in TRACE-eligible securities that are issued pursuant to Section 4(2) of the Securities Act of 1933 (Securities Act) and purchased or sold pursuant to Rule 144A under the Securities Act (Section 4(2)/Rule 144A TRACE-eligible securities).

In addition, NASD, amended two defined terms, "Investment Grade" and "Non-Investment Grade," and added a new defined term, "Split-rated," in Rule 6210; deleted provisions in Rule 6250 regarding market aggregate and last sale data and the treatment of certain transaction reports; and amended the notification provisions in Rule 6260 to require firms to provide information needed to implement various dissemination schedules. Rule 6250, Rule 6210, and Rule 6260, as amended, are set forth in Attachment A.

The amendments to the TRACE Rules will become effective in two stages (Stage One and Stage Two), on, respectively, October 1, 2004 and February 1, 2005. All of the amendments to Rules 6210 and 6260, and part of the amendments to Rule 6250, will become effective on October 1, 2004, as Stage One. The remainder of the amendments to Rule 6250 will become effective on February 1, 2005, as Stage Two. (A more detailed statement of the effective dates of various provisions of Rule 6250, as amended, is set forth below.)²

Questions/Further Information

Questions concerning this *Notice* should be directed to tracefeedback@nasd.com; Elliot Levine, Chief Counsel, Market Operations, Markets, Services and Information, at 202-728-8405; or Sharon K. Zackula, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at 202-728-8985.

Discussion

I. Dissemination of Corporate Bond Transaction Information

Currently, under Rule 6250(a), NASD disseminates transaction information on four categories of TRACE-eligible securities: (1) any Investment Grade TRACE-eligible security having an initial issuance size of \$1 billion or greater; (2) approximately 50 Non-Investment Grade TRACE-eligible securities; (3) any TRACE-eligible security that is Investment Grade, is rated A or higher and has an original issue size of \$100 million or greater, unless downgraded below BBB; and (4) approximately 120 TRACE-eligible securities rated BBB.³ All dissemination required under current Rule 6250(a) is “immediate”; NASD disseminates the transaction information as soon as it is reported to NASD.

Amended Rule 6250 will effect a fundamental change in the corporate bond markets as it is implemented by making publicly available for the first time pricing information on all transactions in publicly traded TRACE-eligible securities. Under Rule 6250, as amended, NASD will disseminate publicly transaction information for secondary market transactions in all TRACE-eligible securities, except transactions in Section 4(2)/Rule 144A TRACE-eligible securities. Pursuant to amended Rule 6250(b)(1), NASD will disseminate information immediately on approximately 99 percent of all transactions in TRACE-eligible securities and 95 percent of the par value traded in such securities.

The amended TRACE dissemination provisions are set forth in Rule 6250(a) through (c). Rule 6250(a) relates solely to delayed dissemination during the new issue aftermarket for TRACE-eligible securities rated BBB or lower. Rule 6250(b) sets forth the dissemination requirements for all other secondary market transactions in TRACE-eligible securities—those occurring in the new issue aftermarket that are not subject to delayed dissemination, and all transactions occurring after the new issue aftermarket, whether subject to immediate or delayed dissemination. Finally, Rule 6250(c) codifies a

staff interpretation that NASD will not disseminate information on transactions in Section 4(2)/Rule 144A TRACE-eligible securities.

The full text of the amendments providing for dissemination of transaction information on all TRACE-eligible securities (except Section 4(2)/Rule 144A TRACE-eligible securities) is set forth in Attachment A. The discussion below highlights, in Section A, *only* those provisions *requiring delayed dissemination*, which will apply to only one percent of all transactions in TRACE-eligible securities, and, in Section B, *the single provision under which NASD will not disseminate transaction information*.

A. Delayed Dissemination Provisions

NASD will disseminate information on the following transactions in TRACE-eligible securities subject to certain delays as set forth below.⁴

- ◆ Transactions in newly issued BBB-rated TRACE-eligible securities that are executed during the first two business days after pricing will be disseminated beginning on the third business day.⁵ (The period of the first two business days after pricing is referred to as the New Issue Aftermarket-2.) Rule 6250(a)(1).
- ◆ Transactions in newly issued TRACE-eligible securities rated BB or lower that are executed during the first ten business days after pricing will be disseminated beginning on the eleventh business day.⁶ (The period of the first ten business days after pricing is referred to as the New Issue Aftermarket-10.) Rule 6250(a)(2).
- ◆ Transactions that are greater than \$1 million (par value) in BB-rated TRACE-eligible securities that trade an average of less than one time per day⁷ will be disseminated two business days from the time of execution.⁸ Rule 6250(b)(2)(A).
- ◆ Transactions that are greater than \$1 million (par value) in TRACE-eligible securities rated B or lower that trade an average of less than one time per day will be disseminated four business days from the time of execution.⁹ Rule 6250(b)(2)(B).

All other TRACE-eligible securities transactions except those in Section 4(2)/Rule 144A TRACE-eligible securities will be disseminated immediately upon receipt of the transaction report.

B. Section 4(2)/Rule 144A TRACE-Eligible Securities

Under amended Rule 6250(c), NASD will not disseminate information on secondary market transactions in Section 4(2)/Rule 144A TRACE-eligible securities. Rule 6250(c) codifies the staff's prior interpretive position that such securities would not be disseminated publicly because the securities transactions are not registered under Section 5 of the Securities Act and the securities cannot be freely traded. (A firm's obligation to report such transactions to TRACE remains in effect.)

II. Investment Grade, Non-Investment Grade, and Split-Rated TRACE-Eligible Securities

Rule 6210(h) currently defines an “Investment Grade” security as a TRACE-eligible security rated by an NRSRO “in one of its four highest generic rating categories.” In addition, under the current TRACE Rules, “split-rated,” although not set forth as a defined term, is interpreted as a security that is classified as Investment Grade by one NRSRO and Non-Investment Grade by a second NRSRO. Rule 6210(i) currently defines “Non-Investment Grade” as a TRACE-eligible security “that is unrated, non-rated, split-rated (where one rating falls below Investment Grade), or otherwise does not meet the definition of Investment Grade” as defined in Rule 6210(h).

NASD amended the terms, “Investment Grade” and “Non-Investment Grade” in, respectively, Rule 6210(h) and Rule 6210(i), and added a new defined term, “split-rated,” as Rule 6210(j) to properly classify a TRACE-eligible security and determine if any of the provisions in amended Rule 6250 that require delayed dissemination apply to such security.

The amendments provide a method to categorize TRACE-eligible securities more specifically than Investment Grade or Non-Investment Grade. This is required when, for example, a security is assigned two Non-Investment Grade ratings, but the Non-Investment Grade ratings are not in the same generic rating category (e.g., a security is rated “Ba” by Moody’s, which is a rating in the fifth-highest generic rating category, and “B” by S&P, which is a rating in the sixth-highest generic rating category).¹⁰

In addition, under Rule 6210(h) and Rule 6210(i) as amended, if a TRACE-eligible security is unrated, for purposes of TRACE, NASD may otherwise classify the security. When TRACE-eligible securities are not rated, NASD will classify such securities as Investment Grade or Non-Investment Grade, then more specifically in a generic rating category for purposes of determining the appropriate TRACE dissemination provision that applies to such securities and for any other provision of TRACE, if applicable. A determination is necessary because the rating (or, otherwise, the classification) of a TRACE-eligible security is a key dissemination criterion under amended Rule 6250. The classification of a TRACE-eligible security is an internal, administrative process of NASD. The staff will classify TRACE-eligible securities as necessary and appropriate and solely for the purpose of administering TRACE.

NASD will classify an unrated TRACE-eligible security by attributing a certain credit quality—*i.e.*, considering the security as if it were assigned ratings reflecting a specific generic rating category—when there is evidence of the issuer’s credit quality available in the bond markets. For example, if an unrated TRACE-eligible security is newly issued and the issuer of the security has other, similar debt securities outstanding that are rated, NASD may classify the unrated TRACE-eligible security by attributing to the security the same credit quality that is indicated by the one or more ratings assigned by the NRSROs to the issuer’s rated, similar debt securities. In most cases, NASD will look to the generic rating(s) that one or more NRSROs assigned to the issuer’s most recently issued and outstanding, similar debt security as the most important factor in determining the classification.

However, there may be instances when a TRACE-eligible security is unrated and there is not sufficient information available to NASD to make a determination, whether the security is newly issued or has been outstanding for some time. In such cases, NASD will classify the TRACE-eligible security as a "Non-Investment Grade" security that is rated B for purposes of dissemination. By treating the TRACE-eligible security as a B-rated security, it will be disseminated according to the most conservative dissemination provisions. NASD believes that this is a reasonable approach because such unrated securities often are considered distressed debt.

See Attachment A for the full text of such changes.

III. Amendments to Rule 6260; Other Amendments

NASD amended the notification provisions in Rule 6260(b) and made other minor technical revisions to Rule 6260. Amended Rule 6260(b) provides NASD the necessary flexibility to obtain information on a timely basis about new TRACE-eligible securities and incorporate such securities into the TRACE System. Under amended Rule 6260(b), NASD may require a firm to provide any information needed, as determined by NASD, to implement the New Issue Aftermarket dissemination criteria in Rule 6250(a)(1) and (2), in addition to the CUSIP and other basic identifying information previously required. NASD anticipates that, in many cases, the information that NASD will request firms to provide will be the date and time that a new TRACE-eligible security is priced and its rating(s). The full text of the amendments is set forth in Attachment A.

NASD also deleted paragraphs (b) through (d) of Rule 6250 relating to the administration, calculation, and dissemination of "market aggregate" and "last sale" data for disseminated securities, and the treatment of TRACE-eligible securities traded after the TRACE System has closed or on a non-business day. NASD will establish policies regarding the calculation and dissemination of "market aggregate" and "last sale" data, which will be published in *Notices to Members* and various other media (e.g., TRACE User's Guide and NASD's Web site).

NASD will continue to treat transactions executed after the TRACE System closes and on weekends and holidays that were described in Rule 6250(c) and (d), in the same manner as set forth in the Rule, provided the treatment is consistent with the delayed dissemination provisions in amended Rule 6250 and continues to meet the needs of the marketplace. Information regarding the treatment of such transactions also will be published by NASD.

Effective Dates

As noted previously, NASD will implement the amendments to the TRACE Rules in two stages. The following amendments to the TRACE Rules will become effective on October 1, 2004, as Stage One.

- ▶ All amendments to Rule 6210
- ▶ All amendments to Rule 6260
- ▶ Certain provisions in amended Rule 6250 listed below:

New Rule 6250(b)(1)(A) and (B)

A portion of new Rule 6250(b)(1)(C)(i)

Amended Rule 6250(b)(1)(C)(i) requires all transactions in TRACE-eligible securities rated BB or lower to be disseminated immediately upon receipt of the report if the size of the transaction is \$1 million or less (par value). All such transactions in a TRACE-eligible security that meet or exceed the frequency standard set forth in Rule 6250(b)(1)(C)(ii) (*i.e.*, the security trades an average of one or more times per day) will be disseminated as of October 1, 2004.¹¹

New Rule 6250(b)(1)(C)(ii)

New Rule 6250(c)

Deletion of paragraphs (a) through (d) of current Rule 6250

The following provisions of amended Rule 6250 will become effective on February 1, 2005, as Stage Two.

- ▶ New Rule 6250(a)(1) and (2)
- ▶ The portion of new Rule 6250(b)(1)(C)(i) not fully implemented in Stage One

The portion of Rule 6250(b)(1)(C)(i) that was not fully implemented—transactions of \$1 million or less (par value) in any TRACE-eligible security described in Rule 6250(b)(1)(C)(i)—that did not meet or exceed the frequency standard in Rule 6250(b)(1)(C)(ii) will be implemented in Stage Two with the dissemination of all such transactions.
- ▶ New Rule 6250(b)(2)

Endnotes

- 1 See Securities Exchange Act Release No. 50317 (September 3, 2004), ___ Fed. Reg. _____ (September __, 2004) (File No. SR-NASD-2004-094).
 - 2 In the SEC's order approving the rule filing, the SEC noted "that the two studies commissioned by the NASD to address the relationship between transparency and liquidity found no conclusive evidence that TRACE transparency has adversely affected liquidity. Accordingly, the Commission expects that, not later than November 1, 2005 (nine months after the effective date of Stage Two), the NASD will submit a proposed rule change eliminating the delays in TRACE information dissemination." Securities Exchange Act Release No. 50317 (September 3, 2004), p. 8.
 - 3 A and BBB are ratings of Standard and Poor's, a division of the McGraw-Hill Companies, Inc. (S&P). S&P is a nationally recognized statistical rating organization (NRSRO). S&P's ratings are proprietary to S&P and are protected by copyright and other intellectual property laws. S&P licenses ratings to NASD. Ratings may not be copied or otherwise reproduced, repackaged, further transmitted, transferred, disseminated, redistributed or resold, or stored for subsequent use for any such purposes, in whole or in part, in any form or manner or by any means whatsoever, by any person without S&P's prior written consent.

For purposes of the TRACE rules, any rating of S&P used means the S&P rating and the equivalent ratings of Moody's Investors Service, Inc. (Moody's), an NRSRO, and any other NRSRO whose ratings may be used for purposes of TRACE. Currently, NASD administers the TRACE provisions based on the ratings of S&P and Moody's. The use of a single rating is for the convenience of readers only.
- The ratings of the NRSRO, Moody's, are proprietary to Moody's and are protected by copyright and other intellectual property laws. Moody's licenses ratings to NASD. Ratings may not be copied or otherwise reproduced, repackaged, further transmitted, transferred, disseminated, redistributed or resold, or stored for subsequent use for any such purposes, in whole or in part, in any form or manner or by any means whatsoever, by any person without Moody's prior written consent.
- 4 The amended TRACE Rules do not allow a member to delay the *reporting* of any transaction. Reports on all TRACE-eligible securities transactions must be filed within 45 minutes of the time of execution. (The period to report such transactions will be reduced, effective October 1, 2004, to 30 minutes, and, effective July 1, 2005, to 15 minutes.)
 - 5 Under Rule 6250(a)(1), when such transaction information is disseminated on the third business day, it will be disseminated in the order of the date and time of execution.
 - 6 Similarly, under Rule 6250(a)(2), the previously withheld transaction information will be disseminated in the order of the date and time of execution.
 - 7 To calculate the average daily trading of a security, which is required to administer Rule 6250(b)(1)(C) and (b)(2), NASD, where applicable, will review a security's trading during its New Issue Aftermarket-10 to determine the appropriate dissemination protocol. That dissemination protocol will remain in effect for the security until the next established calculation timeframe occurs. That calculation timeframe will be based on the trading activity during the last 20 business days of a 90-day period determined by NASD (20/90 period). Unlike a New Issue Aftermarket-10, where the timing is specific to the security, the 20/90 period will be established quarterly and will apply to all Non-Investment Grade TRACE-eligible securities.

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- 8 For example, if a transaction meeting the three criteria (*i.e.*, the transaction is greater than \$1 million (par value), the subject security is BB-rated, and such security trades an average of less than one time per day) is executed on Monday, November 15, 2004, at 10:00 a.m. Eastern Time, the transaction will be disseminated on Wednesday, November 17, 2004, at approximately 10:01 a.m. Eastern Time.
- 9 For example, if a transaction in such a security is executed on Monday, November 15, 2004, at 10:30 a.m. Eastern Time, the transaction will be disseminated on Friday, November 19, 2004, at approximately 10:31 a.m. Eastern Time.
- 10 As noted above, NASD currently administers the TRACE dissemination provisions based on the ratings of two NRSROs, S&P and Moody's. The amendments to Rule 6210(h) and Rule 6210(i) and new Rule 6210(j) were drafted to allow NASD to consider additional NRSRO rating information, if appropriate. NASD is also incorporating the ratings of Fitch Inc. (Fitch) into the TRACE System, which also will be used to administer TRACE beginning in Stage Two.
- 11 Rule 6250(b)(1)(C)(i) provides for the immediate dissemination of transactions in TRACE-eligible securities that are rated BB or lower and are executed other than during the New Issue Aftermarket-10, if the size of the transaction is \$1 million or less. NASD will partially implement this provision in Stage One. In Stage One, NASD will disseminate immediately such transactions in *any security* for which the larger transactions (*i.e.*, "\$1 million plus" transactions) are also disseminated in Stage One (*i.e.*, securities that are traded an average of one or more times per day, as more fully set forth in Rule 6250(b)(1)(C)(ii)). Securities transactions described in Rule 6250(b)(1)(C)(i) that would otherwise be subject to immediate dissemination, but occur in a security that is traded an average of less than one time per day and in which "\$1 million plus" transactions are subject to dissemination delays under Rule 6250(b)(2)(A) or Rule 6250(b)(2)(B), will be disseminated in Stage Two, when delayed dissemination has been implemented and all transactions in the security will be disseminated. For example, XYZ Security is rated BB and trades an average of less than one time per day. Under Rule 6250(b)(1)(C)(i), a transaction in XYZ Security for \$100,000 would be disseminated immediately if not for the above approach to implementation, but a \$2 million transaction on the same day in XYZ Security would not be disseminated at any time during Stage One. NASD will withhold dissemination of the \$100,000 XYZ transaction during Stage One because it believes that all market participants will be best served and get a more complete and accurate indication of price when, in a particular security, transactions of all sizes are subject to an operative TRACE dissemination requirement

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ATTACHMENT A

New language is underlined; deletions are in brackets.

Rule 6200. TRADE REPORTING AND COMPLIANCE ENGINE (TRACE)

Rule 6210. Definitions

(a) through (g) No Change

(h) The term "Investment Grade" shall mean a TRACE-eligible security that, if rated by only one nationally recognized statistical rating organization ("NRSRO"), is rated in one of the four highest generic rating categories; or if rated by more than one NRSRO, is rated in one of the four highest generic rating categories by all or a majority of such NRSROs; provided that if the NRSROs assign ratings that are evenly divided between (i) the four highest generic ratings and (ii) ratings lower than the four highest generic ratings, NASD will classify the TRACE-eligible security as Non-Investment Grade for purposes of TRACE. If a TRACE-eligible security is unrated, for purposes of TRACE, NASD may otherwise classify the TRACE-eligible security as an Investment Grade security and further classify it as being in one of the four highest generic rating categories.[any TRACE-eligible security rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories.]

(i) The term "Non-Investment Grade" shall mean a TRACE-eligible security that, if rated by only one NRSRO, is rated lower than one of the four highest generic rating categories; or if rated by more than one NRSRO, is rated lower than one of the four highest generic rating categories by all or a majority of such NRSROs. If a TRACE-eligible security is unrated, for purposes of TRACE, NASD may otherwise classify the TRACE-eligible security as a Non-Investment Grade security and further classify it as being in one of the generic rating categories below the four highest such categories. If NASD does not have sufficient information to make a judgment regarding the classification of an unrated TRACE-eligible security, for purposes of TRACE, NASD will classify the TRACE-eligible security as having been rated B (or the equivalent rating of one or more NRSROs).¹[any TRACE-eligible security that is unrated, non-rated, split-rated (where one rating falls below Investment Grade), or otherwise does not meet the definition of Investment Grade in paragraph (h) above.]

¹ "B" is a rating of Standard & Poor's, a division of the McGraw-Hill Companies, Inc. ("S&P"). S&P is a nationally recognized statistical rating organization. S&P's ratings are proprietary to S&P and are protected by copyright and other intellectual property laws. S&P's licenses ratings to NASD. Ratings may not be copied or otherwise reproduced, repackaged, further transmitted, transferred, disseminated, redistributed or resold, or stored for subsequent use for any such purpose, in whole or in part, in any form or manner or by any means whatsoever, by any person without S&P's prior written consent.

(j) The term, "split-rated," shall mean an Investment Grade or a Non-Investment Grade security that is assigned ratings by multiple NRSROs that, for an Investment Grade security, are not in the same generic Investment Grade rating category, or, for a Non-Investment Grade security, are not in the same generic Non-Investment Grade rating category. After determining if a security is Investment Grade or Non-Investment Grade, NASD will disregard any rating, if the security is Investment Grade, that is Non-Investment Grade, or, if the security is Non-Investment Grade, that is Investment Grade. With respect to an Investment Grade security, if multiple NRSROs assign ratings that are not in the same generic Investment Grade rating category, or, with respect to a Non-Investment Grade security, if multiple NRSROs assign ratings that are not in the same generic Non-Investment Grade rating category, NASD will classify the TRACE-eligible security for purposes of TRACE by the generic rating that a majority or, if no majority, a plurality of the NRSROs assigns the security, provided that (i) if the NRSROs assign ratings that are evenly divided between two generic rating categories, NASD will classify the TRACE-eligible security for purposes of TRACE by the lower of the ratings; or (ii) if each NRSRO assigns a different generic rating, NASD will classify the TRACE-eligible security for purposes of TRACE by the lower or lowest of the ratings.

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6250. Dissemination of [Corporate Bond Trade]Transaction Information

(a) Dissemination of New Issue Aftermarket Transactions

(1) Transaction information for TRACE-eligible securities rated by an NRSRO or classified by NASD for purposes of TRACE as BBB (or the equivalent rating of one or more NRSROs) executed during the period beginning the day a newly issued security is priced and lasting two business days ("New Issue Aftermarket-2") will not be disseminated during the New Issue Aftermarket-2. NASD will disseminate transaction information for transactions executed during the New Issue Aftermarket-2 starting on the next (third) business day, according to dissemination protocols established by NASD.

(2) Transaction information for TRACE-eligible securities rated by an NRSRO or classified by NASD for purposes of TRACE as BB (or the equivalent rating of one or more NRSROs) or lower executed during the period beginning the day a newly issued security is priced and lasting 10 business days ("New Issue Aftermarket-10") will not be disseminated during the New Issue Aftermarket-10. NASD will disseminate transaction information for transactions executed during the New Issue Aftermarket-10 starting on the next (eleventh) business day, according to dissemination protocols established by NASD.

(b) Dissemination of Secondary Market Transactions

(1) Immediate Dissemination. NASD will disseminate transaction information immediately upon receipt of a transaction report, if the report is for a transaction:

(A) In a TRACE-eligible security rated by an NRSRO or classified by NASD for purposes of TRACE above BBB (or the equivalent rating of one or more NRSROs); or

(B) In a TRACE-eligible security rated by an NRSRO or classified by NASD for purposes of TRACE as BBB (or the equivalent rating of one or more NRSROs) executed other than during the New Issue Aftermarket-2; or,

(C) In a TRACE-eligible security rated by an NRSRO or classified by NASD for purposes of TRACE as BB (or the equivalent rating of one or more NRSROs) or lower executed other than during the New Issue Aftermarket-10 if:

(i) the size of the transaction is \$1 million or less (par value); or

(ii) the size of the transaction is greater than \$1 million (par value), and the TRACE-eligible security is traded (a) an average of one or more times per day, during the New Issue Aftermarket-10; and (b) thereafter, an average of one or more times per day over the last 20 business days of a 90-day period determined each quarter by NASD. Such security shall remain subject to immediate dissemination until such 90-day period in which the security fails to meet the condition set forth in this subparagraph (C)(ii)(b), in which case it shall be subject to a two- or four-business day delayed dissemination, as applicable.

(2) Two- or Four-Business-Day Delayed Dissemination. For transactions in a TRACE-eligible security rated by an NRSRO or classified by NASD for purposes of TRACE as BB (or the equivalent rating of one or more NRSROs) or lower executed other than during the New Issue Aftermarket-10, NASD will disseminate transaction information on a two- or four-business-day delayed basis from the time of execution as follows:

(A) Two-Business-Day Delay. In a TRACE-eligible security rated by an NRSRO or classified by NASD for purposes of TRACE as BB (or the equivalent rating of one or more NRSROs) if:

(i) the size of the transaction is greater than \$1 million (par value); and

(ii) the security is traded (a) an average of less than one time per day, during the New Issue Aftermarket-10; and (b) thereafter, an average of less than one time per day over the last 20 business days of a 90-day period determined each quarter by NASD. Such security shall remain subject to a two-business day delayed dissemination until such 90-day period in which the security fails to meet the condition set forth in this subparagraph (A)(ii)(b), in which case it shall be subject to immediate dissemination.

(B) Four-Business-Day Delay. In a TRACE-eligible security rated by an NRSRO or classified by NASD for purposes of TRACE as B (or the equivalent rating of one or more NRSROs) or lower if:

(i) the size of the transaction is greater than \$1 million (par value) and;

(ii) the security is traded (a) an average of less than one time per day, during the New Issue Aftermarket-10; and (b) thereafter, an average of less than one time per day over the last 20 business days of a 90-day period determined each quarter by NASD. Such security shall remain subject to a four-business day delayed dissemination until such 90-day period in which the security fails to meet the condition set forth in this subparagraph (B)(ii)(b), in which case it shall be subject to immediate dissemination.

(c) **Rule 144A**

NASD will not disseminate information on a transaction in a TRACE-eligible security that is issued pursuant to Section 4(2) of the Securities Act of 1933 and resold pursuant to Rule 144A under the Securities Act of 1933.

(a) **General Dissemination Standard**

Immediately upon receipt of transaction reports received at or after 8:00 a.m. through 6:29:59 p.m. Eastern Time, NASD will disseminate transaction information (except that market aggregate information and last sale information will not be updated after 5:15 p.m. Eastern Time) in the securities described below.

(1) A TRACE-eligible security that is Investment Grade at the time of receipt of the transaction report and has an initial issuance size of \$1 billion or greater.

(2) A TRACE-eligible security that is Non-Investment Grade at the time of receipt of the transaction report and is designated by NASD for dissemination according to the following criteria.

(A) The staff of NASD will designate fifty of the most actively traded Non-Investment Grade securities that are TRACE-eligible securities for dissemination under this rule, based on (i) the security's volume; (ii) the security's price; (iii) the security's name recognition; (iv) the research following of the security; (v) the security having a minimum number of bonds outstanding; (vi) the security being traded routinely by at least two dealers; and (vii) the security contributing to a representation of diverse industry groups in the group of securities designated for dissemination.

(B) A Non-Investment Grade security will not be designated, and may be immediately withdrawn from designation, for dissemination under this rule if the security: (i) has matured; (ii) has been called; (iii) has been upgraded to Investment Grade; or (iv) has been downgraded to an extent that the security's trading characteristics do not warrant designation for dissemination.

(3) A TRACE-eligible security that is Investment Grade, is rated by Moody's Investors Service, Inc. as "A3"¹ or higher, and by Standard & Poor's, a division of McGraw Hill Co., Inc., as "A-"² or higher, and has an original issue size of \$100 million or greater. If a security is rated under this provision to qualify for dissemination at any time on or after the effective date of the rule, dissemination of transaction information on the security will continue under this paragraph unless the security is downgraded below "Baa3/BBB-."

(4) Ninety to 120 TRACE-eligible securities designated by NASD that are rated "Baa/BBB" at the time of designation, according to the following standards.

(A) Three groups, each composed of up to 50 TRACE-eligible securities (Group 1, Group 2, and Group 3), but collectively not exceeding 120, shall be designated by NASD. At the time of designation, each TRACE-eligible security in Group 1 must be rated "Baa1/BBB+" and each TRACE-eligible security in Group 2 and Group 3, must be rated, respectively, "Baa2/BBB" and "Baa3/BBB-." If a TRACE-eligible security is rated one of the "Baa" ratings by Moody's and one of the "BBB" ratings by S&P and the ratings indicate two different levels of credit quality, the lower of the two ratings will be used to determine the group to which a debt security will be assigned under this paragraph (a)(4).

(B) A TRACE-eligible security that has a rating from only one rating agency will not be designated under paragraph (a)(4).

(C) Dissemination of transaction information on a TRACE-eligible security that is designated under paragraph (a)(4) will not be discontinued if one rating is, or both ratings, are downgraded or upgraded.]

[(b) Transactions Excluded From Market Aggregate, Last Sale

All trade reports in TRACE-eligible securities that are approved for dissemination and submitted to TRACE at or after 8:00 a.m. Eastern Time and prior to 5:15 p.m. Eastern Time will be included in the calculation of market aggregates and last sale except:

(1) trades reported on an "as of" basis;

[1] Moody's Investors Service, Inc. ("Moody's") is a nationally recognized statistical rating organization. Moody's is a registered trademark of Moody's Investors Service. Moody's ratings are proprietary to Moody's and are protected by copyright and other intellectual property laws. Moody's licenses ratings to NASD. Ratings may not be copied or otherwise reproduced, repackaged, further transmitted, transferred, disseminated, redistributed or resold, or stored for subsequent use for any purpose, in whole or in part, in any form or manner or by any means whatsoever, by any person without Moody's prior written consent.]

[2] Standard & Poor's, a division of the McGraw-Hill Companies, Inc. ("S&P"), is a nationally recognized statistical rating organization. S&P's ratings are proprietary to S&P and are protected by copyright and other intellectual property laws. S&P's licenses ratings to NASD. Ratings may not be copied or otherwise reproduced, repackaged, further transmitted, transferred, disseminated, redistributed or resold, or stored for subsequent use for any such purpose, in whole or in part, in any form or manner or by any means whatsoever, by any person without S&P's prior written consent.]

- (2) "when issued" trades executed on a yield basis;
- (3) trades in baby bonds with a par value of less than \$1,000;
- (4) trades in which the price is determined by a weighted average price; and
- (5) trades in which the price is a "special price," as indicated by the use of the special price modifier.]

[(c) Dissemination of Certain Trades Executed on A Business Day

(1) Reports of transactions in TRACE-eligible securities that are subject to dissemination, are executed on a business day at or after 6:30 p.m. Eastern Time through 11:59:59 p.m. Eastern Time, and are reported pursuant to Rule 6230(a)(2) on the next business day and designated "as/of" will be disseminated beginning at 8:00 a.m. Eastern Time on the day of receipt. The reported information will not be included in the calculation of the day's market aggregates.

(2) Reports of transactions in TRACE-eligible securities that are subject to dissemination, are executed on a business day at or after 12:00 a.m. Eastern Time through 7:59:59 a.m. Eastern Time, and are reported pursuant to Rule 6230(a)(3) on the same day beginning at 8:00 a.m. Eastern Time will be disseminated upon receipt. The reported information will be included in the calculation of the day's market aggregates, except as otherwise provided in Rule 6250(b)(1) through (5).]

[(d) Dissemination of Trades Executed on Non-Business Days

Reports of transactions in TRACE-eligible securities that are subject to dissemination, are executed on a non-business day at any time during the day, and are reported pursuant to Rule 6230(a)(4) on the next business day will be disseminated upon receipt. The reported information will not be included in the calculation of the day's market aggregates.]

* * * * *

Rule 6260. Managing Underwriter or Group of Underwriters Obligation To Obtain CUSIP and Provide Notice

(a) Members Required to Provide Information and Notice

(1) In order to facilitate trade reporting and dissemination of secondary transactions in TRACE-eligible securities, the member that is the managing underwriter or the members that are the group of underwriters of a distribution or offering, excluding a secondary distribution or offering, of a debt security that, upon issuance will be a TRACE-eligible security ("new issue"),[of any newly issued TRACE-eligible security] must obtain and provide information [by email or facsimile]to the TRACE Operations Center as required below.[under paragraph (b).] If a managing underwriter is not appointed, the group of underwriters must provide the information required under this rule.[comply with paragraph (b).]

(2) The information must be provided by facsimile or e-mail.

(b) Notices

For such [TRACE-eligible securities]new issues, the managing underwriter or group of underwriters must provide to the TRACE Operations Center[, by email or facsimile]: (1) the CUSIP number; (2) the issuer name; (3) the coupon rate; (4) the maturity; (5) whether Rule 144A applies; (6) a brief description of the issue (e.g., senior subordinated note, senior note); and, (7) information, as determined by NASD, [that is required to determine]to implement the provisions of Rule 6250(a) and such other information NASD deems necessary to properly implement the reporting and dissemination of a TRACE-eligible security[if a TRACE-eligible security must be disseminated under Rule 6250 (e.g., size of issue and rating)], or if any of items (2) through (7) has not been determined, such other information as NASD deems necessary. The managing underwriter or group of underwriters must obtain the CUSIP number and provide it and the information listed as (2) through (7) not later than 5:00 p.m. Eastern Time on the business day preceding the day that the registration statement becomes effective, or, if registration is not required, the day before the securities will be priced. If an issuer notifies a managing underwriter or group of underwriters, or the issuer and the managing underwriter or group of underwriters determine, that the TRACE-eligible securities of the issuer shall be priced, offered and sold the same business day in an intra-day offering under Rule 415 of the Securities Act of 1933 or Section 4(2) and Rule 144A of the Securities Act of 1933, the managing underwriter or group of underwriters shall provide the information not later than 5:00 p.m. Eastern Time on the day that the securities are priced and offered, provided that if such securities are priced and offered on or after 5:00 p.m. Eastern Time, the managing underwriter or group of underwriters shall provide the information not later than 5:00 p.m. Eastern Time on the next business day. The managing underwriter or group of underwriters must make a good faith determination that the security is a TRACE-eligible security before submitting the information to the TRACE Operations Center.

Notice to Members

SEPTEMBER 2004

SUGGESTED ROUTING

Institutional
Internal Audit
Legal & Compliance
Operations
Senior Management
Syndicate
Systems
Trading

KEY TOPICS

Operations
Order-Routing and Execution Systems
Rule 3010
Rule 3310 and IM-3310
Supervision
Trading and Market Making Systems

GUIDANCE

Order-Routing and Execution Systems

NASD Reminds Member Firms of Their Obligations to Ensure the Accuracy and Integrity of Information Entered into Order-Routing and Execution Systems

Executive Summary

In recent months, there have been several instances where member firms inadvertently have entered, or permitted customers or non-members to enter, the incorrect quantity of shares or prices into the handling, routing, and execution services of a vendor, automated trading system, electronic communications network, or other market center (collectively, "trading systems"). NASD is issuing this *Notice* to remind firms of their obligations under Rule 3010 (Supervision) to have in place a supervisory system and written supervisory procedures reasonably designed to ensure that such orders placed into trading systems are not entered in error or in a manner inconsistent with NASD rules, including Rule 3310 (Publication of Transactions and Quotations) and IM-3310 (Manipulative and Deceptive Quotations). NASD is also reminding firms that their supervisory systems should promote compliance with the subscriber agreements of such trading systems to the extent necessary to ensure compliance with NASD rules.

Questions/Further Information

Questions regarding this *Notice* may be directed to the Legal Section, Market Regulation, at (240) 386-5126; or Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8071.

Discussion

NASD is reminding firms that enter, or permit customers or non-members to enter, orders into trading systems to take steps to ensure that such orders are free of errors and representative of bona fide transaction and quotation activity. NASD notes that there have been several instances where firms inadvertently have entered the incorrect quantity of shares or price into a trading system for execution, primarily as a result of mistakes in data entry or defective or malfunctioning software operated by either a firm or its vendor. An NASD firm is ultimately responsible for all orders entered, whether entered by the firm or by a sponsored customer or non-member, even if such firm is using the services of a vendor to facilitate the entry of such orders.¹

Firms have an obligation to act in accordance with NASD rules and to ensure that all trading systems are used properly and in accordance with the terms and conditions specific to those systems to the extent necessary to ensure compliance with NASD rules. These rules include, but are not limited to, Rule 3310 and IM-3310, concerning bona fide transaction and quotation activity. Consequently, firms must have in place a supervisory system and written supervisory procedures reasonably designed to ensure that orders are not entered in error or in a manner inconsistent with NASD rules. Such supervisory systems and procedures should comply with the subscriber and operating agreements of such trading systems for the purpose of avoiding erroneous orders and transactions.²

NASD recognizes that trading systems enhance the ability to route and execute orders and enable firms to execute multiple orders as quickly and efficiently as possible. However, speed and efficiency must be balanced against the safeguards needed to protect against errors or mistakes that can result in increased market volatility and confusion, as well as significant financial risk and exposure to firms and the investing public.

When developing supervisory systems and written supervisory procedures in this area, firms should consult NASD's supervision rule, Rule 3010, and guidance provided in *Notices to Members 88-84* (November 1988), *89-34* (April 1989), *98-96* (December 1998), and *99-45* (June 1999). Additionally, firms should consider the following factors when developing a supervisory system and written supervisory procedures:

1. Firm trading systems should include controls that limit the use of such systems to authorized persons, check for order accuracy, prevent orders that exceed preset credit- and order-size parameters from being transmitted to a trading system, and prevent the unwanted generation, cancellation, repricing, resizing, duplication, or re-transmission of orders.
2. Safeguards should be in place to ensure that the operation, testing, or maintenance of a firm's trading system does not result in the inadvertent disabling of the applicable trading system, mistaken executions, errors, or other trading problems.

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3. Firms should ensure that they do not test their systems' connectivity to the applicable trading system by sending orders that are not executable, such as by sending orders during normal market hours that are priced far outside a security's current price. Firms must test pursuant to established protocols and test messages should be clearly denoted as such.
 4. Before permitting or sponsoring customer or non-member access to a firm's trading system, a firm must have a supervisory system and written supervisory procedures in place reasonably designed to ensure that such orders are not entered in error or in a manner inconsistent with NASD rules (including, but not limited to, Rule 3310 and IM-3310) or with the subscriber agreements of such trading systems to the extent necessary to ensure compliance with NASD rules. *See Notice to Members 98-66.*
 5. Procedures that are available to adjudicate clearly erroneous transactions are to be used only in cases of clear or obvious errors and should not be used as a proxy for proper system use or trading procedures. Other errors, whether as a result of a system problem or human error, will not be dealt with through the rules applicable to clearly erroneous transactions.

Firms are reminded that NASD will examine closely firms' supervisory systems and written supervisory procedures with respect to the review and detection of potential order-entry errors, and, where appropriate, initiate disciplinary action against firms and their supervisory personnel for failure to adopt, implement, and enforce appropriate supervisory procedures. NASD also may impose more significant sanctions if it finds that a firm has inadequate supervisory systems and procedures in place and such deficiencies have resulted in a pattern or practice of erroneous information being distributed to the marketplace.

Endnotes

- 1 See *Notice to Members 98-66* (August 1998).
- 2 See NASD Rules 2110 and 3010.

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Special Notice to Members

SEPTEMBER 2004

SUGGESTED ROUTING

Legal & Compliance
Operations
Registration
Senior Management

KEY TOPICS

District Elections

INFORMATIONAL

District Elections

Nominees for District Committee and District Nominating Committee

Executive Summary

The purpose of this *Special Notice to Members* is to announce the nominees for the District Committees and the District Nominating Committees. The individuals identified in this *Special Notice* (see Attachment A) have been nominated for three-year terms¹ on the District Committees and for one-year terms on the District Nominating Committees starting in January 2005. These nominees will be considered duly elected on **October 1, 2004**, unless an election is contested in accordance with the procedures set forth in Article VIII of the By-Laws of NASD Regulation, as summarized below.

We appreciate the interest shown by many of you in participating in the District Committees and thank everyone for their continuing support of the self-regulatory process. We look forward to your participation in the matters of the Districts during the coming year, as well as hope that those who were not selected this year consider revisiting this process next year.

Contested Election Procedures

If an officer, director, or employee of an NASD member who meets the qualifications set forth in Article VIII of the By-Laws of NASD Regulation is interested in being considered as an additional candidate, he/she must indicate his/her interest in writing to the District Director by **September 30, 2004**. If an additional candidate or candidates come forward by that date, the Corporate Secretary

04-67

will provide each additional candidate with a list of members that are eligible to vote in the District, their mailing addresses, and their Executive Representatives. In order to be considered for nomination, within 30 calendar days after the date the Corporate Secretary mails the list of members eligible to vote, an additional candidate must submit a petition to the District Nominating Committee containing signatures from at least 10 percent of the Executive Representatives of members eligible to vote in the District.

If no additional candidates submit petitions by **November 1, 2004**, then the candidates nominated by the District Nominating Committee shall be considered elected as of **October 1, 2004**, and the Corporate Secretary will announce the election results to the Executive Representatives of NASD members.

Additional information pertaining to the District Election Procedures can be found in Article VIII of the By-Laws of NASD Regulation.

Questions/Further Information

Questions concerning this *Special Notice* may be directed to the District Director noted in Attachment A or to Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD, at (202) 728-8062, or via e-mail at barbara.sweeney@nasd.com.

Endnote

- 1 Some nominees are filling existing vacancies and therefore may serve less than a three-year term, as indicated on Attachment A.

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ATTACHMENT A

District Committee and District Nominating Committee Nominees

District 1

Elisabeth P. Owens, Regional Director, West Region

525 Market Street, Suite 300, San Francisco, CA 94105-2711

(415) 882-1200

Northern California (the counties of Monterey, San Benito, Fresno, and Inyo, and the remainder of the state north or west of such counties), northern Nevada (the counties of Esmeralda and Nye, and the remainder of the state north or west of such counties), and Hawaii

2004 District Nominating Committee Chair

James D. Klein	UBS PaineWebber, Inc.	San Francisco, CA
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District 1 Nominees

Howard Bernstein	Pacific Growth Equities, LLC	San Francisco, CA
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Kevin T. Kitchin	Wachovia Securities, Inc.	San Francisco, CA
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Bruce Nollenberger	Nollenberger Capital Partners, Inc.	San Francisco, CA
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District 1 Nominating Committee Nominees

Robert S. Basso	National Financial Services, LLC	San Francisco, CA
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L. Robert McKulla	Wachovia Securities, Inc.	Walnut Creek, CA
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Robert A. Muh	Sutter Securities, Inc.	San Francisco, CA
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G. Stuart Spence	UBS Financial Services, Inc.	San Francisco, CA
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Samuel Yates	RBC Dain Rauscher	San Francisco, CA
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District Committee and District Nominating Committee Nominees

District 2

Lani M. Sen Woltmann, District Director

300 South Grand Avenue, Suite 1600, Los Angeles, CA 90071

(213) 229-2300

Southern California (that part of the state south or east of the counties of Monterey, San Benito, Fresno, and Inyo), southern Nevada (that part of the state south or east of the counties of Esmeralda and Nye), and the former U.S. Trust Territories

2004 District Nominating Committee Chair

Margaret M. Black	Morgan Stanley	Century City, CA
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District 2 Nominees

Kenneth R. Hyman	Partnervest Securities, Inc.	Santa Barbara, CA
Ismael Manzanares, Jr. ¹ (1-Year Term)	Foresters Equity Securities, Inc.	San Diego, CA
Bryan R. Plank	Merrill Lynch	San Diego, CA
Valorie Seyfert	CUSO Financial Services, L.P.	San Diego, CA

District 2 Nominating Committee Nominees

James E. Biddle	The Securities Center Incorporated	Chula Vista, CA
Terry L. Chase	Wachovia Securities, Inc.	Pasadena, CA
Richard B. Gunter	Wedbush Morgan Securities	Los Angeles, CA
Steven K. McGinnis		Irvine, CA
Joel H. Ravitz	Quincy Cass Associates	Los Angeles, CA

¹ Mr. Manzanares has been nominated to serve the remaining one-year term of James E. Biddle, who will resign from the District Committee in January 2005.

District Committee and District Nominating Committee Nominees

District 3

Joseph M. McCarthy, District Director

370 17th Street, Suite 2900
Denver, CO 80202-5629

(303) 446-3100

James G. Dawson, District Director

Two Union Square, 601 Union Street
Suite 1616, Seattle, WA 98101-2327

(206) 624-0790

*Arizona, Colorado, New Mexico,
Utah, and Wyoming*

*Alaska, Idaho, Montana, Oregon,
and Washington*

2004 District Nominating Committee Chair

Anthony B. Petrelli

Neidiger, Tucker, Bruner, Inc.

Denver, CO

District 3 Nominees

Kathryn M. Dominick

TCAvisors Network, Inc.

Englewood, CO

Craig A. Jackson

Northwest Consulting, LLC

Roseburg, OR

Harry L. Striplin

Paulson Investment Company, Inc.

Portland, OR

District 3 Nominating Committee Nominees

Gregory R. Anderson

TIAA-CREF Individual & Institutional Services, LLC

Denver, CO

Elyssa S. Baltazar

Morgan Stanley Dean Witter, Inc.

Denver, CO

Thomas R. Hislop

Peacock, Hislop, Staley & Given, Inc.

Phoenix, AZ

Clarence Fredrick Roed

RBC Dain Rauscher

Bellevue, WA

Kathryn A. Supko

Northwestern Mutual Investment Services, LLC

Boise, ID

District Committee and District Nominating Committee Nominees

District 4

Thomas D. Clough, District Director

120 West 12th Street, Suite 900, Kansas City, MO 64105

(816) 421-5700

Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota

2004 District Nominating Committee Chair

L.C. (Jack) Petersen Kirkpatrick, Pettis, Smith, Polian, Inc. Omaha, NE

District 4 Nominees

Allen J. Moore SMITH HAYES Financial Services Lincoln, NE
Stephen R. Oliver Gold Capital Management, Inc. Overland Park, KS
Mino Spellerberg Princor Financial Services Corporation Des Moines, IA

District 4 Nominating Committee Nominees

Frank H. Kirk Wachovia Securities LLC Kansas City, MO
Timothy J. Lyle Cambridge Investment Research Fairfield, IA
Jeffrey A. Schuh Residential Funding Securities Corp. Minneapolis, MN
James H. Warner The Warner Group Sioux City, IA
Pamela R. Ziermann Dougherty & Company LLC Minneapolis, MN

District Committee and District Nominating Committee Nominees

District 5

Warren A. Butler, Jr., Regional Director, South Region

1100 Poydras Street, Energy Centre, Suite 850, New Orleans, LA 70163-0802

(504) 522-6527

Alabama, Arkansas, Louisiana, Mississippi, Oklahoma, and Tennessee

2004 District Nominating Committee Chair

Duncan F. Williams	Duncan-Williams, Inc.	Memphis, TN
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District 5 Nominees

Philip J. Dorsey ²	Dorsey & Company, Inc.	New Orleans, LA
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Fred G. Eason	Delta Trust Investments, Inc.	Little Rock, AR
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Harold L. Gladney	Vining Sparks IBG, L.P.	Memphis, TN
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District 5 Nominating Committee Nominees

John J. Dardis	Jack Dardis & Associates, Ltd.	Metairie, LA
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David A. Knight	Stephens, Inc.	Little Rock, AR
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LeRoy H. Paris, II	Invest Linc Securities, Inc.	Jackson, MS
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Tom R. Steele	Equitable Advisors, Inc.	Nashville, TN
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David W. Wiley, III	Wiley Bros., Aintree Capital, LLC	Nashville, TN
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² Mr. Dorsey was appointed to serve the remaining one-year term of J. Timothy Rice, who resigned from the District Committee in November 2003. Mr. Dorsey's term expires in January 2005. Mr. Dorsey has been nominated to serve a three-year term on the District Committee commencing in January 2005.

District Committee and District Nominating Committee Nominees

District 6

Virginia F. M. Jans, District Director

12801 N. Central Expressway, Suite 1050, Dallas, TX 75243

(972) 701-8554

Texas

2004 District Nominating Committee Chair

Edward M. Milkie	Milkie/Ferguson Investments, Inc.	Dallas, TX
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District 6 Nominees

Bryan T. Emerson	Starlight Investments, LLC	Houston, TX
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Michael A. Pagano	1st Global Capital Corporation	Dallas, TX
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William H. Lowell	Lowell & Co., Inc.	Lubbock, TX
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District 6 Nominating Committee Nominees

Christopher R. Allison	M.E. Allison & Company, Inc.	San Antonio, TX
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Sennett Kirk, III	Kirk Securities Corporation	Denton, TX
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William B. Madden	Madden Securities Corporation	Dallas, TX
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V. Keith Roberts	Stanford Group Company	Houston, TX
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David W. Turner	Wachovia Securities, Inc.	Fort Worth, TX
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District Committee and District Nominating Committee Nominees

District 7

David Paulukaitis, Associate Director

One Securities Centre, Suite 500, 3490 Piedmont Road, NE, Atlanta, GA 30305

(404) 239-6100

*Florida, Georgia, North Carolina, South Carolina, Puerto Rico, the Canal Zone,
and the Virgin Islands*

2004 District Nominating Committee Chair

Michael D. Hearn, Esq. Banc of America Investment Services, Inc. Charlotte, NC

District 7 Nominees

Erick R. Holt, Esq. AMVESCAP Atlanta, GA

William G. McMaster Scott & Stringfellow, Inc. Columbia, SC

Charles F. O'Kelley Atlantic Coast Securities Corporation Tampa, FL

District 7 Nominating Committee Nominees

Jeffrey P. Adams Balentine & Company Atlanta, GA

Richard G. Averitt, III Raymond James Financial Services, Inc. St. Petersburg, FL

Richard V. McGalliard Wachovia Securities, Inc. Atlanta, GA

Kenneth W. McGrath Popular Securities, Inc. Hato Rey, Puerto Rico

Roark A. Young Young, Stovall & Company Miami, FL

District Committee and District Nominating Committee Nominees

District 8

Carlotta A. Romano, District Director

55 West Monroe Street, Suite 2700, Chicago, IL 60603-5052

(312) 899-4400

Illinois, Indiana, Kentucky, Michigan, Ohio, and Wisconsin

2004 District Nominating Committee Chair

Mary D. Esser	Cressman Esser Securities, Inc.	Naperville, IL
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District 8 Nominees

Richard M. Arceci	ValMark Securities, Inc.	Akron, OH
Ronald J. Dieckman	J.J.B. Hilliard, W.L. Lyons, Inc.	Louisville, KY
Julie E. Vander Weele	Mesirow Financial, Inc.	Chicago, IL

District 8 Nominating Committee Nominees

Bernard A. Breton	Carillon Investments, Inc.	Cincinnati, OH
William K. Curtis	M & I Brokerage Services, Inc.	Milwaukee, WI
Carol P. Foley	Podesta & Company	Chicago, IL
Gregory Goelzer	Goelzer Investment Management	Indianapolis, IN
Bruce J. Young	Mesirow Financial, Inc.	Chicago, IL

District Committee and District Nominating Committee Nominees

District 9

Gary K. Liebowitz, District Director
581 Main Street, 7th Floor
Woodbridge, NJ 07095
(732) 596-2000

John P. Nocella, District Director
Eleven Penn Center, 1835 Market Street
19th Floor, Philadelphia, PA 19103
(215) 665-1180

New Jersey and New York (except for the counties of Nassau and Suffolk, and the five boroughs of New York City)

Delaware, the District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia

2004 District Nominating Committee Chair

Lenda P. Washington GRW Capital Corporation Washington, DC

District 9 Nominees

Scott L. Fagin	The Jeffrey Matthews Financial Group, L.L.C.	Millburn, NJ
Rebecca L. Kohler	American Express Financial Advisors, Inc.	Roanoke, VA
Jerome J. Murphy³ <i>(1-Year Term)</i>	Janney Montgomery Scott LLC	Philadelphia, PA
Harold N. Peremel⁴ <i>(2-Year Term)</i>	Peremel & Co., Inc.	Baltimore, MD
Dorothy G. Sanders	Fred Alger & Company, Incorporated	Jersey City, NJ

District 9 Nominating Committee Nominees

James E. Bickley	Cresap, Inc.	Horsham, PA
J. Lee Keiger, III	Davenport & Company, LLC	Richmond, VA
Michael S. Mortensen	PNC Investments	Pittsburgh, PA
Michael B. Row	Pershing, LLC	Jersey City, NJ
Howard B. Scherer	Janney Montgomery Scott LLC	Philadelphia, PA

3 Mr. Murphy has been nominated to serve the remaining one-year term of Robert M. Berson, who has resigned from the District Committee.

4 Mr. Peremel has been nominated to serve the remaining two-year term of John Bluhner, who has resigned from the District Committee.

District Committee and District Nominating Committee Nominees

District 10

Hans Reich, Regional Director, New York Region

One Liberty Plaza, New York, NY 10006

(212) 858-4000

New York (the counties of Nassau and Suffolk, and the five boroughs of New York City)

2004 District Nominating Committee Chair

Judith R. MacDonald Rothschild, Inc. New York, NY

District 10 Nominees

Margaret M. Caffrey⁵ Schonfeld & Company, LLC New York, NY
(1-Year Term)

Tracy E. Calder UBS Financial Services, Inc. Weehawken, NJ

Clifford H. Goldman Marco Polo Securities, Inc. New York, NY

Jeffrey T. Letzler Instinet, LLC New York, NY

Michael Santo Banc of America Securities LLC New York, NY

District 10 Nominating Committee Nominees

William Behrens Northeast Securities, Inc. New York, NY

Jennifer A. Connors ITG, Inc. New York, NY

Ruth S. Goodstein UBS Financial Services, Inc. New York, NY

Mark Ronda Oppenheimer & Co., Inc. New York, NY

Charles V. Senatore Fidelity Brokerage Services, LLC New York, NY

5 Ms. Caffrey has been nominated to serve the remaining one-year term of Vicki Holleman, who has resigned from the District Committee.

District Committee and District Nominating Committee Nominees

District 11

Frederick F. McDonald, District Director

99 High Street, Suite 900, Boston, MA 02110

(617) 532-3400

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont

2004 District Nominating Committee Chair

John D. Lane	Lane Capital Markets, LLC	Fairfield, CT
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District 11 Nominees

Frank L. Chandler	Boston Capital Services, Inc.	Boston, MA
Joseph Gritzer	USI Securities, Inc.	Glastonbury, CT
Moira Lowe	Tower Square Securities, Inc.	Hartford, CT
Wilson G. Saville ⁶ (1-Year Term)	Barrett & Company	Providence, RI

District 11 Nominating Committee Nominees

Michael C. Braun	Moors & Cabot, Inc.	Boston, MA
Andrew F. Detwiler	Vandham Securities Corp.	Boston, MA
John I. Fitzgerald	Leerink Swann & Company	Boston, MA
Thomas J. Horack	John Hancock Life Insurance Company	Boston, MA
Gregory D. Teese	Equity Services, Inc.	Montpelier, VT

⁶ Mr. Saville has been nominated to serve the remaining one-year term of Gregg A. Kidd, who has resigned from the District Committee.

Notice to Members

SEPTEMBER 2004

SUGGESTED ROUTING

Legal & Compliance
Operations
Registered Representatives
Senior Management
Trading

KEY TOPICS

Alternative Display System (ADF)
Electronic Communications Network (ECN)
Rule 4300A
Trade Reporting and Comparison Service (TRACS)

GUIDANCE

Alternative Display Facility (ADF)

SEC Approves Rule Amendment Requiring That ADF Market Participant Provide Advance Written Notice When Denying Access; **Effective Date: October 20, 2004**

Executive Summary

On August 18, 2004, the Securities and Exchange Commission (SEC) approved amendments to Rule 4300A to require Alternative Display Facility (ADF) Market Participants to provide written notice, via facsimile, personal delivery, courier, or overnight mail, at least 14 calendar days in advance to NASD's ADF Market Operations before denying direct electronic access to an NASD member firm.¹ Upon receipt of the notice, ADF Market Operations will post the required notice on the ADF Web page to ensure that member firms have adequate time to make other routing or access arrangements, as necessary. Amended Rule 4300A also provides that only a Market Participant that is an electronic communications network (ECN) may lawfully deny access to its quotes, and may only do so in the limited circumstance where a broker-dealer fails to pay contractually obligated costs for access to the ECN's quotes.

The text of the amendments is set forth in Attachment A and becomes effective on October 20, 2004.

Questions/Further Information

Questions concerning this *Notice* may be directed to Patricia Albrecht, Assistant General Counsel, Office of General Counsel, Regulatory Policy and Oversight (202) 728-8026; or Elliot Levine, Chief Counsel, Markets, Services, and Information, at (202) 728-8405.

Background

The ADF is a quotation collection, trade comparison, and trade reporting facility developed by NASD in accordance with the SEC's SuperMontage Approval Order.² The ADF currently is operating as a pilot until October 26, 2004,³ and it is anticipated that the ADF will continue to operate on a pilot basis until the SEC approves the operation of the ADF on a permanent basis.

ADF provides Market Participants (e.g., ADF-registered market makers or ECNs) the ability to post quotations in NASDAQ securities and provides all member firms that participate in the ADF the ability to view quotations and report transactions in NASDAQ securities to the Securities Information Processor (SIP) for NASDAQ-listed issues for consolidation and dissemination of data to vendors and ADF Market Participants. The facility also provides for trade comparison through the Trade Reporting and Comparison Service (TRACS). The facility further provides for real-time data delivery to NASD for regulatory purposes, including enforcement of firm quote and related rules.

The ADF does not provide an order-routing capability. Instead, Rule 4300A requires Market Participants to provide direct electronic access to other Market Participants and to provide to all other NASD member firms direct electronic access or allow for indirect electronic access to the individual market participant's quote. This rule provides the means for Market Participants and other broker/dealers to access ADF quotes and, among other things, meet the firm quote and locked and crossed quotation requirements. Rule 4300A prohibits Market Participants from in any way discouraging or discriminating against member firms that wish to reach their quotes.

Last year, NASD became aware that a Market Participant denied access, with no prior notice, to a second ADF Market Participant for allegedly failing to pay contractually obligated costs. This action caused disruption not only for the Market Participant denied access, but also other NASD member firms that typically accessed the first Market Participant's quote through the second ADF Market Participant's routing system. Although there were other means in place by which an NASD member firm could access the first Market Participant's quotes, the absence of any advance notice of the denial of access caused confusion in the marketplace as member firms considered alternative means to access the first Market Participant's quotes.

Accordingly, to maintain market efficiency and prevent such confusion in the future, NASD has amended Rule 4300A to require that Market Participants provide written notice, via facsimile, personal delivery, courier, or overnight mail, at least 14 calendar days in advance to ADF Market Operations before denying access to an NASD member firm. The 14-day period begins on the first business day that ADF Market Operations has receipt of the notice. Upon receipt of the notice, ADF Market Operations will post the notice on the ADF Web page to ensure that member firms have adequate time to make other routing or access arrangements, as necessary. To ensure proper documentation of compliance with Rule 4300A, member firms should maintain evidence of receipt of the notice (*i.e.*, dated facsimile confirmation, receipt from a courier, etc.).

Rule 4300A also codifies existing NASD guidance that a Market Participant may deny access to its quotes only in the limited circumstances where a broker-dealer fails to pay contractually obligated costs for access to its quotes.⁵ Because the SEC has determined that only ECNs may charge a post-transaction fee for execution against their displayed quotation (*i.e.*, access fee),⁵ Rule 4300A clarifies that only Market Participants that are ECNs may deny access to an NASD member firm for failure to pay contractually obligated access fees.

Additionally, any denial of access must be based on a good faith belief that the denial of access is appropriate and does not violate any NASD rules or the securities laws. Amended Rule 4300A further clarifies that the publication of an ADF Market Participant's intent to deny access will have no bearing on the merits of any claim between the Market Participant and any affected broker-dealer, nor will it insulate the Market Participant from liability from violations of NASD rules or the federal securities laws, such as SEC Rule 11Ac1-1. If NASD believes that a Market Participant has improperly denied a broker-dealer access to its quotes, the Market Participant will not have met the terms of Rule 4300A. In that instance, NASD will consider the ADF Market Participant to be in violation of that provision and will not permit the ADF Market Participant to continue quoting on the ADF.

Endnotes

- 1 Exchange Act Rel. No. 50218 (August 18, 2004), 69 F.R. 52055 (August 24, 2004) (File No. SR-NASD-2004-002).
- 2 Exchange Act Rel. No. 43863 (January 19, 2001), 66 F.R. 8020 (January 26, 2001) (File No. SR-NASD-99-53).
- 3 See Exchange Act Rel. No. 49131 (January 27, 2004), 69 F.R. 5229 (February 3, 2004) (File No. SR-NASD-2004-12).
- 4 See Exchange Act Rel. No. 46249 (July 24, 2002), 67 F.R. 49822 (July 31, 2002) (File No. SR-NASD-2002-97).
- 5 See Letter from Robert L.D. Colby, Deputy Director, Division of Market Regulation, SEC, to Louis B. Todd, Jr., Head of Equity Trading, J.C. Bradford & Co. (August 6, 1998).

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ATTACHMENT A

New language is underlined; deletions are in brackets

4000A. NASD ALTERNATIVE DISPLAY FACILITY

* * * * *

4300A. Quote and Order Access Requirements

(a) To ensure that NASD Market Participants comply with their quote and order access obligations as defined below, for each security in which they elect to display a bid and offer (for Registered Reporting ADF Market Makers), or a bid and/or offer (for Registered Reporting ADF ECNs), in the Alternative Display Facility, NASD Market Participants must:

(1) through (2) No change.

(3) Provide at least 14 calendar days advance written notice, via facsimile, personal delivery, courier or overnight mail, to NASD Alternative Display Facility Operations before denying any NASD member direct electronic access as defined below. An ECN is the only Market Participant that may lawfully deny access to its quotes, and an ECN may only do so in the limited circumstance where a broker-dealer fails to pay contractually obligated costs for access to the ECN's quotes. The notice provided hereunder must be based on the good faith belief of a Market Participant that such denial of access is appropriate and does not violate any of the Market Participant's obligations under NASD rules or the federal securities laws. Further, any notification or publication of a Market Participant's intent to deny access will have no bearing on the merits of any claim between the Market Participant and any affected broker-dealer, nor will it insulate the Market Participant from liability for violations of NASD rules or the federal securities laws, such as SEC Rule 11Ac1-1. The 14-day period begins on the first business day that NASD Alternative Display Facility Operations has receipt of the notice.

(4) [(3)] [Market Participants shall s]Share equally the costs of providing to each other the direct electronic access required pursuant to paragraph (a)(1), unless those Market Participants agree upon another cost-sharing arrangement.

(b) through (f) No change.

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Disciplinary and Other NASD Actions

REPORTED FOR SEPTEMBER

NASD® has taken disciplinary actions against the following firms and individuals for violations of NASD rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this *Notice* is current as of the end of August 2004.

Firms Suspended, Individuals Sanctioned

Westpark Capital Corporation (CRD #39914, Los Angeles, California) and Richard Alyn Rappaport (CRD #1885122, Registered Principal, Los Angeles, California) submitted an Offer of Settlement in which the firm was censured and fined \$50,000 jointly and severally with Rappaport, suspended from issuing research reports for six months, and required to retain an independent consultant, not unacceptable to NASD, to review and make recommendations concerning the adequacy of its current supervisory and operating procedures. Rappaport also was suspended from association with any NASD member in a Series 24 capacity for 30 days and shall requalify by examination as a Series 24. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm issued research reports that omitted material facts and qualifications about the stocks. NASD found that Rappaport knew or had reason to know that the statements and claims were unwarranted, exaggerated, false or misleading. The findings also stated that the firm and Rappaport did not have a reasonable basis for recommending the stocks as a "strong buy" or "buy" did not have a principal initial the research reports as evidence of supervisory review before the firm released the reports. NASD also found that the firm had not adopted and implemented written supervisory procedures reasonably designed to ensure compliance with the provisions of Rule 2711.

The firm's suspension began August 16, 2004, and will conclude at the close of business February 15, 2005. Rappaport's suspension began August 16, 2004, and concluded at the close of business September 14, 2004. (NASD Case #CAF030062)

Firms Fined, Individuals Sanctioned

AFS Equities, Inc. (CRD #35464, Birmingham, Alabama) and Trava Lance Williams (CRD #2437216, Registered Principal, Birmingham, Alabama) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$11,000 jointly and severally. Williams was also suspended from association with any NASD member in any capacity for 10 business days. Within sixty days of the acceptance of this AWC, the firm will provide NASD with a copy of its updated written supervisory procedures as they relate to the monitoring of the firm's net capital position. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the

entry of findings that the firm, acting through Williams, engaged in a securities business when the firm's net capital was below the required minimum and failed and neglected to provide notification that the firm's net capital was below the required minimum. The findings also stated that the firm, acting through Williams, failed and neglected to file an accurate FOCUS Report Part IIA and failed to file timely its annual audited financial statement report. NASD also found that the firm failed and neglected to establish, maintain, and enforce written supervisory procedures reasonably designed to monitor the firm's net capital position.

Williams' suspension began September 7, 2004, and will conclude at the close of business September 20, 2004. (NASD Case #C05040055)

Daewoo Securities (America) Inc. (CRD #30679, New York, New York) and Hong Gon Kim (CRD #3080768, Registered Representative, Tenafly, New Jersey) were fined \$7,500, jointly and severally, the firm and Kim each were fined \$2,500, and Kim was suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, the firm and Kim consented to the described sanctions and to the entry of findings that Kim failed to register as a principal but functioned as a principal of the firm. The findings also stated that the firm and Kim operated securities business without at least two registered principals, and that the firm and Kim allowed unregistered persons to engage in the securities business.

Kim's suspension began July 6, 2004, and concluded at the close of business July 19, 2004. (NASD Case #C10030076)

First Capital Securities, Inc. (CRD #105093, Dallas, Texas) and Jorge Felipe Hernandez (CRD #4298909, Registered Principal, Mexico City, Mexico) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000, \$7,500 of which was jointly and severally with Hernandez. Hernandez was suspended from association with any NASD member in any principal or supervisory capacity for 60 days and required to obtain, by examination, a general securities principal license (Series 24) within 90 days. If Hernandez fails to obtain a securities principal license within 90 days, he will be suspended from association with any NASD member in any capacity until such time as he obtains the required license.

Without admitting or denying the allegations, the firm and Hernandez consented to the described sanctions and to the entry of findings that they conducted a securities business while failing to maintain the required minimum capital. The findings also stated that the net capital deficits resulted from loans in the amount of \$244,000 from the firm to its owner, Hernandez. The findings further stated that the firm erroneously treated the loans payable as an allowable asset on its books and records

because the loans were secured by collateral—shares of stock in a privately held company owned by Hernandez. However, because there was no determinable market value for the stock, the loans were deemed unsecured and, therefore, the loans payable should have been treated as a non-allowable asset. NASD found that the firm's net capital computations and its FOCUS reports were all materially inaccurate. In addition, NASD found that despite Hernandez's written representation to NASD that he would not engage in the management of the firm's securities business, the firm, acting through another individual, permitted Hernandez to actively engage in the management of the firm's securities business without being registered in any capacity. Furthermore, NASD found that the firm, acting through another individual, failed to amend its Form BD to disclose Hernandez's role at the firm.

Hernandez's suspension began September 7, 2004, and will conclude at the close of business November 5, 2004. (NASD Case #C06040022)

International Correspondent Trading, Inc. (CRD #37401, Jersey City, New Jersey) and Ilana Ben-Mayor (CRD #1707317, Registered Principal, Douglaston, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000, jointly and severally with Ben-Mayor. Ben-Mayor was also suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, the firm and Ben-Mayor consented to the described sanctions and to the entry of findings that the firm, acting through Ben-Mayor, failed to make and keep current accurate records of discretionary trades in options effected in an institutional customer's account. The findings also stated that the firm's order tickets and trade blotters inaccurately classified the subject discretionary trades as "solicited" orders.

Ben-Mayor's suspension began August 23, 2004, and concluded at the close of business September 3, 2004. (NASD Case #C9B040071)

Salomon Grey Financial Corporation (CRD 43413, Dallas, Texas) and Kyle Browning Rowe (CRD #2310978, Registered Principal, Dallas, Texas) submitted an Offer of Settlement in which the firm was censured and fined \$100,000 jointly and severally with Rowe. Rowe was also suspended from association with any NASD member in any capacity for two weeks. Without admitting or denying the allegations, the firm and Rowe consented to the described sanctions and to the entry of findings that the firm, acting through Rowe and others, purchased 1 million shares of a common stock at varying prices substantially discounted from the current market price. NASD found that the firm, after each block purchase, sold the stock to its retail customers through payment of substantial concessions to its brokers that constituted over 33 percent of the public float of the stock. The findings also stated that the firm's purchase

and sales of the stock constituted a distribution under the terms of Securities and Exchange Commission (SEC) Regulation M and that while conducting the distribution, the firm acted as a market maker and bid for, purchased, and induced others to bid for or purchase shares of the stock. In addition, the firm failed to make any filings with the Corporate Finance Department of NASD regarding the distribution and received unfair and excessive compensation of \$686,000 from the offerings, and arrangements before commencing the distribution.

Rowe's suspension began September 7, 2004, and will conclude at the close of business September 20, 2004. (NASD Case #CAF030043)

Tejas Securities Group (CRD #36705, Austin, Texas) and Arnold Reed Durant (CRD #716150, Registered Principal, Austin, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000, jointly and severally with Durant and \$5,000 jointly and severally with another respondent, and required to retain an independent outside consultant to conduct a review of, and prepare a written report and make recommendations as to the adequacy of its supervisory compliance policies and procedures and its system for applying such policies and procedures. Durant also was suspended from association with any NASD member in a principal or supervisory capacity for 30 days.

Without admitting or denying the allegations, the firm and Durant consented to the described sanctions and to the entry of findings that the firm traded ahead of its research report. NASD found that the firm, acting through Durant, failed to establish, maintain, and enforce a supervisory system and written supervisory procedures reasonably designed to achieve compliance with NASD rules regarding trading ahead of research. The findings also stated that the firm failed to report timely and accurately through the Automated Confirmation Transactions ServiceSM (ACTSM) certain NASDAQ National Market Securities[®] (NNM[®]), Over-the-Counter (OTC) securities, and Consolidated Quotation Service (CQS) equity securities transactions and failed to report, and to timely and accurately report through the Trade Reporting and Compliance Engine (TRACE) certain debt securities transactions. NASD also found that the firm, acting through Durant in connection with the equity securities transactions and debt securities transactions, failed to establish, maintain, and enforce a supervisory system and written supervisory procedures reasonably designed to achieve compliance with TRACE Rules. In addition, NASD determined that the firm failed to enforce its procedures regarding complying with other trade reporting provisions, in that its procedures require that all trades be reported timely and accurately.

Durant's suspension began August 16, 2004, and concluded at the close of business September 14, 2004. (NASD Case #C06040021)

Firms Fined

Alpine Securities Corp. (CRD #14952, Salt Lake City, Utah) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it inaccurately reported customer sales as short transactions to ACT. The findings also stated that the firm failed to establish a system or written supervisory procedures reasonably designed to achieve compliance with NASD Marketplace Rule 6130(d)(6), in that the firm's procedures did not specify what individual was responsible for supervising compliance with Rule 6130(d)(6); what steps and review were to be taken by the supervisor; and the frequency of reviews or how such reviews were to be documented. (NASD Case #C3A040036)

Banc of America Securities LLC (CRD #26091, Charlotte, North Carolina) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$7,500, and required to pay \$7,163.10, plus interest in restitution to a public customer. In addition, the firm will update its written supervisory procedures as they relate to the determination of the fair market value of municipal securities being bought or sold from a public customer. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, based on the bids provided by the broker's broker, the firm purchased a municipal security from a public customer for its own account and then sold the security to the broker's broker at a nominal gain. NASD found that the price paid to the customer, and received by the firm, was below the fair market value of the security in an amount equal to 11.34 percent. The findings also stated that, by relying solely on the bids provided by the broker's broker to determine the fair market value of the security, the firm failed to ensure that the transaction was executed at an aggregate price that was fair and reasonable. (NASD Case #C05040057)

Blaylock & Partners, L.P. (CRD #35669, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$17,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it permitted an individual to act in a capacity that required registration while the individual's registration status with NASD was inactive due to his failure to complete the Regulatory Element of NASD's Continuing Education Requirement. The findings also stated that the firm allowed its compliance director to perform the duties of a chief compliance officer while he was not registered as a general securities principal. (NASD Case #C10040080)

Brokerage America, LLC (CRD #47966, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$25,000, and required to pay \$2,112.35, plus interest, in restitution to public customers.

Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions. **(NASD Case #CMS040102)**

The GMS Group, LLC (CRD #8000, Livingston, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it maintained the registration of a general securities representative with the firm even though the individual was not active in the firm's investment banking or securities business and was not functioning as a representative. The findings also stated that the firm permitted representatives associated with the firm to effect, or failed to prevent each from effecting, transactions in U.S. Government securities when they were not registered in a capacity that qualified them to effect such transactions. NASD also found that the firm failed to establish and maintain written supervisory procedures reasonably designed to achieve compliance with NASD rules relating to the registration of associated persons. **(NASD Case #C9B040065)**

Goldman, Sachs & Co. (CRD #361, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a market maker, the firm caused a locked/crossed market condition prior to the market opening by entering a bid (ask) quotation that locked/crossed another market maker's quotations without immediately thereafter sending through SelectNet® to the market maker whose quotes it locked or crossed a Trade-or-Move Message that was at the receiving market maker's quoted price and whose aggregate size was at least 5,000 shares. **(NASD Case #CMS040111)**

Highbridge Capital Corporation (CRD #30208, Cayman Island, B.W.I.) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$15,000, and required to revise its written supervisory procedures with respect to applicable securities laws and regulations and NASD rules concerning the Order Audit Trail SystemSM (OATSSM) within 30 business days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to submit required information to OATS in 196 business days. NASD determined that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations and NASD rules concerning OATS. **(NASD Case #CMS040100)**

Lehman Brothers, Inc. (CRD #10022, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$20,000, and required to revise its written supervisory procedures with respect to applicable securities laws and regulations and NASD rules concerning crossing incoming orders against non-displayed limit orders, and trade reporting for trades reported by other entities on the firm's behalf and for riskless principal trades. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report through ACT the correct symbol indicating whether the firm executed transactions in eligible securities in a principal, riskless principal, or an agency capacity. The findings also stated that the firm failed to show the correct time of execution in the memoranda of brokerage orders and the firm's records did not contain an order ticket for a transaction. In addition, NASD found that the firm, as a market maker, failed to execute orders upon presentation at the firm's published bid or published offer in an amount up to its published quotation size, thereby failing to honor its published quotation. Furthermore, the findings stated that the firm's supervisory procedures did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations and NASD rules concerning crossing incoming orders against non-displayed limit orders and trade reporting for trades reported by other entities on the firm's behalf and for riskless principal trades. **(NASD Case #CMS040098)**

Park Financial Group, Inc. (CRD #30582, Winter Park, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$33,000, and required to revise its written supervisory procedures with respect to applicable securities laws and regulations and NASD rules concerning trade reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit through ACT last sale reports of transactions in NNM, NASDAQ SmallCapSM (SC), and eligible securities, and failed to designate through ACT such last sale reports as late. The findings also stated that the firm failed to report timely to OATS Reportable Order Events (ROEs). In addition, NASD found that the firm discovered an OATS reporting problem after four business days, but was unable to submit required information to OATS for 20 business days. Furthermore, NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations and NASD rules concerning trade reporting and OATS. **(NASD Case #CMS040097)**

Prudential Equity Group, LLC (CRD #7471, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the

described sanctions and to the entry of findings that it sold shares in an initial public offering (IPO) at a premium in the immediate secondary market, and failed prior to the execution of the transactions to obtain the required documentation as set forth in IM-2110-1(f)(1) concerning persons having any beneficial interest in such accounts. The findings also stated that the firm acted as an underwriter in primary offerings of municipal securities and was required to file, or cause to be filed, documents with the Municipal Securities Rulemaking Board (MSRB), but failed to submit timely official statements and/or other documents to the MSRB. **(NASD Case #C10040083)**

Shay Financial Services, Inc. (CRD #43981, Miami, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it engaged in "adjusted trading," in that it repurchased an interest in a certificate of deposit (CD) from a public customer at a price away from the market (at par value as opposed to current market value) and sold the same customer an interest in another CD at a price away from the market (the interest rate offered to the customer was less than that being offered to other public customers that purchased the same CDs at or about the same time). The findings also stated that the firm paid a concession to unregistered co-brokers for their sales of CDs on behalf of the firm. In addition, the findings stated that the firm failed to maintain customer suitability information on its books and records for its institutional clients that purchased CDs. **(NASD Case #C05040053)**

SII Investments, Inc. (CRD #2225, Appleton, Wisconsin) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed and neglected to establish, maintain, and enforce adequate written procedures to supervise the sale of variable annuities and variable life insurance products. The findings also stated that the firm's supervision of the sale of variable products was deficient in that, although the firm maintained guidelines for the review of transactions, the guidelines were inadequately documented and the firm failed to maintain adequate records documenting review of specific transactions in accordance with the guidelines. **(NASD Case #C05040059)**

SunAmerica Securities, Inc. (CRD #20068, Phoenix, Arizona) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$35,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm failed and neglected to establish, maintain, and enforce adequate written supervisory procedures governing the review of transactions in which branch managers dealt directly with customers. The

findings also stated that, although the firm's procedures called for an independent principal review of transactions effected by branch managers, the procedures were not adequately documented or properly communicated to branch managers. **(NASD Case #C05040051)**

UBS Financial Services, Inc. (CRD #8174, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$85,000, and required to file with NASD's Advertising Regulation Department within 30 days of the effective date of this AWC, all presentations, quarterly client letters, fact sheets, and quarterly performance updates relating to privately placed registered investment companies that the firm currently is using on the date of acceptance by the National Adjudicatory Council (NAC) of this AWC. The firm also agreed that, upon receipt of comments from NASD on any of the filed materials, unless notified otherwise by NASD, it shall take all reasonable steps to withhold or cause to be withheld such material until further publication until the changes specified by NASD have been made, and such material will be revised and re-filed prior to any use, unless otherwise agreed to by NASD at its sole discretion.

Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it distributed sales literature regarding privately placed registered investment companies to its public customers that did not comply with NASD rules in that the pieces did not have adequate risk disclosure. The findings also stated that, although the pieces of sales literature were accompanied by offering documents and other sales literature that did include risk disclosure, such disclosure did not cure the violations since each piece of sales literature must independently comply with the standards of NASD Rule 2210(d)(1)(A). NASD also found that the sales presentation stated that the fund was seeking a targeted rate of return without providing a substantiated basis for the target to enable investors to evaluate it. **(NASD Case #CAF040051)**

Vanguard Marketing Corporation (CRD #7452, Valley Forge, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,000, ordered to pay \$9,443, plus interest, in restitution to public customers, and required to provide NASD, within 90 days of acceptance of the AWC, with a copy of its updated written supervisory procedures as they relate to the determination of the fair market value of municipal securities being bought or sold from a public customer. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, after public customers requested that the firm liquidate two different municipal security positions, the firm contacted a broker's broker and obtained bids for the customer's securities, the firm purchased the securities from the customers based on the broker's bid for its own account, and

the firm then sold the securities to the broker's broker at a nominal gain, thereby failing to ensure that the transactions were executed at aggregate prices that were fair and reasonable. (NASD Case #C05040058)

Westminster Securities Corporation (CRD #6105, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$35,000, and required to revise its written supervisory procedures with respect to applicable securities laws and regulations and NASD rules concerning trade reporting within 30 business days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit through ACT last sale reports of transactions in NNM, NASDAQ SC and OTC equity securities. The findings also stated that the firm failed, within 90 seconds after execution, to transmit through ACT last sale reports of transactions in NNM and OTC Equity securities and failed to designate through ACT such last sale reports as late. The findings further stated that the firm failed to accept or decline in ACT transactions in eligible securities within 20 minutes after execution, which constitutes four percent of all transactions, that the firm has an obligation to accept or decline in ACT as the order entry ID (OEID) during the review period. Furthermore, NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations and NASD rules concerning trade reporting. (NASD Case #CMS040092)

Individuals Barred or Suspended

Karim El Din Amiry (CRD #2756135, Registered Principal, Johnston, Iowa) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and barred from association with any NASD member in a principal or supervisory capacity. Without admitting or denying the allegations, Amiry consented to the described sanctions and to the entry of findings that he failed to adequately and properly supervise the annuity sales desk personnel of his member firm to assure compliance with New York State Insurance Regulation 60 and applicable NASD rules. (NASD Case #C9B040079)

Emmanuel Mapalo Ancheta (CRD #2577230, Registered Principal, Elk Grove, 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 one year. The fine must be paid before Ancheta reassociates with an NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Ancheta consented to the described sanctions and to the entry of findings that he failed to timely update material information on his Uniform Application for Securities Industry Registration or Transfer (Form U4).

Ancheta's suspension began August 16, 2004, and will conclude at the close of business August 15, 2005. (NASD Case #C01040020)

John Thomas Archer (CRD #6890, Registered Representative, Escondido, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that Archer fraudulently offered and sold unregistered securities in the form of promissory notes by failing to disclose material adverse information concerning the issuer, and failed to obtain prior written approval from his member firm before selling the promissory notes. The findings also stated that Archer acted as a broker by effecting transactions in the accounts of others without the benefit of registration required by Section 15 of the Securities Exchange Act. (NASD Case #C02020057)

Robert Mark Benning (CRD #2002792, Registered Representative, Streator, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 45 days. Without admitting or denying the allegations, Benning consented to the described sanctions and to the entry of findings that while registered with a member firm, he engaged in private securities transactions by selling telephone leases to public customer without notifying his member firm of these transactions, and without receiving prior written approval for these transactions from his member firm.

Benning's suspension began September 7, 2004, and will conclude at the close of business October 21, 2004. (NASD Case #C8A040067)

Herbert Jerome Berghoff (CRD #4320854, Registered Representative, Granada Hills, 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 three months. The fine must be paid before Berghoff reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Berghoff consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on his Form U4.

Berghoff's suspension began September 7, 2004, and will conclude at the close of business December 6, 2004. (NASD Case #C02040022)

Kathleen Biggs-Drake (CRD #4300338, Registered Representative, Port Charlotte, Florida) was barred from association with any member in any capacity. The sanction was based on findings that Biggs-Drake misused customer funds. The findings stated that Biggs-Drake deposited a personal check drawn on a public customer's checking account into her personal account without the customer's knowledge, consent, or

authorization. The findings also stated that Biggs-Drake failed to respond to an NASD request to appear and give testimony. (NASD Case #C07040028)

Adrian Allie Bond (CRD #4003860, Registered Representative, Memphis, Tennessee) 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, Bond consented to the described sanction and to the entry of findings that he made improper use of the funds of a public customer by completing a form directing that \$10,000 be transferred from the customer's account with Bond's member firm to a credit union account belonging to a third party who subsequently transferred the funds to Bond. The findings also stated that Bond effected the transactions without the customer's knowledge or consent. (NASD Case #C05040060)

Cara Ann Botticelli (CRD #2897269, Registered Representative, Memphis, Tennessee) 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, Botticelli consented to the described sanction and to the entry of findings that she participated in an arrangement to misappropriate customer information outside of her member firm for a profit. The findings also stated that Botticelli failed to respond to an NASD request to appear for an on-the- record interview. (NASD Case #C9B040067)

John Alan Briscoe (CRD #3168614, Registered Representative, Columbia, Georgia) 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, Briscoe consented to the described sanction and to the entry of findings that he falsified firm records and misappropriated his firm's funds in that he submitted false contribution requests for retirement plan participants to his firm, resulting in the payment by the firm of approximately \$71,000 in commissions to which Briscoe was not entitled. The findings also stated that Briscoe failed to respond to NASD requests for information. (NASD Case #C07040037)

Diane Kathryn Byrd (CRD #4078944, Registered Representative, Rapid City, South Dakota) 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, Byrd consented to the described sanction and to the entry of findings that she misused customer funds totaling \$74,333.20. (NASD Case #C04040038)

Samuel Dale Christmas, Jr. (CRD #4285858, Registered Representative, Detroit, Michigan) 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 years. Without admitting or denying the allegations, Christmas consented to the described sanctions and to the entry of findings that he misused customer funds.

Christmas' suspension began August 16, 2004, and will conclude at the close of business August 15, 2006. (NASD Case # C8A040058)

Paul David Coffman, Jr. (CRD #3046168, Registered Representative, Mattoon, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Coffman consented to the described sanction and to the entry of findings that he misused the funds of public customers in that he accepted checks totaling \$5,119 from the customers for insurance policies, deposited the funds into his bank account without obtaining the policies as directed, and failed to use the funds for the benefit of the customers without their knowledge or consent. The findings also stated that Coffman provided falsified documents to the customers that purported to be an insurance policy for one of the customers and a certificate of liability insurance for the other customer for which he made no payments and for which no policies were issued. (NASD Case #C8A040052)

Jason Wayne Collard (CRD #4069428, Registered Representative, Marion, Arkansas) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$12,500, ordered to disgorge \$16,675 in partial restitution to public customers, and suspended from association with any NASD member in any capacity for two years. The fine and disgorgement must be paid before Collard reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Collard consented to the described sanctions and to the entry of findings that he participated in private securities transactions and engaged in outside business activities without providing prior written notice to his member firm.

Collard's suspension began August 16, 2004, and will conclude at the close of business August 15, 2006. (NASD Case #C05040050)

Greta Ann Commerford (CRD #1510956, Registered Representative, New York, New York) 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, Commerford consented to the described sanction and to the entry of findings that she misused customer funds totaling \$63,263.78. The findings also stated that Commerford failed to respond to NASD requests for information. (NASD Case #C04040037)

Jennifer Lea Connolly (CRD #4205892, Registered Representative, Keedysville, Maryland) 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, Connolly consented to the described sanction and to the entry of findings that, acting in concert with another representative who was registered with an NASD member firm, she caused shares of a mutual fund held in a customer's Individual Retirement Account (IRA) at the firm to be redeemed and a check for \$40,000 to be issued to the customer without the customer's prior knowledge or authorization. The findings also stated that Connolly failed to respond to NASD request for information. **(NASD Case #C9A040029)**

Domitilo Correa (CRD #3121152, Associated Person, West New York, 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, Correa consented to the described sanction and to the entry of findings that he participated in an arrangement to misappropriate public customer information by attempting to sell customer contact worksheets containing addresses, telephone numbers, and social security numbers outside of his member firm for a profit. The findings also stated that Correa failed to respond to NASD requests to appear for on-the-record interviews. **(NASD Case #C9B040063)**

Jeffrey Lawrence Cox (CRD #861963, Registered Representative, Lemoyne, Pennsylvania) 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, Cox consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information concerning his dealings with public customers and the disposition of their funds of \$100,000 given to him for investment. **(NASD Case #C9A040026)**

Garry Alexander Damico (CRD #3210136, Registered Representative, Far Rockaway, New York) was barred from association with any member in any capacity. The sanction was based on findings that Damico failed to provide testimony at an on-the-record interview requested by NASD. **(NASD Case #CMS040027)**

Duane Allen Darling (CRD #1014290, Registered Representative, Lowville, 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, Darling consented to the described sanction and to the entry of findings that he executed transactions in the account of a public customer, a resident of Colorado, although Darling was not registered to sell securities

in Colorado. The findings also stated that in order to circumvent Colorado State registration requirements, Darling falsified the customer's account documentation to make it appear that the customer was a resident of New York. In addition, the findings stated that Darling exercised discretion in the account of a public customer by effecting transactions in the customer's account without obtaining prior written authorization from the customer or written acceptance of the account as discretionary by his member firm that, in fact, prohibited discretionary accounts. **(NASD Case #C9B040070)**

Siamak Derakhshani (CRD #4038327, Registered Representative, Los Angeles, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000, suspended from association with any NASD member in any capacity for six months, and ordered to requalify by examination prior to association with any NASD member. The fine must be paid prior to Derakhshani's reassociation with any NASD member following the suspension or before requesting relief from any statutory disqualification.

Without admitting or denying the allegations, Derakhshani consented to the described sanctions and to the entry of findings that, in connection with offers and sales of limited partnership interests in a company, he provided or caused to be provided to public customers the Private Placement Memorandum (PPM). The findings stated that the PPM provided that net profit or net loss would be allocated among the limited partners' capital accounts in proportion to the relative values of such capital accounts. NASD found that the PPM also provided that a limited partner could not make a withdrawal or partial withdrawal from his capital account that would result in an account balance below \$250,000. In addition, NASD determined that contrary to the terms of the PPM, Derakhshani authorized and caused \$450,000 to be paid to a limited partner, and was paid without regard to the net profit or loss or the relative value of the account. The findings also included that this payment resulted in the account being reduced to a \$0 balance, was in contravention of the representations set forth in the PPM, and caused the remaining limited partners to suffer losses in the value of their limited partnership interests that were unrelated to market returns.

Derakhshani's suspension began September 7, 2004, and will conclude March 6, 2005. **(NASD Case #C02040021)**

Gary Patrick Duffy (CRD# 1779786, Registered Principal, Scottsdale, Arizona) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 10 days. Without admitting or denying the allegations, Duffy consented to the described sanctions and to the entry of findings that he distributed sales literature to public customers concerning covered call writing strategies that he downloaded from a third

party's Web site. NASD found that the sales literature failed to present a balanced picture of the risks and merits of investing in options as required by NASD's advertising standards.

Duffy's suspension began August 16, 2004, and concluded at the close of business August 25, 2004. (NASD Case #C3A040034)

Kristian Murphy Fuhse (CRD #2475319, Registered Representative, Yorktown Heights, 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 three months. The fine must be paid before Fuhse reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Fuhse consented to the described sanctions and to the entry of findings that he willfully failed to disclose material information on his Form U4.

Fuhse's suspension began September 7, 2004 and will conclude at the close of business December 6, 2004. (NASD Case #C9B040066)

Mitchell Todd Galloway (CRD #2990335, Registered Representative, Cedar Hill, Texas) was barred from association with any NASD member in any capacity. The sanction was based on findings that Galloway failed to respond to NASD requests for information. The findings also stated that Galloway engaged in outside business activities without providing his member firm with prior notice of such activities. The findings further stated that Galloway made an unsuitable recommendation to a public customer. (NASD Case #C06040003)

Larry Hiroyuki Goto (CRD #1398303, Registered Representative, Honolulu, Hawaii) 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, Goto consented to the described sanction and to the entry of findings that he participated in private securities transactions, for compensation, outside the scope of his employment with his member firm and failed to provide prior written notice to, or receive approval from, his member firm. (NASD Case #C01040011)

Jeffrey Lou Greenberg (CRD #853296, Registered Representative, East Hanover, 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 20 business days. Without admitting or denying the allegations, Greenberg consented to the described sanctions and to the entry of findings that while associated with a member firm, he settled a customer complaint by paying the customer \$12,500 without the firm's knowledge or approval.

Greenberg's suspension began September 7, 2004, and will conclude at close business October 4, 2004. (NASD Case #C9B040073)

Benjamin Josef Harelick (CRD #3063646, Registered Representative, Westwood, 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 days. Without admitting or denying the allegations, Harelick consented to the described sanctions and to the entry of findings that he signed a public customer's signature to various annuity and insurance product transfer forms.

Harelick's suspension began September 7, 2004, and will conclude at the close of business October 6, 2004. (NASD Case #C11040029)

Eric John Held (CRD #4700846, Associated Person, San Francisco, 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 30 business days. The fine must be paid before Held reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Held consented to the described sanctions and to the entry of findings that he failed to disclose material information on his Form U4.

Held's suspension began September 7, 2004, and will conclude at the close of business October 18, 2004. (NASD Case #C10040084)

Stephen Handley Holley (CRD #1348114, Registered Principal, Brandon, Mississippi) and Steven Thomas Nosacka (CRD #2938331, Registered Representative, Reserve, Louisiana) submitted an Offer of Settlement in which they were each fined \$10,000 and suspended from association from any NASD member in any capacity for 31 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they failed to disclose \$21,250 in political contributions to their member firm as required by their firm's written supervisory procedures.

Holley's suspension began September 7, 2004, and will conclude at the close of business October 7, 2004. Nosacka's suspension began September 7, 2004, and will conclude at the close of business October 7, 2004. (NASD Case #C05030055)

William Zane Jackson, Jr. (CRD #3174581, Registered Representative, Blythewood, South Carolina) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$25,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Jackson reassociates with any NASD member following the suspension or before requesting relief from any statutory

disqualification. Without admitting or denying the allegations, Jackson consented to the described sanctions and to the entry of findings that he effected transactions in the account of public customers without their authorization or consent. NASD found also that Jackson forged the signatures of public customers on applications.

Jackson's suspension began August 16, 2004, and will conclude at the close of business August 15, 2006. (NASD Case #C07040062)

Kevin D. Jones (CRD #4625366, Associated Person, Tulsa, Oklahoma) was barred from association with any NASD member in any capacity. The sanction is based on findings that Jones willfully failed to disclose material information on his Form U4. The findings also stated that Jones failed to respond to NASD requests for information. (NASD Case #C05040013)

Kojo Nantambu Kandi (CRD #3055831, Registered Representative, Columbus, Ohio) was barred from association with any NASD member in any capacity. The sanction was based on findings that Kandi recommended unsuitable transactions for a public customer's account without having a reasonable basis for believing that the recommendations and resultant transactions were suitable for the customer, based upon customer's age, net worth, financial situation, and investment objectives. The findings also stated that Kandi exercised discretion in the accounts of public customers without having obtained prior written authorization from the customers and prior written acceptance of the accounts as discretionary by his member firm. (NASD Case #C8B040001)

Janice D. Kelton (CRD #4110467, Registered Representative, Gadsden, Alabama) submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Kelton reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kelton consented to the described sanctions and to the entry of findings that she signed the name of public customers to securities account application forms without the knowledge or consent of the customers.

Kelton's suspension began August 16, 2004, and will conclude at the close of business November 15, 2004. (NASD Case #C05040052)

Rodney H. Lankford (CRD #1652793, Registered Principal, Gadsden, Alabama) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Lankford reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Lankford 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. NASD also found that Lankford used the means or instrumentalities of interstate commerce to solicit the purchase of a security, when no registration statement was in effect for the security.

Lankford's suspension began September 7, 2004, and will conclude at the close of business December 6, 2004. (NASD Case #C05040061)

Michael Thomas Lemons (CRD #1350907, Registered Representative, Newton, North Carolina) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lemons consented to the described sanction and to the entry of findings that he received a check payable to his member firm in the amount of \$4,500 from a family member who intended the funds to be deposited into variable life insurance accounts. The findings stated that Lemons deposited the check into a bank account under his control and did not transmit the funds to the firm; rather, the funds were used for his own use and benefit. NASD also found that Lemons failed to respond to NASD requests to appear and testify. (NASD Case #C07040065)

Matthew Alan Lesnikowski (CRD #1530281, Registered Supervisor, Eden Prairie, Minnesota) submitted an Offer of Settlement in which he was fined \$7,500 and suspended from association with any NASD member in any principal or supervisory capacity for 30 business days. Without admitting or denying the allegations, Lesnikowski consented to the described sanctions and to the entry of findings that he failed to take appropriate action to supervise a registered representative that was reasonably designed to detect and prevent unsuitable mutual fund transactions in the account of a public customer and achieve compliance with applicable securities laws, regulations, and NASD rules. The findings also stated that Lesnikowski failed to consider the class of mutual funds purchased when performing the suitability review of the registered representative's mutual fund transactions. Lesnikowski approved Class B purchases executed by the registered representative even though the purchases were made in violation of firm policy requiring pre-approval by a branch manager of mutual fund transactions over \$100,000, and were made in contravention of a prohibition contained in the fund prospectus against purchases of Class B shares over \$250,000. In addition, NASD found that the public customer would have been eligible for breakpoints, paid lower on-going expenses, and avoided contingent deferred sales charges if Class A shares had been recommended and purchased in his account.

Lesnikowski's suspension began September 7, 2004, and will conclude at the close of business October 18, 2004. (NASD Case #C9B030081)

Glenn Allen Levit (CRD #2323235, Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Levit consented to the described sanctions and to the entry of findings that he settled a customer complaint by paying \$96,000 to the customer, without informing and obtaining authorization from his member firms.

Levit's suspension began August 16, 2004, and concluded at the close of business August 27, 2004. (NASD Case #C10040078)

Trevor Kene Litherland (CRD #732572, Registered Representative, Naperville, Illinois) 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 15 days. The fine must be paid before Litherland reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegation, Litherland consented to the described sanctions and to the entry of findings that he conducted outside business activities without providing prompt written notice to his member firm.

Litherland's suspension began August 16, 2004, and concluded at the close of business August 30, 2004. (NASD Case #C8A040063)

Jack Allen Marble (CRD #2246040, Registered Principal, Keedysville, Maryland) 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, Marble consented to the described sanction and to the entry of findings that he conspired with another representative to cause shares of a mutual fund held in a customer's IRA at his member firm to be redeemed and a check for \$40,000 issued to the customer without the customer's prior knowledge or authorization. The findings stated that, after the check was deposited to a bank account the customer owned, Marble induced the customer to write a check against the bank account payable to him for \$40,000 under false pretenses regarding the purpose of the check and/or what would be done with the funds and converted the funds to his own use and benefit. NASD also found that Marble failed to respond to NASD requests for information. (NASD Case #C9A040030)

Ronald James Marszalek (CRD #2891521, Registered Representative, Joliet, Illinois) was barred from association with any NASD member in any capacity. The sanction was based on findings that Marszalek affixed the signature of his branch manager on documents intended to effect changes in customer account records without the branch manager's knowledge or

consent. The findings also stated that Marszalek effected purchases of securities in the joint account of public customers and effected the transfer of securities from their account to the account of another customer without their knowledge or consent and without Marszalek having authority to exercise discretion in the account. NASD also found that Marszalek effected the sale of the securities that he had transferred from the account of public customers to the account of another public customer for \$14,712.27, received a \$12,212.27 check from the customer who retained the \$2,500 balance of the proceeds of the sale, and endorsed the check and used the funds for his own benefit or for some purpose other than the benefit of the public customers. (NASD Case #C8A040004)

Randy Lawrence McClure (CRD #1289750, Registered Principal, Dunedin, Florida) submitted an Offer of Settlement in which he was fined \$7,500 and suspended from association with any NASD member as a financial and operations principal for 90 days. McClure is also required to requalify as a financial and operations principal prior to functioning in such capacity after the suspension. Without admitting or denying the allegations, McClure consented to the described sanctions and to the entry of findings that, acting on behalf of his member firm, he conducted a securities business while failing to maintain the firm's minimum net capital and failing to maintain complete, current, and accurate books and records in that the firm's net capital computations were materially inaccurate. The findings also stated that McClure, acting on behalf of his member firm, filed FOCUS Reports Part IIA that materially overstated the firm's net capital and failed to file timely audited financial reports.

McClure's suspension began September 7, 2004, and will conclude December 5, 2004. (NASD Case #C07040051)

John W. McDonnell (CRD #4415674, Registered Representative, Wilmington, Delaware) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before McDonnell reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, McDonnell consented to the described sanctions and to the entry of findings that he engaged in an outside business activities for compensation without providing prompt written notice of the activity to his member firm.

McDonnell's suspension began August 23, 2004, and will conclude at the close of business November 22, 2004. (NASD Case #C9A040025)

Joshua Ryan Mickley (CRD #4653103, Registered Representative, New Philadelphia, Ohio) submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for two

years. Without admitting or denying the allegations, Mickley consented to the described sanction and to the entry of findings that he willfully failed to disclose material information on his Form U4.

Mickley's suspension began August 23, 2004, and will conclude at the close of business August 22, 2006. (NASD Case #C8A040054)

Eric Lee Miller (CRD #2200698, Registered Principal, Kings Park, 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 capacity for 15 business days. Without admitting or denying the allegations, Miller consented to the described sanctions and to the entry of findings that while employed as Director of Compliance at a member firm, Miller failed to reasonably discharge his supervisory duties, in that, upon learning that an eavesdropping device had been installed in the firm office, failed to make an appropriate inquiry and/or direct that an inquiry be undertaken regarding this device.

Miller's suspension began September 7, 2004, and will conclude at the close of business September 27, 2004. (NASD Case #CLI040021)

Patricia Morency (CRD #4626110, Associated Person, Rosedale, 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 any capacity for 30 business days. The fine must be paid before Morency reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Morency consented to the described sanctions and to the entry of findings that she failed to disclose material facts on her Form U4.

Morency's suspension began September 7, 2004, and will conclude at the close of business October 18, 2004. (NASD Case #CLI040020)

Andre O'Neil Morgan (CRD #4000157, Registered Representative, Queens, 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, Morgan consented to the described sanction and to the entry of findings that he effected or caused to be effected the purchase of shares in the accounts of public customers without their knowledge, authorization, or consent. The findings also stated that Morgan falsified the personal information of a public customer on his new account application, including his date of birth, social security number, and residential address. NASD also found that Morgan failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #CLI040018)

Patrick Roger Morrison (CRD #3159281, Registered Representative, Huntington Station, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Morrison falsified company records by submitting to his member firm a change of address form on behalf of a public customer without the customer's knowledge or consent. NASD also found that Morrison forged a public customer's signature on a change of address form, account agreement, option agreement, margin account agreement, and checks and submitted the forms to his member firm without the customer's knowledge, authorization, or consent. In addition, NASD found that Morrison converted customer funds totaling \$61,700 and exercised discretionary trading authority in a public customer's account without obtaining prior written authorization from the customer and without obtaining written acceptance of the discretionary trading account by his member firm. Furthermore, the findings stated that Morrison engaged in unauthorized transactions by employing deceptive means to defraud a public customer through the unauthorized transactions in her account. Moreover, the findings stated that Morrison failed to respond to NASD requests to provide information. (NASD Case #CLI040002)

William Taro Mukai (CRD #1760223, Registered Representative, Des Plaines, Illinois) 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 Mukai, no monetary sanction has been imposed. Without admitting or denying the allegations, Mukai consented to the described sanction and to the entry of findings that he executed excessive trading in the accounts of public customers without having a reasonable basis for believing that the recommendations and resultant transactions were suitable for the customers based on their age, financial situations, and investment objectives. NASD also found that Mukai executed trades in the account of public customers and consistently designated them incorrectly as unsolicited. The findings also stated that Mukai exercised discretion in the accounts of public customers without having obtained prior written authorization from the customers and prior written acceptance of the accounts as discretionary by his member firm. NASD found that Mukai prepared and delivered to the customers misleading communications, consisting of summaries of the trading in their accounts that contained exaggerated, unwarranted, and misleading statements by omitting losses and misrepresenting losses as gains. In addition, NASD determined that Mukai prepared and provided the misleading information to the customers without submitting them to the appropriate registered principal of his member firm for review and approval prior to their distribution.

Mukai's suspension began September 7, 2004, and will conclude at the close of business September 6, 2005. (NASD Case #C8A030093)

Raymond Louis Natili, III (CRD #2202614, Registered Representative, Greensboro, North Carolina) was fined \$23,243 and barred from association with any NASD member in any capacity. The fine must be paid before Natili reassociates with any NASD member. The sanction was based on findings that Natili failed to respond to NASD requests for information, and that he recommended purchase transactions to public customers that were unsuitable under the circumstances. (NASD Case #C07040025)

Andrew Alan Neff (CRD #2651241, Registered Representative, Stuart, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Neff failed to respond to NASD requests for information. NASD also found that Neff participated in private securities transactions without prior written notice to his member firm. NASD also found that Neff failed to respond to NASD requests for information. (NASD Case #C07040009)

James Christopher Pangione (CRD #2315739, Registered Representative, Carver, Massachusetts) 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, Pangione consented to the described sanction and to the entry of findings that he stated to NASD staff members that he would no longer respond to NASD requests for information. (NASD Case #C11040028)

Richard Timothy Pigg (CRD #2173165, Registered Representative, Springfield, Missouri) was barred from association with any NASD member in any capacity. The sanction was based on findings that Pigg converted his member firm's funds totaling \$52,226.20 to himself without the knowledge, authorization, or consent of the firm. The findings also stated that Pigg failed to respond to NASD requests for information. (NASD Case #C04040010)

David N. Pitts (CRD #3216375, Registered Representative, Cincinnati, Ohio) was barred from association with any NASD member in any capacity. The sanction was based on findings that Pitts made unauthorized withdrawals totaling \$219,162.12 from customers' accounts and used the improperly obtained funds for his own benefit. The findings also stated that Pitts failed to respond to NASD requests for information. (NASD Case #C8B040005)

Frank Porporino, Jr. (CRD #3185329, Registered Representative, Hawthorne, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$33,900, including disgorgement of \$23,900 in commissions, and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, Porporino consented to the described sanctions and to the entry of findings that he exercised control over a public

customer's account and effected excessive securities transactions in the account in a manner that was inconsistent with the customer's financial situation, investment objectives, and needs.

Porporino's suspension began September 15, 2004, and will conclude at the close of business December 14, 2004. (NASD Case #C9B040076)

William Scott Prendergast (CRD #2240522, Registered Principal, Leesburg, Virginia) submitted an Offer of Settlement in which he was fined \$25,000, suspended from association with any NASD member in any capacity for 45 days, and required to complete an ethics course acceptable to NASD staff within 90 days of the acceptance of this offer. Without admitting or denying the allegations, Prendergast consented to the described sanctions and to the entry of findings that a U.S. District Court issued an order finding Prendergast in violation of a temporary restraining order filed against him by a member firm, and that he made certain materially false statements and representations to the Court. NASD also found that in reaching this ruling the Court drew "adverse inferences" based on Prendergast's assertion of his Fifth Amendment privilege to refuse to testify in the proceeding. The findings also stated that Prendergast failed to respond in a timely manner to NASD requests to testify.

Prendergast's suspension will begin September 20, 2004, and will conclude at the close of business November 3, 2004. (NASD Case #C07030038)

Alex Rabinovich (CRD #3100801, 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, Rabinovich consented to the described sanction and to the entry of findings that he failed to respond to an NASD request to provide testimony. (NASD Case #CLI040019)

Timothy Angelo Rassias (CRD #2106648, Registered Principal, Holden, Massachusetts) 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, Rassias consented to the described sanction and to the entry of findings that he stated to NASD staff members that he would no longer respond to NASD requests for information. (NASD Case #C11040027)

Andrew Vincent Reid (CRD #2407747, Registered Principal, New Orleans, Louisiana) was barred from association with any NASD member in any capacity. The sanction was based on findings that Reid received \$10,090.58 for investment and, without the customer's authorization, deposited the check into his personal bank account, thereby converting the funds. The findings also stated that Reid failed to respond to NASD requests for information. (NASD Case #C05040011)

Willeidean Robinson a/k/a Willeidean Moore (CRD #43906, Associated Person, Brooklyn, New York) 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, Robinson consented to the described sanction and to the entry of findings that she improperly transferred \$30,000 from the account of a public customer to Robinson's husband's bank account without the customer's knowledge or consent. The findings also stated that Robinson failed to respond to NASD requests for information. **(NASD Case #C9B040068)**

Leonard Savitt (CRD #2495644, Registered Representative, Chicago, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Savitt consented to the described sanction and to the entry of findings that he made unauthorized mutual fund trades in the accounts of public customers without the knowledge or consent of the customers and in the absence of written or oral authorization to Savitt to exercise discretion in the accounts. The findings also stated that Savitt made mutual fund trades exercising discretion in the accounts of public customers in the absence of written authorization to exercise discretion in the accounts. **(NASD Case #C8A040064)**

Sydelle Emma Scardilli (CRD #4052341, Registered Representative, Brick, 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 Scardilli reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Scardilli consented to the described sanctions and to the entry of findings that she willfully failed to disclose material information on her Form U4.

Scardilli's suspension began September 7, 2004, and will conclude March 6, 2005. **(NASD Case #C9A040033)**

Arthur Laurence Scheid (CRD #1405105, Registered Represented, Alto, Michigan) 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 Scheid reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Scheid consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on his Form U4.

Scheid's suspension began September 7, 2004, and will conclude March 6, 2005. **(NASD Case #C8A040071)**

Robert Scott Scheinman (CRD #2593087, Registered Representative, Hartsdale, New York) Submitted an Offer of Settlement in which he was fined \$5,000 and suspended from associating with any NASD member in any capacity for 30 business days. The fine must be paid before Scheinman reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Scheinman 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 prior written authorization from the customer and his member firm's acceptance of the account as discretionary.

Scheinman's suspension began September 7, 2004, and will conclude at the close of business October 18, 2004. **(NASD Case #C10040060)**

Charles Marc Shalmi (CRD #1293269, Registered Principal, Boca Raton, 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 60 days. Without admitting or denying the allegations, Shalmi consented to the described sanctions and to the entry of findings that he solicited public customers to make transactions in OTC equity securities. NASD found that Shalmi improperly recorded those transactions as "unsolicited" on the order tickets, causing his firm's books and records to be inaccurate. NASD also found that Shalmi did not have the OTC equity securities transactions reviewed nor approved by the firm prior to the recommendations.

Shalmi's suspension began September 7, 2004, and will conclude at the close of business November 5, 2004. **(NASD Case #C11040030)**

Charles Albert Small (CRD #1265587, Registered Principal, Sacramento, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$50,000, including \$12,000 in disgorgement of commissions received, and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Small reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Small consented to the described sanctions and to the entry of findings that he participated in private securities transactions for compensation without providing prior written notification to and without obtaining prior written approval from his member firm.

Small's suspension began August 16, 2004, and will conclude at the close of business August 15, 2006. **(NASD Case #C01040021)**

Steven Lee Smith (CRD #2224721, Registered Representative, Alpharetta, Georgia) submitted an Offer of Settlement in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Smith consented to the described sanctions and to the entry of findings that he failed to respond in a timely manner to NASD requests for information.

Smith's suspension began August 16, 2004, and concluded at the close of business September 3, 2004. (NASD Case #C07040041)

Thomas Socco (CRD #1712524, Registered Representative, Tinley Park, Illinois) 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, Socco consented to the described sanction and to the entry of findings that he received checks from a public customer totaling \$580,350, made payable to a non-incorporated assumed name business owned and operated by Socco, to be invested in corporate bonds through Socco's member firm. Socco failed to follow the customer's instructions, in that he used the funds for some purpose other than the benefit of the customer and failed to return the funds to the customer. In addition, NASD found that Socco failed to respond to NASD requests for documents and information. (NASD Case #C8A040038)

Stephen Nicholas Thomas (CRD #3236045, Registered Representative, Queens, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Thomas improperly used customers' funds. (NASD Case #C10030082)

David Daniel Trowbridge (CRD #3165145, Registered Principal, Lake In the Hills, Illinois) 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 15 business days. Without admitting or denying the allegations, Trowbridge consented to the described sanctions and to the entry of findings that he participated in activities outside the scope of his relationship with his member firm and failed to provide prompt written notice to his firm about these activities.

Trowbridge's suspension began August 16, 2004, and concluded at the close of business September 3, 2004. (NASD Case #C8A040061)

John Thomas Wagtowicz (CRD #4310867, Registered Representative, Freehold, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Wagtowicz consented to the described sanction and to the entry of findings that he

affixed the purported signature of an applicant for an automobile insurance policy to a Requirement for Insurance Inspection/New Vehicle Document Submission form without the prior authorization, knowledge, or consent of the applicant and submitted the form to an insurance company as authentic. The findings also stated that Wagtowicz failed to respond to NASD requests for documents and information. (NASD Case #C9B040078)

Dale H. Yorgey (CRD #814563, Registered Representative, Allentown, 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 Yorgey reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Yorgey consented to the described sanctions and to the entry of findings that he willfully failed to disclose material facts on his Form U4.

Yorgey's suspension began September 7, 2004, and will conclude March 6, 2005. (NASD Case #C9A040035)

Richard Dean Young (CRD #4282028, Registered Representative, Chandler, Arizona) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Young reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Young consented to the described sanctions and to the entry of findings that while he was registered with a member firm, he received a request from a public customer for liquidation of \$5,000 from four separate mutual fund holdings, and that the customer requested that the \$20,000 in proceeds from the sale of these funds be invested in a short-term corporate bond fund. NASD found that Young did not execute these orders as instructed and, instead, to cover his failure he provided false account information to the customer.

Young's suspension began September 7, 2004, and will conclude at the close of business September 6, 2005. (NASD Case #C3A040035)

Demetrios Zouloufis (CRD #2805419, Registered Representative, Valley Stream, New York) was fined \$300 and suspended from association with any NASD member in any capacity for 30 business days. The sanction was based on findings that Zouloufis failed to obtain supervisory approval for the issuance of credits to an individual at his member firm with whom he was involved in a personal relationship. The findings also alleged that Zouloufis caused the firm to issue checks to the individual drawn against the individual's account. NASD also found that the credits were issued without the firm's knowledge,

authorization, or consent; that credits were not related to commission, adjustments, interest adjustments, or reversal of fees; and that Zouloufis did not have a legitimate business reason to issue any of the credits.

Zouloufis' suspension began August 2, 2004, and concluded at the close of business September 13, 2004. (NASD Case #CLI030011)

Individual Fined

Debora Holly Frank (CRD #1550224, Registered Representative, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which she was censured and fined \$10,000. Without admitting or denying the allegations, Frank consented to the described sanctions and to the entry of findings that she engaged in riskless principal proprietary trading of convertible bonds knowing that she was not qualified to do so. (NASD Case #CAF040057)

Decisions Issued

The following decisions have been issued by the District Business Conduct Committee (DBCC) or the OHO and have been appealed to or called for review by the NAC as of August 6, 2004. The findings and sanctions imposed in the decisions may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notices to Members*.

Donner Corporation International n/k/a National Capital Securities, Inc. (CRD #37702, Oklahoma City, Oklahoma), Jeffrey Lyle Baclet (CRD #2022409, Registered Principal, Santa Ana, California), Vincent Michael Uberti (CRD #2618595, Registered Principal, Santa Ana, California), and Paul Alan Runyon (CRD #3159920, Registered Principal, Lake Forest California). NASD expelled the firm from NASD membership and barred Baclet from association with any NASD member in any capacity. NASD fined Uberti \$40,000, suspended him from association with any NASD member in any capacity for 30 months, and ordered him to requalify as a general securities representative and a general securities principal. NASD fined Runyon \$20,000, suspended him from association with any NASD member in any capacity for six months, and ordered him to requalify as a general securities representative and a general securities principal. The fines are due and payable when and if Uberti or Runyon seek to return to the securities industry.

The sanctions are based on findings that the firm, Baclet, and Uberti issued research reports that failed to disclose material information about the subject companies and contained misleading, exaggerated, and false statements in violation of SEC and NASD rules. NASD found that in the firm's research reports,

the firm, Baclet, and Uberti omitted the existence of and underlying basis for independent auditors' "going concern" opinions; included fraudulently exaggerated, misleading, and false statements; and failed to disclose that the firm had received compensation for the preparation and dissemination of the research reports. In addition, NASD found that the firm and Baclet failed to have the research reports approved and signed by a principal of the firm even though Baclet was a principal and was designated as the person in charge of advertising. Moreover, NASD found that the firm and Baclet failed to establish and maintain adequate written supervisory procedures pertaining to the preparation and dissemination of the firm's research reports. Furthermore, NASD found that Uberti and Runyon fraudulently failed to disclose material negative financial information and included exaggerated and misleading information in their research reports.

This decision has been appealed to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #CAF020048)

Justin F. Ficken (CRD #4059611, Registered Representative, Boston, Massachusetts) was barred from association with any NASD member in any capacity. The sanction was based on findings that Ficken failed to respond to NASD requests to answer questions and to appear for on-the-record testimony.

This decision has been appealed to the NAC, and the sanction is not in effect pending consideration of the appeal. (NASD Case #C11040006)

Todd Grafenauer (CRD #4408817, Registered Representative, Mukwonago, Wisconsin) was barred from associating with any NASD member in any capacity. The sanction was based upon findings that Grafenauer forged and falsified documents required by his member firm to recruit and utilize college interns.

This decision has been appealed to the NAC, and the sanction is not in effect pending consideration of the appeal. (NASD Case #C8A030068)

Scott Wiard (CRD #1509365, Registered Principal, Ypsilanti, Michigan) and James Reisinger (CRD #1275258, Registered Principal, Dexter, Michigan) were barred from association with any NASD member in any capacity. The sanctions were based on findings that Wiard and Reisinger engaged in unsuitable transactions in the accounts of public customers and used discretionary authority to pursue a high-risk investment strategy that was not authorized by these customers. NASD also found that Wiard exercised discretion in the accounts of public customers even though the terms of his MC-400 approval prohibited him from maintaining discretionary accounts. In addition, NASD found that Wiard failed to update his Form U4 in a timely manner.

This decision has been appealed to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C8A030078)

Complaints Filed

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

Vincent James Cappetta (CRD #2471511, Registered Principal, North Babylon, New York) was named as a respondent in an NASD complaint alleging that he recommended and induced public customers to purchase bonds in that he directly or indirectly, by the use of means or instrumentalities of interstate commerce, omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. The complaint further alleges that Cappetta lacked reasonable grounds to believe that the recommendation of the purchase bonds on margin was suitable for the customers, in light of the financial situation, investment objectives, and needs of the customers. In addition, the complaint alleges that Cappetta executed transactions, or caused transactions to be executed in customer accounts, without reasonable grounds for believing that the level of activity represented by such transactions was suitable based on each customer's respective financial situation, investment objectives, and needs. Furthermore, the complaint alleges that Cappetta exercised discretionary trading authority in a public customer's account without obtaining the customer's prior written authorization and his member firm's prior written acceptance of the account as discretionary. (NASD Case #C10040085)

Carmen Rosario Caro (CRD #1949991, Registered Representative, San Juan, Puerto Rico) was named as a respondent in an NASD complaint alleging that she recommended public customers to sign, in blank, a Partial Withdrawal form relating to their variable annuity in order to take advantage of investment opportunities. The complaint alleges that sometime after signing the Partial Withdrawal form and a cover letter as recommended by Caro, \$25,000 was withdrawn from the customers' variable annuity and a check was issued and mailed to a third party. The complaint further alleges that the customers did not authorize the withdrawal of the specific amount of \$25,000 from their variable annuity, did not know of the third party, and did not authorize the funds to be mailed to a third party. In addition, the complaint alleges that

Caro failed to respond to NASD requests for information and documentation. (NASD Case #C07040066)

Charles Phillip Clark, III (CRD #2379623, Registered Representative, St. Louis, Missouri) was named as a respondent in an NASD complaint alleging that he deposited 16 checks totaling \$44,425.24 received from a public customer into his personal bank account and used these funds for his personal use and benefit without the customer's knowledge, consent, or authorization. The complaint further alleges that Clark failed to respond to NASD requests for information. (NASD Case #C04040034)

Andrew Paul Gonchar (CRD #1659516, Registered Representative, Staten Island, New York) and Polyvios Tony Polyviou (CRD #1659532, Registered Representatives, Upper Saddle River, New Jersey) were named as respondents in an NASD complaint alleging that they interpositioned a hedge fund in transactions with public customers causing the customers to unknowingly pay more than they should have for bond purchases, and that they either knew, should have known, or were reckless in not knowing, that their interpositioning scheme would result in increased costs and excessive prices being charged to the customers. The complaint also alleges that Gonchar and Polyviou failed to disclose to public customers that the hedge fund was interpositioned in each trade, causing the customers to pay higher prices. In addition, the complaint alleges that Gonchar and Polyviou charged public customers unfair, excessive, and fraudulent markups for convertible bond transactions, and failed to disclose the excessive and fraudulent markups to the customers. Moreover, the complaint alleges that Gonchar and Polyviou failed to disclose to public customers, and the customers did not know, that under the circumstances, the markups and markdowns in transactions were unfair, excessive, and fraudulent. (NASD Case #CAF040058)

Lori A. Huck (CRD #4190301, Associated Person, Greenfield, Wisconsin) was named as a respondent in an NASD complaint alleging that, without the knowledge or consent of her member firm's public finance department, she converted approximately \$59,079.69 from the finance department by endorsing checks made payable to her member firm, depositing the checks into her personal securities and bank accounts, and using the proceeds from the checks for her own benefit or for the benefit of someone other than her member firm's public finance department. The complaint also alleges that Huck converted approximately \$1,400 from the securities account of a public customer by endorsing a check payable to her member firm, depositing the check into her personal securities account, and using the proceeds for her own benefit or for the benefit of someone other than the public customer. In addition, the complaint alleges that Huck received \$10,000 from a public customer to be deposited into the customer's account and failed to follow the customer's instructions, in that she deposited the funds into her personal securities account and used the funds for

some purpose other than the benefit of the customer; the deposit was reversed and credited to the customer's securities account two days later. Furthermore, the complaint alleges that Huck failed to respond to NASD requests for documents and information. (NASD Case #C8A040069)

Todd William Kmiec (CRD #1726325, Registered Supervisor, Chicago, Illinois) was named as a respondent in an NASD complaint alleging that he recommended and effected transactions in the accounts of public customers without having reasonable grounds for believing that the recommendation and resultant transactions were suitable for the customers on the basis of their financial situation, investment objectives, and needs. The complaint alleges that Kmiec failed to respond to NASD requests for information. (NASD Case #C8A040056)

Marcus Kalman Nagel (CRD #2170816, Registered Representative, New York, New York) was named as a respondent in an NASD complaint alleging that he misused a public customer's funds totaling approximately \$307,139.67 by depositing checks received from the customer into his personal savings account and placed only \$13,600 in the customer's brokerage account at his member firm. The complaint also alleges that Nagel failed to respond to NASD requests for information. (NASD Case #C10040082)

Jericho Guazon Nicolas (CRD #2030192, Registered Representative, San Francisco, California), Angel Cruz (CRD #1988787, Registered Representative, San Francisco, California), and Anthony Joseph Martinez (CRD #1568443, Registered Representative, Lake Grove, New York) were named as respondents in an NASD complaint alleging that they generated intra-day profits of more than \$694,000 in their member firm's proprietary accounts by trading ahead of a firm customer without disclosing that the firm was realizing such a profit on the customer's transactions in addition to agreed upon commissions, mark-ups, and mark-downs. The complaint alleges that Nicolas, Cruz, and Martinez, after receiving an order from the customer or learning of his intention to place an order, used the information thereby obtained to take a position in a firm proprietary account in the security the customer wished to buy or sell. The complaint further alleges that, if the position increased in value in the course of the day, the respondents executed the customer's order as a principal transaction at the later price; otherwise, the respondents executed the order at the earlier price as a riskless principal transaction. In addition, the complaint alleges that in carrying out the scheme the respondents caused, or caused their firm to create, false records and customer confirmations and failed properly to report transactions. (NASD Case #CAF040052)

Raul Peralta (CRD #4547226, Associated Person, Chicago, Illinois) was named as a respondent in an NASD complaint alleging that he forged the signature of a public customer as an endorsement on a \$2,667.47 check made payable to the customer without the customer's authorization, knowledge, or consent, and misused the customer's funds by cashing the check without the customer's authorization, knowledge, or consent. The complaint also alleges that Peralta failed to respond to NASD requests for information. (NASD Case #C8A040062)

Donald Lee Roseen (CRD #3184246, Registered Representative, Chicago, Illinois) was named as a respondent in an NASD complaint alleging that he affixed the signatures of public customers on "Switch Letters" and submitted them to his member firm in connection with mutual fund transactions and without the knowledge and consent of one of the individuals. The complaint also alleges that, although his member firm's policies and procedures manual prohibited representatives of the firm from signing a document on behalf of a client, Roseen failed to inform anyone at his member firm that he had signed the customers' names on the documents. (NASD Case #C8A040068)

LH Ross & Company, Inc. (CRD #37920, Boca Raton, Florida), Franklyn Ross Michelin (CRD #2459180, Registered Principal, Boca Raton, Florida), Kelly P. Paterno (CRD 2355542, Associated Person, Deerfield Beach, Florida), and Robert John Vitale (CRD #2695384, Registered Representation, Parkland, Florida) were named as respondents in an NASD complaint alleging that the firm, acting through Michelin, Paterno, and Vitale engaged in fraudulent and deceptive devices and contrivances involving trading in stocks through the use of instrumentalities of interstate commerce, or of the mails, or of a facility of any national securities exchange. The complaint alleges that the firm, acting through Michelin, Paterno, and Vital failed to act with reasonable diligence to ascertain the best inter-dealer market for the subject securities and failed to act diligently to ensure that the prices paid by the customers were as favorable as possible under the then prevailing market conditions. In addition, the complaint alleges that Paterno has never been registered with NASD in any capacity, but he functioned as an equity trader for the firm, entering and reporting trades on behalf of the firm, determining when and how to execute trades, directing trades to market makers or the firm's clearing firm, and conducting proprietary trades for the firm. The complaint also alleges that the firm, acting through Michelin, allowed Paterno to function as a registered person without the benefit of registration. The complaint further alleges that the firm, acting through Paterno, failed to make and preserve order tickets for the transactions as required by Rules 17a-3 and 17a-4, and that the firm, acting through Michelin, failed to follow the firm's supervisory procedures. (NASD Case #C05040054)

Firm Suspended for Failure to Supply Financial Information

The following firm was suspended from membership in NASD for failure to comply with formal written requests to submit financial information to NASD. The action was based on the provisions of NASD Rule 9552. 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.

American International Securities, Inc.
New York, New York
(July 16, 2004)

Suspension Lifted

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

Harvest Capital Investments LLC
Vienna, Virginia
(August 3, 2004)

Individuals Barred Pursuant to NASD Rule 9552 for Failure to Provide Information Requested Under NASD Rule 8210.

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

Andre, Antoine
Dania, Florida
(July 21, 2004)

Barber, Christopher Layne
Wake Forest, North Carolina
(July 19, 2004)

Tanwir, Khurram
New York, New York
(August 9, 2004)

Individuals Suspended Pursuant to NASD Rule 9552 for Failure to Provide Information Requested under NASD Rule 8210.

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

Antonucci, Dominic
Rochester, New York
(August 9, 2004)

Diehl, Ronald E.
Germantown, Tennessee
(June 19, 2004)

Multhaup, Karen
Auburn Hills, Michigan
(July 21, 2004)

Paulino, Jose M.
Union City, New Jersey
(August 9, 2004)

Penzini, Pedro
Key Biscayne, Florida
(August 9, 2004)

Reifer, Joshua
Brooklyn, New York
(July 6, 2004)

Tijanich, Brett E.
Avon, Ohio
(August 9, 2004)

Wiggins, Norbert L.
Arlington Heights, Illinois
(July 1, 2004)

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

Martellaro, Carl Dominic
Chico, California
(May 10, 2004)

Richardson, Wayne
Northport, New York
(July 26, 2004)
Richardson has appealed this decision to the SEC.
(NASD Case # ARB040010)

Smith, Jason Daniel
Boston, Massachusetts
(July 10, 2004)

NASD Granted First Temporary Cease-and-Desist Order to Stop Ongoing Fraud by Brokerage LH Ross

Firm Charged with Illegally Raising Millions through Fraudulent Self-Offerings

Finding that L.H. Ross and Company, Inc.'s "misconduct poses an extreme threat to the investing public," an NASD Hearing Panel for the first time has granted a petition for a temporary cease-and-desist order (TCDO) to immediately stop ongoing fraud by a brokerage firm while an NASD disciplinary proceeding is underway.

Under the terms of the TCDO, the Boca Raton, FL-based firm was ordered to cease raising funds for itself through two unregistered private placements as well as through the sale of promissory notes. The firm was also ordered to stop opening new branch offices and to stop paying bonuses or other compensation to brokers or branch managers as an incentive for joining the firm. And the firm was ordered to collect \$2 million from a parent company within one month and deposit the funds in escrow. The panel ordered this and other relief to "benefit customers by protecting them from exposure to additional serious violations and further dissipation or conversion of assets."

Late last month, NASD's Department of Enforcement filed for a TCDO against LH Ross, seeking an immediate halt to ongoing fraudulent and illegal sales activities relating to unregistered private placement self-offerings that to date have raised more than \$10 million for the firm (see www.nasdr.com/news/pr2004/release_04_050.html). This is the first time NASD has used its temporary cease-and-desist authority, which was approved by the SEC and went into effect in June 2003.

"LH Ross is engaging in an ongoing campaign of deceit designed to lure unsuspecting and unqualified customers into making highly risky private investments based on misleading and incomplete information," said NASD Vice Chairman Mary L. Schapiro. "Using its temporary cease-and-desist remedy, NASD acted promptly to force LH Ross to stop its ongoing fraudulent conduct and to stop victimizing investors."

In its decision and order, the Hearing Panel found that LH Ross's brokers made oral misrepresentations to investors, many of whom were elderly. The panel found that the brokers "stood to benefit from their material misrepresentations and omissions and high-pressure sales tactics [and] intended to deceive, manipulate or defraud investors..." Among the misrepresentations: that investors could "double, triple or quadruple their money" once the firm went public soon, when in fact the firm had not taken substantial steps to have its stock publicly traded. There was no reasonable basis for their prediction that the stock's price would rise given the firm's financial problems and regulatory issues. In addition, brokers told customers that their investment would pay

dividends that exceed current interest rates, when the firm had not paid dividends since 2001 and suffered continuous net operating losses.

The panel also noted that it was "greatly disturbed" by the financial relationship between the firm and its holding company, both of which were controlled by the same person. The panel found that as the LH Ross raised funds from investors it transferred those funds from the firm, "whose books and records are subject to inspection by the NASD and other regulators," to the holding company "that is beyond scrutiny."

The panel found that LH Ross' conduct violates federal securities laws and NASD rules, and that allowing that violative conduct to continue would likely result in significant harm to investors before disciplinary proceedings against LH Ross are completed. The TCDO will remain in effect until the underlying disciplinary action against the firm for this misconduct has been resolved. NASD may seek to suspend or expel a firm for violating a TCDO.

LH Ross is the subject of four other actions pending before NASD disciplinary panels: CAF030055, filed October 10, 2003, alleging a scheme to illegally manipulate the market in Trident Systems International stock; CAF040042, filed May 26, 2004, alleging that LH Ross and its president, Franklyn Michelin, failed to timely pay an arbitration award; C07040054, filed July 7, 2004, alleging that LH Ross and Michelin participated in a fraudulent scheme to profit at the expense of its customers through unauthorized trades; and C07040074, filed August 26, 2004, alleging that LH Ross and Michelin failed to respond to NASD requests for information.

Under NASD rules, the individuals and firms named in a complaint can file a response and request a hearing before an NASD disciplinary panel. Possible sanctions include a fine, an order to pay restitution, censure, suspension, or bar from the securities industry.

NASD Orders First-Ever Suspension of Mutual Fund Business and \$600,000 in Sanctions against National Securities Corp. for Deceptive Market Timing Practices

For the first time, NASD has prohibited a regulated firm from opening mutual fund accounts for new clients for 30 days—for facilitating deceptive market timing practices and for failing to have an adequate supervisory system to prevent deceptive market timing and late trading.

National Securities Corp., based in Seattle, WA, was also fined \$300,000 and ordered to pay almost \$300,000 in restitution to the funds that were affected by the deceptive market timing. In addition, National was ordered to revise its supervisory systems to correct supervisory and e-mail retention deficiencies. National's president, Michael A. Bresner, was fined \$25,000 and

received a one-month supervisory suspension for the firm's supervisory failures. David M. Williams, the firm's former chief operating officer, also was fined \$25,000 and received a four-month supervisory suspension.

"This is an example of a firm whose management totally ignored repeated red flags that its brokers were facilitating deceptive and improper market timing in mutual funds by hedge fund clients," said NASD Vice Chairman Mary L. Schapiro. "This failure, and the harm it caused to long-term investors, combined with the failures of supervision warrant the extraordinary remedy of temporarily prohibiting the firm from opening new mutual fund accounts."

NASD found that from January 2001 through August 2002, National helped four hedge fund clients engage in deceptive market timing practices aimed at 13 mutual funds that had restrictions and prohibitions against these practices. The hedge fund clients transacted at least 1,000 mutual fund trades, totaling nearly \$400 million, after National had received notices that the fund companies considered the timing strategy of the clients to be disruptive and contrary to the interests of long-term investors. These notices were ignored as the hedge fund clients reaped profits of approximately \$300,000 at the expense of long-term investors. This conduct was contrary to the high ethical standards required by NASD rules.

Despite the issuance of multiple notices by the mutual funds demanding that the hedge fund clients stop market-timing their funds, National failed to prevent them from continuing to trade the funds through deceptive means. For example, after an account was restricted by a fund for market timing, the hedge fund client would evade subsequent detection by shifting the prohibited activity to another brokerage account that it controlled. In a few instances, the hedge fund client continued to time the fund through the very same account that had been restricted by the fund company. This resulted in the issuance of additional notices or warnings until the account finally complied with the market timing restriction.

At least two of National's senior officers, Bresner and Williams, failed to ensure that the firm had an adequate supervisory system designed to prevent and detect deceptive market timing practices. They also failed to respond to red flags that pointed to the deceptive practices. Bresner, Williams, and other supervisors received multiple notices from the affected funds directing that the hedge fund clients stop the market timing activity. Additionally, prospectuses and selling agreements for the mutual funds contained explicit restrictions or limitations on market timing. Instead of placing limitations on the evasive activities of the hedge fund clients, however, National assumed a hands-off approach with respect to their deceptive practices.

"Market timing" refers to the practice of the rapid trading of

mutual fund shares in order to exploit inefficiencies in the pricing of mutual funds. While not illegal per se, market timing raises transaction costs for fund companies, which diminishes investor returns. Rapid and repeated redemptions also can force fund managers to sell winning investments, and/or cause managers, anticipating frequent redemptions, to hold a larger cash reserve than necessary and desirable. Consequently, mutual funds often maintain policies and procedures to detect and prevent market timing.

Inadequate Supervisory System for Detecting Late Trading

"Late trading" refers to the practice of placing mutual fund orders after the fund has calculated its daily net asset value (NAV)—typically when markets close at 4 p.m. Eastern Time—but receiving the price based upon that earlier, 4 p.m. calculation. Firms that permit late trades for select customers provide them with an information advantage—by allowing them to trade based on news that breaks after the market close that could affect the value of the mutual fund's holdings, but which is not reflected in the NAV for that day. SEC and NASD rules prohibit late trading to ensure that all purchasers of mutual fund shares are on equal footing as to price and information on any given day.

National, acting through Bresner, Williams, and the firm's compliance officer, failed to develop or implement a supervisory system that was reasonably designed to prevent or detect late trading, despite the fact that selling agreements National had with various mutual funds required the firm to monitor such activities to ensure fair pricing. Moreover, the volume of market timing business in question created significant risk of late trading, and mutual fund orders underlying the market timing in question were repeatedly transmitted to National's trading desk in Seattle after 4:00 p.m. Eastern Time, raising red flags of improper late trading.

During its investigation, NASD also found that National failed to preserve and maintain internal e-mail communications relating to the firm's business, as required by the federal securities laws and NASD rules.

In settling these matters, National, Bresner, and Williams neither admitted nor denied the allegations or findings. The investigation of individual brokers and others involved in the misconduct is continuing.