

DECEMBER 2004

Notice to Members

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For Your Information

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Reported for December

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Notice to Members

DECEMBER 2004

SUGGESTED ROUTING

Legal and Compliance
Registered Representatives
Senior Management

GUIDANCE

Liquefied Home Equity

NASD Alerts Members to Concerns When Recommending or Facilitating Investments of Liquefied Home Equity

KEY TOPICS

Communications with the Public
Home Equity Lines of Credit
Leverage
Liquefied Home Equity
Margin
Mortgages

Executive Summary

The rapid increase in home prices over the past several years, in combination with refinancing activity by homeowners, has led to increasing investment activity by homeowners with equity from their homes. This *Notice* reminds members that recommending liquefying home equity to purchase securities may not be suitable for all investors and that members and their associated persons should perform a careful analysis to determine whether liquefying home equity is a suitable strategy for an investor. In addition, members should ensure that all communications with the public addressing a strategy of liquefying home equity are fair and balanced, and accurately depict the risks of investing with liquefied home equity. Finally, members should consider whether to employ heightened scrutiny of accounts that they know, or have reason to know, are funded with liquefied home equity.

Questions/Further Information

Questions regarding this *Notice* may be directed to Gary L. Goldsholle, Associate Vice President and Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8104.

Background

The escalation of home values has made many homeowners wealthier as the equity in their homes has risen. Many investors have sought to access this equity in connection with mortgage refinancing or home equity lines of credit. Moreover, given the recent historically low interest rates, the cost of accessing this capital has been relatively low. In many cases, lower interest rates have allowed investors refinancing their mortgages to liquefy equity and lower their monthly payments. However, the benefit of these trends has the potential to be undone by inappropriate speculation or investments in securities.

NASD has observed increasing use of liquefied home equity for investments and recent studies corroborate these observations. According to the Federal Reserve Board, in the most recent period studied, the period 2001 through the first half of 2002 (2001-2002 period), 11 percent of the total funds liquefied in mortgage refinancings were used for stock market and other financial investments, up from less than two percent for the period 1998 through the first half of 1999 (1998-1999 period). The average amount of liquefied home equity being used for investments also has increased substantially. In the 1998-1999 period, the Federal Reserve Board found that "most homeowners who used the cash [from liquefied equity] to make stock market investments invested relatively small amounts."¹ However, in the 2001-2002 period, the average spent on stock market and other financial investments was more than \$24,000, greater than nearly all other categories, including home improvement.²

Discussion

NASD believes that a recommendation for a homeowner to liquefy home equity for investments poses significant and unique risks for investors.³ A home is a basic necessity and is often an individual's largest asset. Homeownership also provides stability and plays an important part in many social policies.

One of the primary concerns of investing liquefied home equity is that an investor may lose his or her home. If a homeowner takes out a mortgage to invest in securities on the assumption that the return from the investments will be sufficient to cover the mortgage payments, and the investment fails to earn the necessary rate of return, the investor may be unable to meet his or her mortgage obligations and default on the mortgage.

Another concern is that investors may misapprehend their risk tolerance for investments using liquefied home equity, particularly since liquefying home equity may often have an accompanying increase in mortgage obligations or create a new obligation in the case of a home equity line of credit. Thus, if the value of an investment decreases, as can happen with many investments, the investor may need to sell his or her investments to protect his or her home and limit further losses.

When liquefying home equity for investments in securities, homeowners, in pursuit of lower interest rates, also may select a mortgage or home equity loan with a variable interest rate. In an environment of increasing interest rates, as exists today, homeowners could see a significant increase in their debt service payments potentially forcing a sale of investments to meet these higher obligations.

In addition, investors may fail to recognize certain potential conflicts of interest, for example, a broker's interest to capture commissions or fees on investments from the proceeds of liquefied home equity. In addition, if the member or its affiliate is the lender, investors may not understand that they also will be paying compensation to the member or its affiliate for originating and/or servicing the loan. Conflicts also may exist even in the absence of an affiliate relationship if a member receives referral or other payments from a lender.

Finally, liquefying home equity may undermine the asset diversification benefit of home ownership. While home values fluctuate, they may not be correlated with equity or securities markets. Moreover, homes are an illiquid investment, given the generally high transaction and other costs associated with moving. Because of this, many homeowners do not realize gains (or losses) in the appreciation (or depreciation) in their homes. However, once liquefied for investments in securities, a homeowner can much more easily and quickly lose the equity in his or her home.⁴

In light of these concerns, NASD is reminding members of their obligations in connection with investments of liquefied home equity.

Suitability

Members are reminded that recommending liquefying home equity to purchase securities may not be suitable for all investors. Members should consider not only whether the recommended investments are suitable, but also whether the strategy of investing liquefied home equity in securities is suitable.⁵ In addition to the factors typically considered as part of a suitability analysis,⁶ a member and its associated persons also may wish to consider: (1) how much equity does the investor have in his or her home; (2) what is the level of equity being liquefied for investments; (3) how will the investor meet his or her increased mortgage obligations; (4) is the mortgage or home equity loan at a fixed or variable rate;⁷ (5) what is the investor's risk tolerance with respect to the funds being invested; (6) what is the investor's overall debt burden; and (7) what is the sustainability of the value of the investor's home.⁸

In addition, members also are reminded that IM-2310-2 (Fair Dealing with Customers) prohibits recommending purchases beyond a customer's capability, stating that it is a violation of a member's responsibility of fair dealing to "recommend[] the purchase of securities or the continuing purchase of securities in amounts which are inconsistent with the reasonable expectation that the customer has the financial ability to meet such a commitment."⁹

Best Principles

As noted above, investing liquefied home equity presents unique risks and also may present certain conflicts. NASD believes members should ensure that their supervisory systems address these risks and conflicts.

Firms that recommend or facilitate investments of liquefied home equity should consider the extent to which customers are adequately informed of the risks and conflicts of such a strategy. NASD has previously developed risk disclosure statements for certain other trading strategies, such as margin¹⁰ and day trading accounts.¹¹

Although NASD is not proposing a specific, standardized risk disclosure document, NASD believes members recommending investments of liquefied home equity should pay particular attention to providing investors with adequate risk disclosure. Among the risks and conflicts of investing liquefied home equity are: (1) the potential loss of one's home; (2) the fact that unlike other potential lenders, the member has an interest in having the proceeds of the loan used for investments that may generate commissions, mark-ups or fees for the member; (3) the member or its affiliate may earn fees in connection with originating the loan; (4) the impact of liquefied home equity on the ability to refinance a home mortgage; and (5) depending on the amount of home equity liquefied and any change in home value, the homeowner may have negative equity in his or her home.

Members also should pay particular attention to their sales materials and oral presentations concerning investments of liquefied home equity. NASD reminds its members that the promotion of liquefying home equity must be fair and balanced, and must address the associated risks. For example, if a member presents a scenario in which the investment returns from liquefied equity will be sufficient to pay the costs of accessing such capital, the member should highlight the risk that such returns may not be achieved and that the customer may have to access additional sources of funding to pay the mortgage or equity line of credit or risk foreclosure.

Members also should consider the extent to which accounts investing liquefied home equity should require heightened supervision or specific account approval. Again, in other contexts where leverage is involved,¹² such as options, or specific trading strategies, such as day trading, NASD has required specific account approval procedures.¹³ NASD recommends that firms consider whether similar procedures should be developed for accounts that invest liquefied home equity loaned by the member directly or arranged by the member through an affiliate or third party.

The situation where a member or its affiliate simultaneously recommends the strategy of liquefying home equity and originates the mortgage or equity line of credit presents additional conflicts, as the member or its affiliate may earn compensation from originating the loan, and if applicable, servicing or selling the loan, in addition to commissions or other fees earned by the member in connection with investments of the proceeds of the loan. Members should ensure that customers are adequately informed of the nature of the compensation that the member or its affiliate may earn from extending a mortgage or home equity loan. Conflicts also may arise where a member has a referral or other relationship with an unaffiliated lender. Members should ensure that customers are adequately informed about the nature of any such relationships.

Finally, NASD recommends that firms consider whether there should be any general standards for when a recommendation to invest liquefied home equity should be prohibited. While the circumstances surrounding an investment are fact-specific, there may be certain circumstances where recommending a strategy involving liquefied home equity is in all cases, or nearly all cases, inappropriate. For example, a firm may determine that it is inappropriate for a customer to use liquefied home equity to invest on margin, or withdraw home equity above a certain threshold (*i.e.*, reducing their home equity to below a certain level).

Endnotes

1. Peter J. Brady, Glenn B. Canner, and Dean M. Maki, "The Effects of Recent Mortgage Refinancing," Federal Reserve Bulletin, vol. 86 (July 2000), pp. 441, 446.
2. Glenn Canner, Karen Dynan, and Wayne Passmore, "Mortgage Refinancing in 2001 and Early 2002," Federal Reserve Bulletin, vol. 88 (December 2002), pp. 469, 473.
3. NASD has previously expressed concerns over liquefying home equity and 100% loan-to-value or pledged asset mortgages, including that many investors are not aware of the attendant risks. See Investor Alert *Betting the Ranch: Risking Your Home to Buy Securities*, at www.nasd.com/betting; and Investor Alert *100% Mortgages: The Low Down on No Money Down*, at www.nasd.com/mortgages.
4. See Report for Congress, *U.S. Housing Prices: Is There a Bubble?*, May 16, 2003, page 18.
5. See *In re F.J. Kaufman and Company of Virginia*, 50 S.E.C. 164 (1989).
6. See generally Rule 2310.
7. Inasmuch as investors with adjustable or hybrid mortgages may see their mortgage payment increase in the future, such factors must be taken into account in evaluating whether liquefying equity is a suitable strategy. Where, for example, an investor has an adjustable mortgage that, based on current or anticipated rates, is expected to increase, members should take such higher expected mortgage payments into account when considering whether liquefying equity to purchase securities is a suitable strategy.
8. A member also should evaluate whether an increase in home value is reasonably sustainable. An investor who liquidates a portion of his or her home equity and then sees the value of the home fall may find that he or she has little or even negative equity in his or her home. The loss of equity in one's home may make it difficult or more expensive to refinance a mortgage. In addition, an investor that sells a home with negative equity will be required to pay funds at closing.
9. IM-2310-2(b)(5) (emphasis added).

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10. Rule 2341 prohibits a member from opening a margin account for or on behalf of a non-institutional customer unless the member has furnished the customer with a specified margin disclosure statement.
 11. Rule 2361 prohibits a firm that is promoting a day-trading strategy from opening an account for or on behalf of a non-institutional customer unless the member has furnished the customer with a specified day-trading risk disclosure statement.
 12. Liquefied home equity is akin to leverage as both involve investments with borrowed funds. In the case of liquefied home equity, money is typically borrowed from a bank and secured by the home; in the case of investing on margin, the money is borrowed from a broker-dealer and secured by the securities in the investor's account.
 13. See Rule 2860(b)(16) (Options: Opening of Accounts); Rule 2360 (Approval Procedures for Day-Trading Accounts).

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Notice to Members

DECEMBER 2004

SUGGESTED ROUTING

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

KEY TOPICS

Debt Securities
Operations
Rule 6200 Series
TRACE Rules
Transaction Reporting

GUIDANCE

Corporate Debt Securities

NASD Issues Interpretive Guidance Regarding Various Trade Reporting and Compliance Engine (TRACE) Rules

Executive Summary

NASD provides interpretive guidance on the meaning of the terms “foreign private issuer” and “issue date” as set forth in Rule 6210, notification obligations under Rule 6260, and reporting the time of execution in seconds under Rule 6230.

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.

Interpretive Guidance

1. Foreign Private Issuer

NASD recently made minor, clarifying amendments to the term “TRACE-eligible security.” As amended, the term includes “debt securities that are . . . issued by United States and/or foreign private issuers.” The amendments clarified that TRACE-eligible securities include the debt securities of all U.S. and foreign private issuers, regardless of the business model used by the issuer.¹ For purposes of TRACE, NASD interprets the term “foreign private issuer” as a foreign issuer that is *not* eligible to use the SEC’s Schedule B for registering a debt offering in the U.S.²

Under Section 7 of the Securities Act, when a foreign government or a political subdivision of such foreign government is issuing a security and seeks registration in the U.S., it is required to file a registration statement containing the information and documents required in Schedule B.³ In addition, the SEC has interpreted Section 7 to allow certain supranational organizations, certain issuers of government-guaranteed securities, and certain other issuers closely aligned and identified with a sovereign, in addition to national, state, provincial, and municipal governments, to use Schedule B.⁴ For purposes of TRACE, NASD views such Schedule B-eligible issuers as issuers that are *not* “foreign private issuers,” and their debt securities as outside the definition of “TRACE-eligible security.” Conversely, foreign issuers that are not Schedule-B-eligible issuers are considered “foreign private issuers” as that term is used in the definition of “TRACE-eligible security.”

2. Issue Date

Rule 6210(a) states, “For purposes of the Rule 6200 Series, the term ‘money market instrument’ means a debt security that at issuance has a maturity of one year or less.” NASD is responding to inquiries about how NASD determines the date of “issuance” in Rule 6210(a). For purposes of TRACE, the term “issuance” is the date that a security is issued or the issue date. It is often industry convention to use the term “dated date” as a substitute for the term “issue date,” as the term “dated date” is commonly defined as the effective date of a new issuance. Accordingly, it is often the same date as the issue date. In certain circumstances, however, such as when a bond is issued with accrued interest, the dated date is prior to the issue date. When an issue date is not ascertainable from public sources, NASD will look to the dated date as the issue date to determine if a debt security is a money market instrument under Rule 6210(a). When both the dated date and the issue date are ascertainable from public sources and do not fall on the same date, NASD will look to the issue date for purposes of Rule 6210(a).⁵

3. Rule 6260 Obligations—Early Closing of TRACE System

Rule 6260, in part, requires firms involved in distributing new TRACE-eligible securities to provide information to NASD Market Operations. The deadlines for notification, which are set forth in Rule 6260(b), vary depending on the type of offering and the time it is priced or the effectiveness of the registration statement.

On days when NASD decides that the TRACE System will close early, NASD will announce the early closing and specify when NASD Market Operations will cease accepting information pursuant to Rule 6260 (e.g., NASD may close the TRACE System early, such as at 4:00 p.m. Eastern Time, around major holidays, such as the day after Thanksgiving). When early closings in TRACE occur, NASD interprets Rule 6260 as requiring a firm to provide the information required under Rule 6260 by the early closing time, rather than by 5:00 p.m. Eastern Time. (A calendar noting early closings can be found at www.nasd.com/mkt_sys/trace_calendar.asp)

4. Rule 6260 Obligations—“Underwriter”

Rule 6260 requires that a managing underwriter, or if a managing underwriter is not appointed, the group of underwriters, of a new TRACE-eligible security must provide notice to NASD of the new TRACE-eligible security in the form and manner specified in the rule. For purposes of Rule 6260, the term “underwriter” has the same meaning as set forth in Section 2(a)(11) of the Securities Act. NASD reminds firms that the statutory definition of “underwriter” includes firms acting as agents for issuers of new TRACE-eligible securities.⁶

5. Time of Execution

Rule 6230 requires that firms provide the time of execution in their transaction reports to TRACE. Version 1.05 of the TRACE User Guide provides, in part, the following guidance on reporting the time of execution of a transaction:

All reported times are Eastern Time, and must be entered in military time format, HHMMSS (except that seconds may be entered as “00” if your system is not capable of reporting seconds).

As a result, some firms are reporting trades with time stamps in seconds and some are not (because they may not be capable of reporting in seconds). NASD believes that the actual reporting requirement should be uniform for all firms. Accordingly, at this time, NASD will not require TRACE trade reports to be entered in seconds. However, NASD encourages firms that are currently reporting in seconds, or are capable of reporting in seconds, to continue or begin to do so. NASD will provide advance notice when all trade reports must include seconds so that firms can take the steps necessary to provide the level of detail required in reporting the time of execution.

Endnotes

1. See *Notice to Members 04-39* (May 2004).
2. The SEC has defined the term “foreign private issuer” in certain provisions of the federal securities laws primarily to determine whether an issuer is considered a U.S. or foreign private issuer for purposes of various filing and reporting requirements. See, e.g., Rule 405, 17 CFR §239.405, promulgated pursuant to the Securities Act of 1933, as amended (Securities Act), and Rule 3b-4(c), 17 CFR §240.3b-4(c), promulgated pursuant to the Securities Exchange Act of 1934, as amended (Exchange Act). In both rules, the term “foreign private issuer” means any foreign issuer *other than a foreign government*, except an issuer having significant U.S. contacts that are specified in both rules (*i.e.*, an issuer is not a “foreign private issuer” if more than 50 percent of the outstanding voting securities are directly or indirectly owned of record by U.S. citizens or residents; a majority of officers or executive directors are U.S. citizens or residents; more than 50 percent of the assets are located in the U.S.; or, the business of the issuer is administered principally in the U.S.). In Rule 3b-4(a) under the Exchange Act “foreign government” is defined as “the government of any foreign country or any political subdivision of a foreign country.”

Neither the definition of “foreign government” nor “foreign private issuer” directly addresses the status of foreign issuers that are government-sponsored. Transactions in securities issued by governmental as well as government-sponsored issuers are not subject to TRACE reporting.
3. Section 7 of the Securities Act provides in pertinent part: “The registration statement . . . when relating to a security issued by a foreign government, or political subdivision thereof, shall contain the information, and be accompanied by the documents, specified in Schedule B . . .” 15 U.S.C. § 77f. Schedule B is found at 15 U.S.C. § 77aa (Schedule B).
4. See SEC No-Action Letter dated June 2, 1993 (Bank of Greece); and SEC No-Action Letter dated February 1, 1982 (Nordiska Investeringar Banken).
5. NASD does not expect a “dated date” to occur after an issue date. In addition, NASD will not look to the first settlement date or any other day after the issue date to establish the date of issuance.
6. Section 2(a)(11) of the Securities Act provides: The term “underwriter” means any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors’ or sellers’ commission. As used in this paragraph the term “issuer” shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.

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Notice to Members

DECEMBER 2004

SUGGESTED ROUTING

Legal & Compliance
Registered Representatives
Senior Management

KEY TOPICS

Corporate Financing Department
Corporate Financing Fees
Rule 2710 (Corporate Financing
Rule–Underwriting Terms and
Arrangements)
Schedule A to the NASD By-Laws

GUIDANCE

Fees for Filing Documents Pursuant to Rule 2710 (Corporate Financing Rule–Underwriting Terms and Arrangements)

NASD Has Filed for Immediate Effectiveness Amendments to Section 7 of Schedule A to the NASD By-Laws Governing Fees for Filing Documents Pursuant to the Corporate Financing Rule; **Implementation Date: January 1, 2005**

Executive Summary

NASD has filed for immediate effectiveness amendments to Section 7 of Schedule A to the NASD By-Laws (Section 7). The amendments to Section 7 raise the maximum fee for filing documents pursuant to the Corporate Financing Rule from \$30,500 to \$75,500 (\$500 plus .01 percent of the proposed maximum aggregate offering price up to \$750 million).¹

The amendments to Section 7 become operative on January 1, 2005. New filings received and accepted by the Department through its electronic filing system (COBRA) by 12:00 p.m., Eastern Time, on Thursday, December 30, 2004, will be processed under the current fee structure (\$30,500 maximum fee). Any offering initially filed prior to December 30, 2004, will be subject to the current fee structure, notwithstanding that additional amendments to the filing may be made in 2005. New filings that have been rejected, however, must be corrected, re-submitted, and accepted by the Department prior to the December 30, 2004, deadline for the current fee structure to apply.

Included with this *Notice* is Attachment A, the text of amended Section 7.

Questions/Further Information

Questions concerning this *Notice* may be directed to LaNita A. Tyler, Manager, Corporate Financing Department, at (240) 386-4647.

Background and Discussion

NASD's Corporate Financing Department (Department) is responsible for reviewing the proposed underwriting terms and arrangements of proposed public offerings of securities for compliance with the requirements of Rule 2710 (Corporate Financing Rule—Underwriting Terms and Arrangements). The purpose of the Department's review is to provide members with, among other things, regulatory guidance as to what constitutes fair and reasonable underwriting terms and arrangements. Pursuant to Rule 2710, members may not participate in the offering unless certain documentation is filed with the Department for review. The fee charged to members for this review is set forth in Section 7.

Prior to this amendment, the maximum fee for filing documents pursuant to the Corporate Financing Rule was \$500 plus .01 percent of the proposed maximum aggregate offering price of \$300 million or other applicable value of all securities registered on a Securities and Exchange Commission (SEC) registration statement or included on any other type of offering document (where not filed with the SEC), with a cap of \$30,500. This fee structure was implemented in 1989 and intended to capture the maximum \$30,500 fee on 90 percent of the public offerings filed with the Department.

A recent review of the corporate financing fees showed that in 2004, the maximum \$30,500 fee was being charged on only 75 percent of the public offerings filed with the Department. The amendments to Section 7 will again enable NASD to capture the maximum fee on 90 percent of public offerings filed with the Department by raising the cap in Section 7 from \$30,500 to \$75,500 (\$500 plus .01 percent of the proposed maximum aggregate offering price up to \$750 million) as of January 1, 2005.

Implementation of the Fee Change

The fee change will be implemented on January 1, 2005. The staff plans to conduct an annual review of costs and adjust the corporate financing fee, if necessary, as of January 1 each year after appropriate consultation with the Board and rule filings with the Commission.

New filings received and accepted by the Department through its electronic filing system (COBRA) by 12:00 p.m., Eastern Time, on Thursday, December 30, 2004, will be processed under the current fee structure (\$30,500 maximum fee). Any offering initially filed prior to December 30, 2004, will be subject to the current fee structure, notwithstanding that additional amendments to the filing may be made in 2005. New filings that have been rejected, however, must be corrected, re-submitted, and accepted by the Department prior to the December 30, 2004, deadline for the current fee structure to apply.

COBRADesk will be shut down and unavailable for filings on Thursday, December 30, 2004, at 12:00 p.m., Eastern Time, to update COBRA and COBRADesk to accept the proposed new filing fee. COBRA and COBRADesk will again be available to accept filings on Monday, January 3, 2005, at 8 a.m., Eastern Time. NASD will notify NASD users of system availability on the NASD Web site beginning on December 1, 2004.

Endnote

1. SR-NASD-2004-177.

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ATTACHMENT A

Schedule A To NASD By-Laws

* * * * *

Section 7 — Fees for Filing Documents Pursuant to the Corporate Financing Rule

(a) There shall be a fee imposed for the filing of initial documents relating to any offering filed with NASD pursuant to the Corporate Financing Rule equal to \$500 plus .01% of the proposed maximum aggregate offering price or other applicable value of all securities registered on an SEC registration statement or included on any other type of offering document (where not filed with the SEC), but shall not exceed [~~\$30,500~~] \$75,500. The amount of filing fee may be rounded to the nearest dollar.

(b) There shall be an additional fee imposed for the filing of any amendment or other change to the documents initially filed with NASD pursuant to the Corporate Financing Rule equal to .01% of the net increase in the maximum aggregate offering price or other applicable value of all securities registered on an SEC registration statement, or any related Rule 462(b) registration statement, or reflected on any Rule 430A prospectus, or included on any other type of offering document. However, the aggregate of all filing fees paid in connection with an SEC registration statement or other type of offering document shall not exceed [~~\$30,500~~] \$75,500.

* * * * *

Notice to Members

DECEMBER 2004

SUGGESTED ROUTING

Legal & Compliance
Registered Representatives
Senior Management

KEY TOPICS

Advertising Regulation Department
Advertising Review Charges
Rule 2210 and Interpretations
Schedule A to the NASD By-Laws

GUIDANCE

Advertising Fees

Amendments to Section 13 of Schedule A to the NASD By-Laws Governing the Review Charge for Advertisement, Sales Literature, and Other Such Material Filed with or Submitted to NASD;

Implementation Date: January 1, 2005

Executive Summary

NASD has filed for immediate effectiveness amendments to Section 13 of Schedule A to the NASD By-Laws governing the review charge for advertisement, sales literature, and other such material filed with or submitted to NASD. The amendments raise the review charge for printed material and video or audio media from \$75.00 to \$100.00.¹

Included with this *Notice* is Attachment A, the text of amended Section 13.

Questions/Further Information

Questions concerning this *Notice* may be directed to Thomas A. Pappas, Associate Vice President, Advertising Regulation Department, at (240) 386-4500.

Background and Discussion

The Advertising Regulation Department (Department) is responsible for ensuring that all NASD member firms' communications with the public are fair, balanced, and not misleading. The mission of the Department, as provided in Rule 2210 and the Interpretations issued thereunder, is to ensure that all member communications with the public, including advertisements, sales literature, and correspondence, are based on principles of fair dealing and

good faith, are fair and balanced, and provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. Among other things, the Department reviews member communications with the public for false, exaggerated, unwarranted, misleading statements or claims, and exaggerated or unwarranted claims, opinions, or forecasts.

The amendments to Section 13 raise the minimum fee that may be charged by the Department for reviewing each and every item of advertisement, sales literature, and other such material, whether in printed, video, or other form, filed with or submitted to NASD (except for items that are filed or submitted in response to a written request from the Department issued pursuant to the spot check procedures set forth in NASD's Rules) from \$75 to \$100.² A recent analysis of the Department's operating and technology costs, which showed that NASD's costs have increased significantly due to increased responsibilities, economic conditions and the need for enhanced technology. The raise in the review charge from \$75.00 to \$100.00 is designed to offset these cost increases. This rate change will be implemented on January 1, 2005.

Endnotes

1. SR-NASD-2004-187.
2. The filing fee for expedited review remains \$500 plus \$25 for every page over 10 pages.

ATTACHMENT A

SCHEDULE A TO NASD BY-LAWS

* * * * *

Section 13 — Review Charge for Advertisement, Sales Literature, and Other Such Material Filed or Submitted

There shall be a review charge for each and every item of advertisement, sales literature, and other such material, whether in printed, video or other form, filed with or submitted to NASD, except for items that are filed or submitted in response to a written request from NASD's Advertising Regulation Department issued pursuant to the spot check procedures set forth in NASD's Rules as follows: (1) for printed material reviewed, [~~\$75.00~~] \$100.00, plus \$10.00 for each page reviewed in excess of 10 pages; and (2) for video or audio media, [~~\$75.00~~] \$100.00, plus \$10.00 per minute for each minute of tape reviewed in excess of 10 minutes.

Where a member requests expedited review of material submitted to the Advertising Regulation Department there shall be a review charge of \$500.00 per item plus \$25 for each page reviewed in excess of 10 pages. Expedited review shall be completed within three business days, not including the date the item is received by the Advertising Regulation Department, unless a shorter or longer period is agreed to by the Advertising Regulation Department. The Advertising Regulation Department may, in its sole discretion, refuse requests for expedited review.

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Notice to Members

DECEMBER 2004

SUGGESTED ROUTING

Internal Audit
Legal & Compliance
Operations
Registered Representatives
Senior Management
Systems
Trading
Training

KEY TOPICS

OATS
Rule 3110
Rule 3210
Rule 3350
Rule 3370
Rule 11830
Rules 6950 - 6957
Short Sales

GUIDANCE

Short Sale Requirements

Issues Relating to the SEC's Adoption of Regulation SHO

Executive Summary

On June 23, 2004, the Securities and Exchange Commission (SEC) adopted certain provisions of a new short sale regulation, designated Regulation SHO.¹ Regulation SHO consists of new Rules 200 (definitional and order marking requirements), 202T (short sale price test pilot) and 203 (uniform locate and delivery requirements). Together with the Regulation SHO adopting release, the SEC issued an order establishing a one-year pilot suspending the provisions of SEC Rule 10a-1(a) and any short sale price test of any exchange or national securities association for short sales of certain securities for certain time periods (Pilot).²

NASD, in conjunction with The Nasdaq Stock Market, Inc. (NASDAQ), is issuing this *Notice to Members* to advise member firms and other interested parties of several recent actions and related guidance surrounding the adoption of Regulation SHO. First, on November 30, 2004, NASD filed for immediate effectiveness a proposed rule change to repeal NASD Rule 3110(b)(1),³ Rule 3210,⁴ Rule 3370(b)⁵ and Rule 11830,⁶ which are duplicative of or overlap with the uniform requirements of Regulation SHO. The repeal of these rules will be operative on January 3, 2005, the compliance date of Regulation SHO. Second, NASD and NASDAQ staff are providing information and guidance on several issues relating to Regulation SHO. Questions and answers have been provided relating to the Order Audit Trail System (OATS) rules, the application of Rule 3350 (the Short Sale Rule), the publication and dissemination of the "threshold list" required by Regulation SHO and excused withdrawal status for market makers that cannot comply with the Regulation SHO pre-borrow requirements. Third, NASD is highlighting the recent questions and answers published by the SEC relating to Regulation SHO and is encouraging members to review this

guidance prior to the January 3, 2005 Regulation SHO compliance date. Finally, NASD is emphasizing that it will be closely monitoring member activity for compliance with the Regulation SHO requirements and, in this regard, members must have supervisory procedures and systems in place designed to ensure compliance with these requirements.

Questions/Further Information

Questions regarding this *Notice* may be directed as follows: For questions regarding the repeal of NASD rules, contact the Office of General Counsel, Regulatory Policy and Oversight, NASD, at (202) 728-8071 or the Legal Section, Market Regulation, NASD, at (240) 386-5126; for questions regarding OATS Reporting, please contact the OATS Help Desk at (800) 321-NASD; for questions regarding Rule 3350 and market maker excused withdrawals, contact Office of General Counsel, The Nasdaq Stock Market, Inc., at (301) 978-8400; and for questions regarding Threshold List Securities, direct them to traderreports@nasdaq.com or Market Operations, NASD, at (866) 776-0800.

Discussion

Repeal of NASD Short Sale Rules in Light of Regulation SHO

Several existing NASD rules are duplicative of or overlap with the new provisions of Regulation SHO, including: (1) SEC Rule 200(g) of Regulation SHO, which requires that sell orders in all equity securities be marked "long," "short," or "short exempt"; (2) SEC Rule 203(a) of Regulation SHO, which provides that, with certain limited exceptions, if a broker-dealer knows or should know that a sale of an equity security is marked long, the broker-dealer must make delivery when due and cannot use borrowed securities to do so; (3) SEC Rule 203(b)(1) of Regulation SHO, which applies a uniform rule, with certain limited exceptions, requiring all broker-dealers, prior to effecting short sales in equity securities, to "locate" securities available for borrowing; and (4) SEC Rule 203(b)(3) of Regulation SHO, which requires registered clearing agency participants to close out all failures to deliver 10 days after the normal settlement date for securities in which a substantial amount of failures to deliver have occurred, referred to as "threshold securities."

As noted in the adopting release for Regulation SHO, as well as in discussions between SEC and NASD staff, the SEC has indicated that Regulation SHO provisions will replace existing overlapping self-regulatory organization (SRO) rules. As a result, on November 30, 2004, NASD filed for immediate effectiveness a proposed rule change to repeal NASD Rule 3110(b)(1), Rule 3210, Rule 3370(b) and Rule 11830 in light of the requirements of Regulation SHO. The repealed NASD rules will be supplanted by Rule 200(g) and Rule 203 of Regulation SHO, which will provide uniform order marking and locate and delivery requirements applicable to all equity securities. The compliance date of the repeal of these rules is January 3, 2005, the compliance date for Regulation SHO.

Questions and Answers Relating to NASD Rules and Procedures

To help members in the implementation of Regulation SHO and the Pilot, NASD and NASDAQ staff have published the following questions and answers relating to NASD rules and procedures that are affected by Regulation SHO:

OATS Requirements

Q: What are our OATS reporting requirements relating to short sales in light of Regulation SHO?

A: As noted in the OATS Technical Specifications, the buy/sell code for OATS reports should be populated to indicate whether an order is a long sale (SL), a short sale (SS) or a short sale exempt (SX).⁷ These codes should be populated and reported to OATS consistent with the order marking requirements under Regulation SHO and as is currently required under certain NASD rules, such as Rule 3350. For example, to the extent a short sale order is deemed exempt under Rule 202T of Regulation SHO or Rule 3350, the order should be marked as such for purposes of OATS reporting requirements. To the extent that the SEC permits members to mark orders that are exempt under Regulation SHO with a “short sale” indicator rather than a “short sale exempt” indicator, OATS information should be populated consistent with SEC guidance.

Rule 3350

Q: Did the adoption of Regulation SHO have any impact on the application of NASD Rule 3350?

A: Reg SHO suspends the application of the bid test under NASD Rule 3350 for those stocks that are subject to the short sale price test pilot under SEC Rule 202T. NASDAQ recently amended Rule 3350 to create an exemption for those pilot securities. View the rule filing at www.nasdaq.com/about/SR-NASD-2004-187_NASDAQ_Rule_Filing.pdf.

Regulation SHO Threshold at Securities

Q: What is a threshold security for purposes of Regulation SHO?

A: As defined in Rule 203(c)(6) of Regulation SHO, a “threshold security” is any equity security of any issuer that is registered under Section 12 of the Exchange Act, or that is required to file reports under Section 15(d) of the Exchange Act (commonly referred to as reporting securities), where, for five consecutive settlement days:

- ▶ there there are aggregate fails to deliver at a registered clearing agency of 10,000 shares or more per security;
- ▶ the the level of fails is equal to at least one-half of one percent of the issue’s total shares outstanding; and

-
- ▶ the security is included on a list published by a self-regulatory organization (SRO).

A security ceases to be a threshold security if it does not exceed the specified level of fails for five consecutive settlement days.

Q. What is the NASDAQ Threshold Securities List?

- A. The NASDAQ Threshold Securities List is the list of threshold securities published by NASDAQ to comply with Rule 203(c)(6) of Regulation SHO.

Q. What are the Market Categories of issues that the NASDAQ List will include?

- A. The NASDAQ list will include NASDAQ National Market and NASDAQ Small Cap securities as well as OTCBB issues and other OTC equity issues.

Q. How can I access the NASDAQ Threshold Securities List?

- A. The List will be posted on *www.nasdaqtrader.com* in three different ways.
- ▶ Each night prior to 12:00 midnight ET, the List will appear on the NASDAQ Trader Web site in HTML format at *www.nasdaqtrader.com/asp/regsho.aspx*.
 - ▶ A text file will be published on the Web site at *www.nasdaqtrader.com/dynamic/symdir/regsho/Nasdaqthyyymmdd.txt*.
 - ▶ The same text file will be published on the *www.nasdaqtrader.com* FTP site at: *ftp://ftp.nasdaqtrader.com/symboldirectory/regsho/Nasdaqthyyymmdd.txt* for those firms wishing to automate the extract.

Q. What will be the format of the file?

- A. The format of the file will be as follows: Symbol/Security Name/Market Category/Reg SHO Threshold Flag/Filler/Filler. The values for the Market Category will be as follows:

- Q NASDAQ National Market (NNM)
- S Small Cap NASDAQ
- U OTCBB
- u Other OTC

Q. What does the date in the filename mean?

A. The date in the filename reflects the settlement date that the data is based on.

For example, the filename for the file posted containing January 7, 2005 settlement date data will be Nasdaqth20050107.

Q. How can I tell what time the list was created?

A. The end of the data file will contain a File Creation Timestamp, reflecting the date and time the file is complete. The Timestamp will be in the following format: `yyyymmddhhmmss`.

Q. How much history will NASDAQ maintain?

A. NASDAQ will not delete any files. A full history of files will be available on the FTP site. The daily text file on the website can be obtained by manipulating the url in the browser address field (by manually changing the "mmdd" in the filename URL).

Q. What if the List is posted late (after 12:00 midnight ET) on the NASDAQ Trader Web site?

A. According to guidance provided by staff of the SEC Division of Market Regulation, firms will be permitted to use the previous settlement day's List to comply with Regulation SHO, if the file is unavailable by 12:00 midnight ET. Firms are still obligated to analyze the current settlement day's data when it becomes available to determine compliance with Regulation SHO's close-out requirement.

Q. Starting on what date will the NASDAQ Threshold Securities List be posted?

A. As stated above, Rule 203(c)(6) of Regulation SHO defines "threshold security" as one that exceeds a level of fails for five consecutive settlement days. Since the new rule takes effect on January 3, 2005, the first date a security can meet this definition will be five settlement days after the effective date. Accordingly, the first List will be posted before midnight on Friday, January 7, 2005, and will be available before the opening of trading on Monday, January 10, 2005.

Q. Where can I get more information relating to the NASDAQ Threshold List?

A. A General News item was posted at the following Web site: www.nasdaqtrader.com/Trader/News/2004/generalnews/20041209.stm.

Excused Withdrawals Relating to Compliance with Regulation SHO's Pre-Borrow Requirements

Q. What impact will Regulation SHO's pre-borrow requirement have on a market maker's ability to make a market in a threshold security?

A. Rule 203(b)(3)(iii) of Regulation SHO (pre-borrow requirement) states that a clearing agency participant that has a fail to deliver position in a threshold security for 13 consecutive settlement days may not accept a short sale in the security, or enter a short sale in the security for its own account, without borrowing, or entering into a bona fide arrangement to borrow, the security, until the participant closes out the fail to deliver position by purchasing securities. This pre-borrow requirement also applies to any broker-dealer for which a clearing agency participant clears, including market makers that otherwise would be entitled to rely on the bona-fide market making exception from Rule 203(b)(1)'s locate rule. Thus, if a threshold security is not borrowable, the SEC Division of Market Regulation staff has acknowledged that the application of the pre-borrow requirement may result in a market maker's failure to make markets in that security because of its inability to effect further short sales until the fail to deliver position is closed out. Nasdaq has concluded that a market maker's failure to make a market in the security under these circumstances can form the basis for an excused withdrawal under Rule 4619, which would allow the market maker to resume making markets once the fail to deliver position is closed out or the security becomes borrowable.

SEC Guidance on Regulation SHO Implementation Issues

To assist in the understanding and application of Regulation SHO and the Pilot, SEC staff has published questions and answers regarding Regulation SHO, which are available on the SEC's website at <http://www.sec.gov/divisions/marketreg/mrfaqregsho1204.htm>. SEC staff notes that the responses in the questions and answers may vary depending on certain facts and circumstances of a particular transaction and that SEC staff may update the questions and answers periodically.

Among other important issues, Question 4.1 of the SEC's guidance addresses satisfying the "reasonableness" standards of the locate rules. Specifically, Rule 203(b)(1)(ii) permits a broker or dealer to accept a short sale order in an equity security if the broker-dealer has reasonable grounds to believe that the security can be borrowed so that it can be delivered on settlement date. "Reasonableness" is determined based on the facts and circumstances of the particular transaction and the SEC provided examples

of reasonableness in its Adopting Release. For example, footnote 58 of the Adopting Release notes that a broker-dealer may obtain an assurance from a customer that such party can obtain securities from another identified source in time to settle the trade. In this regard, members must be able to demonstrate that there are reasonable grounds to rely on such customer assurances that they can obtain securities, for example, through documentation noting the source of securities cited by the customer and demonstrating that previous borrowings arranged by the customer resulted in timely deliveries in settlement of the customer's transactions. As such, where a member knows, or has reason to know, that a customer's prior assurances resulted in failures to deliver, assurances from such customer would not satisfy the reasonableness determination of SEC Rule 203(b)(1)(ii) of Regulation SHO.

The SEC's guidance also addresses several other important issues, including clarification on the marking requirements for OTC Bulletin Board Securities (Question 2.1), the use of Easy to Borrow Lists (Question 4.2), and reliance on customer representations to comply with the locate requirements (Question 4.3). NASD encourages members and other interested parties to review the SEC's published guidance.

Surveillance and Examination of Regulation SHO Requirements

NASD will be closely monitoring member activity for compliance with the Regulation SHO requirements and members will be expected to be in compliance with the Regulation SHO requirements as of the January 3, 2005 compliance date. Among other things, NASD is developing surveillance programs that will track the level and duration of CNS fails by members. To the extent such fails are not closed out within the requisite time period, NASD will be reviewing the actions taken by the member to close out the fails, which should be clearly documented by the member. Similarly, NASD will be reviewing member activities to ensure that members have complied with the marking, locate, and pre-borrow requirements, as applicable. Accordingly, NASD's member examination program will include reviews for compliance with each applicable rule in Regulation SHO.

In addition, NASD Rule 3010 requires that members establish and maintain a supervisory system that is designed to ensure compliance with the NASD rules and the federal securities laws. Accordingly, NASD will be examining closely members' supervisory systems and written supervisory procedures relating to Regulation SHO and, where appropriate, will initiate disciplinary action against firms and their supervisory personnel for failure to adopt, implement, and enforce appropriate supervisory procedures.

Endnotes

- 1 See Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (August 6, 2004) (Adopting Release).
- 2 See Exchange Act Release No. 50104 (July 28, 2004), 69 FR 48032 (August 6, 2004) (Pilot Order). See *also* Exchange Act Release No. 50747 (November 29, 2004), 69 FR 70480 (December 6, 2004) (Second Pilot Order).
- 3 Rule 3110(b)(1) requires that an associated person indicate on the order ticket whether an order is "long" or "short."
- 4 Rule 3210 prohibits a member from selling a security for its own account or buying a security as a broker for a customer, if the member has a fail to deliver in that security that is 60 days old or older, or 90 days old or older for foreign securities.
- 5 Rule 3370(b) requires, among other things, that (1) no member accept a long sale order from a customer unless the member has possession of the security, the customer is long in his account, the member makes an affirmative determination that the customer owns the security and will deliver it on settlement date or that it is in good deliverable form on deposit with a member or other permissible entity; and (2) no member effect a "short" sale order for a customer, non-member broker-dealer or proprietary account in any security unless the member makes an affirmative determination that the member will receive delivery of the security or that the member can borrow the security for delivery by settlement date, subject to certain exemptions.
- 6 Rule 11830 generally mandates delivery of a security within 10 days of the settlement date for short sales executed in NASDAQ securities that, on the trade date of the transaction, had a clearing short position equal to at least one-half of one percent of the issue's total shares outstanding.
- 7 The OATS Technical Specifications are available at www.nasdaq.com/oatsspecifications.

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Special Notice to Members

DECEMBER 2004

SUGGESTED ROUTING

Legal & Compliance
Operations
Registration
Senior Management

KEY TOPICS

District Elections

INFORMATIONAL

Nominees for the District Committee for District 10

Executive Summary

Article VIII, Section 8.32 of the NASD Regulation, Inc. By-Laws (the By-Laws) permits the Secretary of NASD Regulation, in extraordinary circumstances and with the approval of the NASD Executive Committee or the NASD Board of Governors, to adopt additional procedures for District Committee and District Nominating Committee elections.

Pursuant to this provision, the purpose of this *Special Notice to Members* is to inform the members of District 10 of additional procedures adopted on December 13, 2004 by the NASD Executive Committee to address the situation where a nominee, Tracy E. Calder, withdrew from further consideration for the District Committee for District 10. Ms. Calder withdrew following the September 16, 2004 *Special Notice* announcing the nominees for the District Committee for District 10 and prior to distribution of the contested election ballot.

The additional procedures for electing the members of the District Committee for District 10 include: (1) extending the timeframe for the Secretary of NASD Regulation to notify the Executive Representatives of NASD members and the District Committee of an amended slate of nominees when a candidate previously nominated by the District Nominating Committee has withdrawn from further consideration; (2) authorizing the District Nominating Committee to amend the slate of nominees to include an alternate nominee selected by the District Nominating Committee to replace a previously nominated candidate who has withdrawn from consideration; (3) requiring that the Secretary of NASD Regulation repeat the procedures as set forth in Article VIII of the By-Laws by

giving notice to the Executive Representatives of NASD members and the District Committee, not later than December 20, 2004, of the amended slate of nominees and identifying the requirements that an additional candidate must satisfy in order to contest the election; and (4) requiring that the ballot for the contested election be distributed after the time period has expired for any additional candidates to come forward to contest the election, and include on the ballot the names of any such additional candidates as well as that of the nominee who successfully gathered petitions as a result of the September 16, 2004 *Special Notice to Members*.

At its meeting on August 13, 2004, to select nominees for the District Committee for District 10, the District Nominating Committee for District 10 identified Vincent A. Buchanan as an alternate nominee in the event one of its nominees were to withdraw from further consideration. Identified in Attachment A is the amended slate of nominees, which includes Mr. Buchanan, who replaces Ms. Calder. Four of the individuals on the slate have been nominated for a three-year term on the District Committee for District 10, with terms commencing in January 2005. A fifth individual has been nominated to fill an existing vacancy on the District Committee for District 10 and will serve the remaining one-year term of this position, beginning in January 2005.¹

The members of District 10 are also notified that in connection with the initial slate of nominees that appeared in *Special Notice 04-67*, an individual, Howard Spindel, has come forward and satisfied the requirements of the By-Laws to contest the election for membership on the District Committee for District 10. The ballot for the contested election will be distributed after the time period has expired for any additional candidates to come forward to contest the election, as outlined below in the Contested Election Procedures.

If any individuals who have not been nominated for election to the District Committee for District 10 are interested in being considered for election, they may contest the election by following the procedures in Sections 8.20 and 8.22 of the By-Laws, as summarized below.

Contested Election Procedures

If an officer, director, or employee of an NASD member is interested in being considered an additional candidate, he/she must indicate his/her interest to the District Director by January 3, 2005. If an additional candidate or candidates come forward by that date, the Secretary of NASD Regulation will provide each additional candidate with a list of members who are eligible to vote in the District. In order to be considered for nomination, within 30 calendar days of receipt of the list of members eligible to vote, an additional candidate must submit a petition to the District Nominating Committee for District 10 with signatures from at least 10 percent of the Executive Representatives of members eligible to vote in the District.

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

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

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ATTACHMENT A

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)

District 10 Nominating Committee Chair

Judith R. MacDonald	Rothschild, Inc.	New York, NY
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District 10 Committee Nominees

Vincent A. Buchanan*		New York, NY
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Margaret M. Caffrey (1-Year Term)	Schonfeld & Company, LLC	Jericho, NY
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Clifford H. Goldman	Marco Polo Securities Inc.	New York, NY
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Jeffrey T. Letzler	Instinet, LLC	New York, NY
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Michael Santo	Banc of America Investment Services, Inc.	New York, NY
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* Mr. Buchanan is associated with nine broker-dealers within District 10 as a Financial and Operations Principal.

Notice to Members

DECEMBER 2004

SUGGESTED ROUTING

Corporate Finance
Executive Representatives
Legal and Compliance
Municipal Securities
Operations
Registered Representatives
Senior Management
Technology
Trading and Market Making
Training

KEY TOPICS

MSRB Rules G-12(f) and G-14
Municipal Securities
Operations
Supervision
Training
Transaction Reporting

GUIDANCE

Municipal Securities

NASD Issues Reminder to Members Regarding the Municipal Securities Rulemaking Board's Implementation of Real-Time Reporting and Dissemination of Transactions in Municipal Securities

Executive Summary

NASD is issuing this *Notice to Members* to remind firms to prepare for the implementation on January 31, 2005, of the reporting of municipal securities transactions within 15 minutes (real-time reporting), immediate dissemination of such transaction information (real-time dissemination), and automated comparison of inter-dealer transactions in such securities. The changes are set forth in amended Municipal Securities Rulemaking Board (MSRB) Rule G-14 and Rule G-12(f). Firms must review *all* areas of their business activities and determine the effect of the amended reporting and comparison rules and real-time dissemination of information on municipal securities transactions. Among other actions, firms should review and revise policies, practices, and procedures, as needed, of associated persons engaged in trading or selling municipal securities, the firm's investment banking operations, the back office, the business line supervisors of any business or operational area that is affected by the changes, and the firm's legal, compliance, and audit departments.

Questions/Further Information

Questions concerning this *Notice* should be directed to Jon Soderlund, Assistant Director, Market Regulation, Regulatory Policy and Oversight (RPO), at (240) 386-5111; Cindy Friedlander, Program Manager, Member Regulation, RPO, at (202) 728-8133; or Sharon K. Zackula, Associate General Counsel, Office of General Counsel, RPO, at (202) 728-8985.

Discussion

On August 31, 2004, the SEC approved a proposed rule change relating to the MSRB's implementation of real-time reporting of transactions in municipal securities, real-time dissemination of such transaction information, automated comparison of inter-dealer trades, and the development of the "Real-Time Transaction Reporting System" (RTRS) facility.¹ As amended, Rule G-14 will require brokers, dealers and municipal securities dealers (collectively, dealers) to report transactions in municipal securities within 15 minutes of the time of trade execution instead of by midnight on trade date, as is currently required. Amended Rule G-12(f) will require dealers to submit inter-dealer transactions for comparison in a central comparison system within the same time frame. The changes to MSRB Rules G-14 and G-12(f) become effective on January 31, 2005. As dealers begin to enter trade information real-time on January 31, 2005, the MSRB will begin real-time dissemination of such transaction data.

The purpose of the rule change is to increase price transparency in the municipal securities market and to enhance the surveillance database and audit trail used by NASD. Accurate and timely automated reporting of municipal securities transaction information is critical to the accurate dissemination of transaction data and resulting price transparency and the effective regulatory oversight of municipal securities trading and sales practices.

The purpose of this *Notice* is to remind firms engaged in municipal securities business of their obligations under MSRB Rules G-14 and G-12(f), as amended. Firms' obligations include the following:

- ▶ Firms must understand the terms of amended MSRB Rules G-14 and G-12(f) and be prepared to report *all* trades in municipal securities within 15 minutes of the time of trade execution, unless the trade is subject to an exception from 15 minute reporting, or there is an exemption from reporting.² Similarly, firms must be prepared to submit inter-dealer transactions in municipal securities to the central comparison system within the same time frame.
- ▶ All firms that engage in a municipal securities business must complete Form RTRS by the deadline set by the MSRB, even if they submit all transaction information through a clearing firm or service bureau, effect no transactions in municipal securities, or only effect transactions in municipal securities that are exempt from reporting (e.g., municipal fund securities, also known as "Section 529 plan" securities). By completing Form RTRS, these firms will confirm with the MSRB how they will be submitting transaction data or that they have no testing or certification requirement.

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- ▶ Firms must comply with all testing and certification requirements by the deadlines established by the MSRB. Certain firms are not required to “test” but all firms must be certified. For example, if all of a firm’s transaction reports are submitted and updated by an agent (a clearing broker or service bureau), the firm will be certified when its agent is certified.³ If a firm’s agent submits some data for a class of trades, but the firm also submits some data (e.g., the firm intends to submit corrections to a trade report previously submitted by the agent to RTRS directly using RTRS Web), then the firm must complete one of the test plans and then be certified.
 - ▶ A firm must make certain that associated persons and their supervisors across the firm have received adequate training to allow the firm to report all transactions in municipal securities timely and accurately upon implementation of amended MSRB Rules G-14 and G-12(f).
 - ▶ A firm must ensure that it has revised its written supervisory policies, practices and procedures to reflect changes both as to the reporting requirements and the availability of additional real-time transaction pricing information prior to implementation of amended MSRB Rules G-14 and G-12(f) and that its supervisory personnel are knowledgeable as to these revisions. Various business areas that may be affected include but are not limited to trading, sales, investment banking, and back office operations. In addition, a firm must ensure that supervisory personnel of affected business areas have implemented such changes.
 - ▶ A firm must enhance communications and back office systems as needed to ensure the firm’s technological and systems readiness as of the date of implementation.
 - ▶ If a firm’s transactions in municipal securities are being reported through a third party, a firm must ensure that the performance of the third party complies with the MSRB’s reporting and related rules, including establishing procedures for the firm to review the performance of the third party and to modify or terminate the relationship if, as a result of the third party’s performance, the firm is not in full compliance with the MSRB’s reporting and related rules.
 - ▶ A firm must assess back office staffing capacity, and reallocate or supplement back office staff if necessary to allow the firm to report municipal securities transactions accurately and timely as of the date of implementation of real-time comparison, reporting, and dissemination of municipal securities transactions.
 - ▶ A firm must review the firm’s legal, compliance, and internal audit policies, practices, and procedures, and amend them as necessary to perform legal, compliance, and audit functions relating to both the amended reporting requirements and the availability of additional real-time transaction pricing information prior to implementation of amended MSRB Rules G-14 and G-12(f).

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- ▶ A firm must review its other supervisory control functions to monitor, test and ensure that, with the changes relating to both the amended reporting requirements and the availability of additional real-time transaction pricing information, the firm is in compliance with the rules of the MSRB.

Many of the obligations referred to above require that firms complete certain actions prior to the implementation of real-time reporting and dissemination, such as executing Form RTRS; testing; obtaining certification; providing adequate training of associated persons and other firm personnel; ensuring the firm's technological and systems readiness; adequately staffing back office operations; and revising policies, practices, and procedures used by business line supervisors and by legal, compliance, audit, and other supervisory control functions. However, it is crucial that firms continue to monitor their compliance with the reporting and dissemination rules and all other MSRB rules on an ongoing basis, and with particular scrutiny during the first months following the implementation of a major regulatory initiative. Upon implementation of real-time reporting and real-time dissemination, firms must monitor their compliance performance to determine if the firms' actions and plans prior to implementation have resulted in full compliance with the rule changes. If needed, firms must take additional steps in areas where compliance has not been achieved to address the issues identified. In addition, with substantial changes in reporting processes and procedures, the introduction of real-time dissemination, and the new availability of real-time pricing information, firms should review diligently affected business areas, and related amended policies, practices, and procedures, to ensure that the changes made in one area do not result in unintended consequences that create separate regulatory deficiencies or issues in another area.

NASD will continue to review firms engaged in municipal securities business to ensure that, with respect to the new reporting requirements and the availability of real-time transaction pricing information, firms have adopted comprehensive policies, practices and procedures to ensure full compliance with amended MSRB Rules G-14 and G-12(f), and to ensure that current pricing information that is publicly available or otherwise available to the firm is considered appropriately in pricing municipal securities. In addition, NASD will review firms to determine if firms have amended their written supervisory policies, practices, and procedures to reflect the changes effected in various business areas (e.g., trading or selling municipal securities, the firms' investment banking operations, the back office) and have implemented such changes. Finally, NASD will review firms to determine if firms have reviewed and updated policies, practices, and procedures in firms' legal, compliance, and audit departments, and other supervisory control functions to monitor, test, and ensure that firms are in compliance with the rules of the MSRB.

Endnotes

- 1 Securities Exchange Act Release No. 50294 (August 31, 2004), 69 FR 54170 (September 3, 2004) (SR-MSRB-2004-02) (SEC approval order).
- 2 In certain situations, dealers will be allowed to report transactions in longer timeframes. See MSRB Rule G-14(a)(ii), as amended. In addition, certain transactions in municipal securities are exempt from reporting. These include transactions in municipal securities that are ineligible for CUSIP number assignment, municipal fund securities transactions, and inter-dealer transactions that are not eligible for comparison. See MSRB Rule G-14(b)(vi), as amended.
- 3 "Real-Time Transaction Reporting: Revised RTRS Certification Test Plan (July 28, 2004)," at www.msrb.org/msrb1/whatsnew/RevCertificationestplan.htm.

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2004 – 2005 Filing Due Dates

NASD would like to remind members of their obligation to file the appropriate FOCUS reports, Annual Audits, Customer Complaints, and Short Interest Reports by their due dates. The following schedule outlines due dates for 2005. Questions regarding the information to be filed can be directed to the appropriate District Office. Business questions as to how to file the FOCUS report, resetting passwords & technical questions concerning system requirements, file uploads, submission problems for Web-Based FOCUS and Customer Complaints can all be directed to (800) 321-NASD. Business questions regarding the Short Interest Reporting deadlines should be directed to Yvonne Huber at (240) 386-5034 or Jocelyn Mello at (240) 386-5091.

2005 FOCUS Due Dates

Annual Schedule I for 2004 Year End	Due Date
2004 FOCUS Schedule	January 26, 2005
Annual Schedule I for 2005 Year End	Due Date
2005 FOCUS Schedule	January 25, 2006

2005 Monthly and Fifth* FOCUS II/IIA Filings

* A Fifth FOCUS report is an additional report that is due from a member whose fiscal year end is a date other than the calendar quarter.

January 31, 2005	February 24, 2005
February 28, 2005	March 23, 2005
April 30, 2005	May 24, 2005
May 31, 2005	June 23, 2005
July 31, 2005	August 23, 2005
August 31, 2005	September 26, 2005
October 31, 2005	November 23, 2005
November 30, 2005	December 23, 2005

2005 Quarterly FOCUS Part II/IIA Filings

Quarter Ending	Due Date
December 31, 2004	January 26, 2005
March 31, 2005	April 25, 2005
June 30, 2005	July 26, 2005
September 30, 2005	October 25, 2005
December 31, 2005	January 25, 2006

2005 Annual Audit Filings Due Dates

Period End	Due Date
January 31, 2005	April 1, 2005
February 28, 2005	April 29, 2005
March 31, 2005	May 31, 2005
April 30, 2005	June 29, 2005
May 31, 2005	August 1, 2005
June 30, 2005	August 29, 2005
July 31, 2005	September 29, 2005
August 31, 2005	October 31, 2005
September 30, 2005	November 29, 2005
October 31, 2005	December 30, 2005
November 30, 2005	January 30, 2006
December 31, 2005	March 1, 2006

2005 3070/Customer Complaints Due Dates

4th quarter 2004:	January 18, 2005
1st quarter 2005:	April 15, 2005
2nd quarter 2005:	July 15, 2005
3rd quarter 2005:	October 17, 2005
4th quarter 2005:	January 17, 2006

Market Regulation Department 2005 Short Interest Reporting Deadlines

Trade Date*	Settlement Date	Exchange-Listed Short Interest Due**	NASDAQ Short Interest Due**
January 11 Tuesday	January 14 Friday	January 19 - 1:00 p.m. Wednesday	January 19 - 6:00 p.m. Wednesday
February 10 Thursday	February 15 Tuesday	February 17 - 1:00 p.m. Thursday	February 17 - 6:00 p.m. Thursday
March 10 Thursday	March 15 Tuesday	March 17 - 1:00 p.m. Thursday	March 17 - 6:00 p.m. Thursday
April 12 Tuesday	April 15 Friday	April 19 - 1:00 p.m. Tuesday	April 19 - 6:00 p.m. Tuesday
May 10 Tuesday	May 13 Friday	May 17 - 1:00 p.m. Tuesday	May 17 - 6:00 p.m. Tuesday
June 10 Friday	June 15 Wednesday	June 17 - 1:00 p.m. Friday	June 17 - 6:00 p.m. Friday
July 12 Tuesday	July 15 Friday	July 19 - 1:00 p.m. Tuesday	July 19 - 6:00 p.m. Tuesday
August 10 Wednesday	August 15 Monday	August 17 - 1:00 p.m. Wednesday	August 17 - 6:00 p.m. Wednesday
September 12 Monday	September 15 Thursday	September 19 - 1:00 p.m. Monday	September 19 - 6:00 p.m. Monday
October 11 Tuesday	October 14 Friday	October 18 - 1:00 p.m. Tuesday	October 18 - 6:00 p.m. Tuesday
November 9 Wednesday	November 15 Tuesday	November 17 - 1:00 p.m. Thursday	November 17 - 6:00 p.m. Thursday
December 12 Monday	December 15 Thursday	December 19 - 1:00 p.m. Monday	December 19 - 6:00 p.m. Monday

* Trade Date is provided for reference purposes only. Positions are to be reported as of settlement date.

** Eastern Standard Time

Disciplinary and Other NASD Actions

REPORTED FOR DECEMBER

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 November 2004.

Firms Fined, Individuals Sanctioned

Davrey Financial Services, Inc. (CRD #38914, Tacoma, Washington) and Pravin Roy Davrey (CRD #2243197, Registered Principal, Tacoma, Washington). The firm was censured, fined \$35,000, and required to submit all of its proposed advertising to NASD's Advertising Regulation Department for "pre-use" approval for a period of two years. Pravin Davrey was suspended from association with any NASD member in any principal capacity for two years and ordered to requalify by exam as a general securities principal and financial and operations principal (FINOP) before again serving in such capacity. The National Adjudicatory Council (NAC) imposed the sanctions following appeal of an Office of Hearing Officers (OHO) decision. The sanctions were based on findings that the firm, acting through Davrey, failed to maintain accurate books and records, in that the firm made payments out of its operating account to certain shareholders pursuant to the terms of two Stock Redemption Agreements, but did not record the corresponding liability on the firm's books and records. NASD also found that Davrey allowed the firm to engage in a securities business when the firm did not meet its minimum net capital requirement. In addition, NASD found that the firm, acting through Davrey, made exaggerated, unwarranted, and misleading statements, and that Davrey failed to provide specific warnings and disclosures required in advertisements regarding options. Moreover, NASD determined that Davrey failed to submit every advertisement pertaining to options to NASD's Advertising Regulation Department at least 10 days prior to use, and failed to include in the advertisement certain required information about how an investor can obtain an Options Disclosure Document.

The firm and Davrey have appealed this action to the Securities and Exchange Commission (SEC) and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C3B020015)

General Securities Corporation (CRD #15062, North Kansas City, Missouri) and David Schumway Miller (CRD #334607, Registered Principal, Liberty, Missouri) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$20,000, jointly and severally. Miller was suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, the firm and Miller consented to the described sanctions and to the entry of findings that the firm, acting through Miller, permitted Miller to act in a capacity requiring registration as a Limited Representative—Equity Trader (Series 55), although he was not so registered. The findings also stated that the

firm, acting through Miller, failed to prepare an order ticket, failed to record the time of receipt of a public customer's order, and failed to reflect the time of execution for transactions executed by the firm on a principal basis. NASD also found that the firm, acting through Miller, disclosed an inaccurate capacity on a customer confirmation and failed to disclose markups or markdowns on customer confirmations. In addition, NASD found that the firm, acting through Miller, failed to report transactions involving NASDAQ SmallCapSM Market securities, listed securities, and over-the-counter equity (OTC) securities executed by the firm on a principal basis and failed to report accurate information for these transactions. The findings also stated that the firm, acting through Miller, failed to report transactions involving Trade Reporting and Compliance Engine (TRACE) eligible securities.

Miller's suspension began November 15, 2004, and concluded at the close of business November 29, 2004. (NASD Case #C04040047)

Firm and Individual Fined

Hunter, Keith, Marshall & Co. (CRD #11424, New York, New York) and Henry C. Marshall, Jr. CRD #1159809, Registered Representative, Cold Spring Harbor, New York) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$12,500, jointly and severally. Without admitting or denying the allegations, the firm and Marshall consented to the described sanctions and to the entry of findings that the firm, acting through Marshall, maintained registrations for employees who were not active in the firm's securities and investment banking business and who ceased to function as principals and/or representatives. The findings also stated that the firm, acting through Marshall, permitted an individual to perform in a capacity requiring registration while he was deemed inactive due to his failure to complete timely the Regulatory Element of NASD's Continuing Education Requirements. (NASD Case #C10040102)

Firms Fined

Citigroup Global Markets, Inc. (CRD #7059, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$250,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it made available to its customers fact cards, sales presentations, sales decks and prospecting letters regarding hedge funds and funds of hedge funds that listed a targeted rate of return without providing a sound basis for evaluating the target, improperly used hypothetical returns in charts or graphs, and/or failed to include adequate risk disclosure. (NASD Case #CAF040077)

Fiserv Investor Services, Inc. (CRD #34637, 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 the firm, acting through an individual, failed to report transactions in municipal securities and to establish a reasonable supervisory system, including but not limited to, the establishment and maintenance of written procedures reasonably designed to ensure the firm reported transactions involving municipal securities. (NASD Case #C06040032)

Forge Financial Group, Inc. (CRD #100020, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$25,000, and required to revise within 30 business days its written supervisory procedures with respect to applicable securities laws, 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 submitted to the Order Audit Trail SystemSM (OATSSM) reports that were not in the electronic form prescribed by NASD and were repairable in that the reports were rejected by OATS and notice of such rejection was made available to the firm on the OATS Web site but the firm failed to correct or replace 100 percent of the reports. The findings stated that the firm, failed, within 90 seconds after execution, to transmit through the Automated Confirmation Transaction ServiceSM (ACTSM) last sale reports of transactions in OTC equity securities and failed to designate through ACT such last sale reports as late. The findings also stated that the firm incorrectly designated as .T through ACT last sale reports of transactions in OTC equity securities during normal market hours. NASD also found that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning trade reporting. (NASD Case #CMS040157)

Harris Nesbitt Corp., f/k/a BMO Nesbitt Burns Corp. (CRD #16686, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$125,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it implemented a procedure for investment banking to review research reports, but failed to establish and maintain adequate systems and safeguards to prevent investment bankers from making inappropriate comments regarding research reports. (NASD Case #CAF040074)

International Corresponding Trading, Inc. (CRD #37401, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to submit required information to OATS.

The findings also stated that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning OATS submissions. **(NASD Case #CMS040164)**

Miramar Securities, LLC. (CRD #37955, Columbus, Georgia) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,000, and required to implement within 90 days its written supervisory procedures with respect to the handling of discretionary accounts and retention of all electronic correspondence. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm, through its Web site, stated that they created a premier investment bank and that a corporate finance division was created to provide strategic advice and capital-raising services to its clients when, in fact, the firm was not and had never been an investment bank, and had never been approved for corporate financing and did not have a corporate finance division. The findings also stated that the firm allowed a broker who prepared and distributed research reports for another firm to brokers, investment company personnel, and investors to have discretionary authority for customers who purchased shares in companies on which his other firm released research reports; this broker made transactions in these companies 30 days before and five calendar days after the publication of research reports on the companies. The findings also stated that the firm failed to enforce its written supervisory procedures concerning the handling of discretionary accounts and review of all incoming and outgoing electronic correspondence by a principal. **(NASD Case #CAF040080)**

Raymond James Financial Services, Inc. (CRD #6694, St. Petersburg, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report accurately municipal principal transactions. The findings also stated that the firm failed to adopt, maintain, and enforce supervisory procedures reasonably designed to ensure compliance with Municipal Securities Rulemaking Board (MSRB) rules relating to trade reporting in that it failed, among other things, to properly test municipal trade reports for accuracy. **(NASD Case #C07040085)**

Scott & Stringfellow, Inc. (CRD #6255, Richmond, Virginia) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$35,000, required to pay \$595.20, plus interest, in restitution to public customers, and required to revise within 30 business days its written supervisory procedures with respect to applicable securities laws, regulations, and NASD rules concerning timely execution. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, in transactions for or with a public customer, 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 customer was as favorable as possible under prevailing market conditions. The findings also stated that the firm's supervisory system failed to provide for supervision reasonable designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning timely execution. **(NASD Case #CMS040159)**

Sentinel Financial Services Company (CRD #31175, Montpelier, Vermont) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$700,000, and required to certify to NASD that it has determined an appropriate methodology to calculate the monetary amounts necessary to compensate the affected funds for losses attributable to excessive trading and that payment of at least \$659,674 has been made in accordance with this methodology. The firm shall also certify in writing that it has completed its review and that it has established systems and procedures reasonably designed to achieve compliance with NASD rules and federal securities laws and regulations concerning the preservation of electronic mail communications and market timing. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to establish, maintain, and enforce a supervisory system reasonably designed to achieve compliance with mutual fund policies relating to market timing and exchanges. The findings also stated that the firm failed to maintain and preserve, for a period of not less than three years, all internal e-mail communications relating to the firm's business as a broker-dealer. NASD also found that the firm failed to maintain, update, and enforce policies, systems, and procedures to detect and prevent customers circumventing the trading policy, and failed to send notices in a timely manner upon customer engaging in excessive trading. **(NASD Case #C11040035)**

Tejas Securities Group, Inc. (CRD #36705, Austin, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$12,000. 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 OTC equity securities and failed to designate through ACT such last sale reports as late. **(NASD Case #CMS040155)**

Trinix Securities LLC (CRD #103360, Encinitas, California) 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 submitted to OATS reports with respect to equity securities traded on The Nasdaq Stock Market, Inc. that were not in the electronic form prescribed by NASD and were repairable in that the reports were

rejected by OATS and notice of such rejection was made available to the firm on the OATS Web site, but the firm failed to correct or replace 90 percent of the reports. (NASD Case #CMS040163)

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 \$30,000, and required to pay \$2,388.58, 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, in connection with transactions for or with a customer reported to the consolidated tape, it failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions. The findings also stated that the firm acted as a principal for its own account and provided to its customers written notification or yield information, but failed also to provide written notification disclosing the reported trade price and the difference between the reported trade price and the price to the customer. (NASD Case #CMS040161)

ViewTrade Securities, Inc. (CRD #46987, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit through ACT last sale reports of transactions in OTC equity securities and failed to designate through ACT such last sale reports as late. The findings also stated that the firm incorrectly designated as ".SLD" through ACT last sale reports of transactions in OTC equity securities reported to ACT within 90 seconds of execution. (NASD Case #CMS040160)

World Group Securities, Inc. (CRD #114473, Duluth, Georgia) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm permitted representatives to act in registered capacities while their registrations were inactive due to their failure to satisfy the Regulatory Element of NASD's Continuing Education Requirements. NASD also found that the firm failed to establish and maintain a supervisory system reasonably designed to assure compliance with the Regulatory Element of the Continuing Education Requirement by its registered representatives. (NASD Case #C07040082)

Individuals Barred or Suspended

Sam Amir-Ebrahimi (CRD #1629130, Registered Representative, Los Angeles, California) was fined \$15,000 and suspended from association with any NASD member in any capacity for one year. The fine shall be due and payable when Amir-Ebrahimi seeks to re-enter the securities industry. The sanctions were based on findings that Amir-Ebrahimi failed to execute his customer's sell order and entered into a settlement away from his member firm.

Amir-Ebrahimi's suspension began November 15, 2004, and will conclude at the close of business November 14, 2005. (NASD Case #C02040017)

Robert Paul Aries (CRD #1711053, Registered Representative, Nashua, New Hampshire) 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. The fine must be paid before Aries reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Aries consented to the described sanctions and to the entry of findings that he recommended and effected a transaction in the account of a public customer without having a reasonable basis for believing that these transactions were suitable for the customer in light of her financial circumstances and needs.

Aries' suspension began November 15, 2004, and concluded at the close of business December 14, 2004. (NASD Case #C11040036)

Charles Edward Barnett, Jr. (CRD #4752863, Registered Representative, York, 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 Barnett reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Barnett consented to the described sanctions and to the entry of findings that he failed to disclose material information on his Uniform Application for Securities Industry Registration or Transfer (Form U4).

Barnett's suspension began November 15, 2004, and will conclude May 14, 2005. (NASD Case #C9A040048)

Thomas Anthony Burgio (CRD #3131830, Registered Representative, Depew, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Burgio received \$1,000 from a public customer to invest on behalf of her children and instead, deposited the funds into his personal bank account, and converted the funds to his own use and benefit. (NASD Case #C9B040035)

Michael Ray Claiborne (CRD #47211, Registered Principal, Dallas, Texas) submitted an Offer of Settlement in which he was fined \$10,000, suspended from association with any NASD member in any capacity for 20 business days, and barred from association with any NASD member in a principal or supervisory capacity. Without admitting or denying the allegations, Claiborne consented to the described sanctions and to the entry of findings that he manipulated the price of a common stock by setting the price at an artificially high level and engaged in wash trades. The findings stated that Claiborne published or circulated, or caused to be published or circulated: 1) communications that purported to report transactions in a common stock when Claiborne did not believe, or had no reasonable basis to believe, that the transactions were bona fide purchases or sales of the stock; and 2) communications that purported to quote the bid price or ask price of the stock when he did not believe, or had no basis to reasonably believe, that such quotations represented bona fide bids for or offers of the common stock.

NASD also found that Claiborne allowed an unregistered person to have discretionary authority over a proprietary account of his member firm and failed to disclose a material fact on his Form U4. The findings further stated that Claiborne, on behalf of his member firm, failed to establish and maintain a supervisory system reasonably designed to achieve compliance with federal laws, regulations, and NASD rules relating to manipulation of the market for the price of securities, the recommendation and sale of unsuitable securities, appropriate registration of persons associated with the firm, and the duty of registered representatives to notify member firms with whom they have an account of their association with another member.

Claiborne's suspension began November 1, 2004, and concluded at the close of business November 29, 2004. (NASD Case #CMS040048)

Margie Ann Clayton (CRD #4706521, Associated Person, Lehigh Acres, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Clayton failed to respond to NASD requests for information. NASD also found that Clayton failed to disclose material information on her Form U4. (NASD Case #C07040026)

Veronica Cordova (CRD #3043875, Registered Principal, Dallas, Texas) and **Mary Catherine Fitzgerald (CRD #1943079, Registered Representative, Dallas, Texas)** submitted a Letter of Acceptance, Waiver, and Consent in which Cordova was fined \$10,000 and suspended from association with any NASD member in any principal or supervisory capacity for 20 business days. Fitzgerald was fined \$61,779, which includes disgorgement of commissions totaling \$51,779, and

suspended from association with any NASD member in any capacity for 30 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Fitzgerald recommended and effected unsuitable B share transactions in the accounts of public customers. The findings also stated that Fitzgerald's recommendations were unsuitable for the customers in light of the dollar amounts being invested. NASD found that had Fitzgerald recommended Class A shares, customers could have been eligible to receive breakpoints on Class A share purchases, avoided or minimized up-front sales charges, paid lower 12b-1 fees throughout the duration of their investments, and avoided being subject to contingent deferred sales charges. In addition, NASD determined that Cordova failed to reasonably supervise Fitzgerald's trading activity in connection with Fitzgerald's recommendations to public customers

Cordova's suspension began November 15, 2004, and concluded at the close of business December 13, 2004. Fitzgerald's suspension began November 15, 2004, and will conclude at the close of business December 28, 2004. (NASD Case #C06040031)

Michael Lawrence Dotton (CRD #2252099, Registered Representative, Buffalo, 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 60 days. The fine must be paid before Dotton reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Dotton consented to the described sanctions and to the entry of findings that he signed the name of a public customer on documents without the customer's knowledge or authorization.

Dotton's suspension began December 6, 2004, and will conclude at the close of business February 3, 2005. (NASD Case #C9B040096)

Charles Robert Eckardt, Jr. (CRD #1071397, Registered Representative, Ambler, 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 three months. The fine must be paid before Eckardt reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Eckardt consented to the described sanctions and to the entry of findings that he failed to disclose material information on his Form U4.

Eckardt's suspension began November 15, 2004, and will conclude at the close of business February 14, 2005. (NASD Case #C9A040045)

Robert Shawn Ellison (CRD #2807005, Registered Representative, Panama Beach, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 business days. The fine must be paid before Ellison reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Ellison consented to the described sanctions and to the entry of findings that he exercised discretionary transactions in the accounts of public customers without prior written acceptance of the accounts as discretionary by his member firm.

Ellison's suspension began November 15, 2004, and will conclude at the close of business December 28, 2004. (NASD Case #C05040074)

Wendy Lynn Epps (CRD #2712735, Registered Principal, Lake Mary, Florida) submitted an Offer of Settlement in which she was fined \$1,000 and suspended from association with any NASD member in a registered securities principal capacity for 30 days. Without admitting or denying the allegations, Epps consented to the described sanctions and to the entry of findings that, after her member firm's books and records were inconsistent with the information reported by the firm to ACT for certain orders, she participated in the modifications to the firm's books and records and did not maintain an appropriate record of the original data.

Epps' suspension began November 15, 2004, and concluded at the close of business December 14, 2004. (NASD Case #CMS040018)

John Ettore (CRD #2580761, Registered Representative, Mahopac, 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 60 days. The fine must be paid before Ettore reassociates with any NASD member or before requesting relief from any statutory disqualification. In addition, Ettore shall not be supervised by any individual who has previously been associated with a disciplined firm as defined in NASD Conduct Rule 3010(b)(2)(J). Further, for a one-year period after Ettore becomes registered with a member firm, he shall be subject to special supervision including, but not limited to, the monitoring of his sales presentations on at least a monthly basis. Without admitting or denying the allegations, Ettore consented to the described sanctions and to the entry of findings that he used high-pressure sales tactics and knowingly made numerous baseless predictions of substantial price increases and material misrepresentations of fact in connection with solicitation of customers and prospective customers to purchase equity securities.

Ettore's suspension began October 25, 2004, and will conclude at the close of business December 23, 2004. (NASD Case #C07040081)

Gregory Leonard Felden (CRD #1100966, Registered Principal, Clearwater, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before Felden reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Felden consented to the described sanctions and to the entry of findings that he engaged in a private securities transaction and failed to provide written notice to, or receive approval from, his member firm to effect such a transaction.

Felden's suspension began November 15, 2004, and concluded at the close of business December 15, 2004. (NASD Case #C11040037)

Lee Andrew Finkelstein (CRD #1257756, Registered Principal, Merion Station, 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, Finkelstein consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information and failed to appear for an on-the-record interview. (NASD Case #C9A040049)

Michael Taradash Garbo (CRD #3026091, Registered Representative, Secaucus, New Jersey) was barred from association with any NASD member in any capacity. The sanction was based on findings that Garbo, in connection with a joint account opened by public customers at his member firm, submitted a margin agreement, purportedly signed by the customers, and a margin account was established. However, Garbo forged the signatures of the customers without their permission or authority. NASD also found that Garbo failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #C9B040064)

Jill Ann Gauci (CRD #2913274, Registered Representative, Franklin, Tennessee) 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, Gauci consented to the described sanction and to the entry of findings that she made improper use of funds belonging to a public customer of her member firm's bank affiliate. NASD found that Gauci completed a debit advice totaling \$320 to issue funds from the customer's bank checking account, then converted the funds for her own use and benefit by processing the debit advice and receiving cash without the knowledge or consent of her member firm's bank affiliate. (NASD Case #C05040071)

Michael Joseph Gorman, Jr. (CRD #1905282, Registered Principal, Short Hills, 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 principal or supervisory capacity for 15 business days. Without admitting or denying the allegations, Gorman consented to the described sanctions and to the entry of findings that he failed to supervise an employee who engaged in outside business activities and failed to ensure that the representative provided prompt written notification of these activities to his member firm.

Gorman's suspension began November 1, 2004, and concluded at the close of business November 19, 2004. (NASD Case #C9B040091)

Robert John Grubert (CRD #2817608, Registered Principal, New York, 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 five business days. Without admitting or denying the allegations, Grubert consented to the described sanctions and to the entry of findings that he engaged in activities requiring a general securities principal registration without being so registered.

Grubert's suspension began November 15, 2004, and concluded November 19, 2004. (NASD Case #CMS040166)

Thomas William Hannon (CRD #841865, Registered Principal, Whitestone, 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, Hannon consented to the described sanctions and to the entry of findings that he executed, or caused to be executed, short sales in his firm's proprietary trading accounts without the firm's prior knowledge, authorization, or consent. The findings also stated that Hannon failed to respond to questions during an NASD on-the-record interview. (NASD Case #C10040103)

Carl Bentley Hays (CRD #1886740, Associated Person, Apex, 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, Hays consented to the described sanction and to the entry of findings that he failed to disclose material information on his Form U4. (NASD Case #C04040050)

Justin Wallace Herman (CRD #2669867, Registered Representative, Sheridan, Wyoming) submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for 12 months and ordered to pay \$100,000, plus interest, in restitution to public customers. Satisfactory proof of payment of restitution

must be made before Herman reassociates with any NASD member. In light of the financial status of Herman, no fine has been imposed.

Without admitting or denying the allegations Herman consented to the described sanctions and to the entry of findings that he established securities accounts with an NASD member, but failed to promptly advise the member firm that he became associated with another NASD member firm. NASD also found that Herman participated in a private securities transaction through the sale of \$293,000 in equity securities to investors without giving his member firm prior written notice of his intent to engage in such transactions and without receiving approval for his participation in these transactions. In addition, NASD determined that Herman drew a check from a customer account of a family member that was made payable to another family member and caused the check to be deposited in the second family member's bank account without the knowledge or authorization of the customer (first family member).

Herman's suspension began November 15, 2004, and will conclude at the close of business November 14, 2005. (NASD Case #C07040083)

Hugh Robert Hunsinger, Jr. (CRD #2179745, Registered Representative, PineBrook, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 business days. Without admitting or denying the allegations, Hunsinger consented to the described sanctions and to the entry of findings that he ordered and used business stationery containing professional designations he did not possess.

Hunsinger's suspension began November 15, 2004, and will conclude at the close of business December 28, 2004. (NASD Case #C9B040094)

Donald Everett Hunt, Jr. (CRD #1342388, Registered Principal, Spring, Texas) was fined \$10,000 and suspended from association with any NASD member in any capacity for three months. The sanction was based on findings that Hunt participated in private securities transactions with public customers of his member firm without first providing written notice to his member firm describing the transactions, his role in the transactions, and disclosing if he would receive any selling compensation.

Hunt's suspension began November 15, 2004, and will conclude at the close of business February 14, 2005. (NASD Case #C06040018)

Thomas Brown Ireland (CRD# 255216, Registered Principal, Sault Ste. Marie, 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 three months. Without admitting or denying the allegations Ireland consented to the described sanctions and to the entry of findings that he attempted to enter into a settlement agreement with public customers by signing and issuing a promissory note without his member firm's knowledge or consent.

Ireland's suspension began December 6, 2004, and will conclude March 5, 2005. (NASD Case #C8A040096)

Gregory Martin Jensen (CRD #2093554, Registered Supervisor, Redmond, Washington) 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 weeks. The fine must be paid before Jensen reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Jensen consented to the described sanctions and to the entry of findings that, in connection with an arbitration proceeding filed by a public customer against him, Jensen altered his handwritten notes to remove a personal comment he had made about the customer, subsequently provided the altered notes to his member firm during discovery in the arbitration, and failed to notify his firm that the notes had been altered until a later time.

Jensen's suspension began November 1, 2004, and concluded December 12, 2004. (NASD Case #CAF040076)

Robert Crandall Jones (CRD #4600966, Registered Representative, Smithville, Missouri) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. The fine must be paid before Jones reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Jones consented to the described sanctions and to the entry of findings that he provided income tax preparation services to public customers for a fee outside of the scope of his relationship with his member firm. NASD also found that Jones failed to provide prompt written notice of this outside business activity to his member firms.

Jones' suspension began November 15, 2004, and concluded at the close of business November 29, 2004. (NASD Case #C04040048)

Robert Dixon Jones (CRD #4582742, Associated Person, Minneapolis, Minnesota) 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, Jones consented to the described sanction and to the entry of findings that he affixed the signatures of public customers to life insurance renewal forms without the knowledge, authorization, or consent of the customers. (NASD Case #C04040051)

Thomas Victor Kozlowski (CRD #1842334, Registered Representative, Fargo, North Dakota) 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 two years. The fine must be paid before Kozlowski reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kozlowski consented to the described sanctions and to the entry of findings that he willfully failed to disclose material information on his Form U4.

Kozlowski's suspension began November 15, 2004, and will conclude at the close of business November 14, 2006. (NASD Case #C04040052)

Kenneth Daniel Krassinger, Jr. (CRD #1982792, Registered Representative, Byrnes Mill, Missouri) was barred from association with any NASD member in any capacity. The sanction was based on findings that Krassinger misused a public customer funds totaling \$50,000 intended for investment purposes without the knowledge or consent of the customer. (NASD Case #C04040004)

Deborah Lyn Lenart (CRD #2930698, Registered Representative, Los Alamitos, California) submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lenart consented to the described sanction and to the entry of findings that she used fraudulent and deceptive means to cause a public customer to write personal checks to her totaling \$50,109. NASD determined that Lenart used the funds for her own personal benefit. (NASD Case #C02040038)

Leonard Nicholas Lucarello (CRD #1908238, Registered Representative, N. Babylon, 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, Lucarello consented to the described sanction and to the entry of findings that he willfully misrepresented and failed to disclose material facts on his Forms U4. (NASD Case #CLI040029)

Makhosini Bruce Mabhena (CRD #4638149, Associated Person, San Francisco, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that Mabhena failed to disclose material information on his Form U4. The findings also stated that he failed to respond to NASD requests for information. (NASD Case #C01040016)

Maribeth Clark McGinty (CRD #4260567, Registered Representative, Boulder City, Nevada) submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$7,500 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before McGinty

reassociates with any NASD member or before requesting relief from statutory disqualification. Without admitting or denying the allegations, McGinty consented to the described sanctions and to the entry of findings that she affixed the signature of a public customer in the form of the customer's initials to a Client Account Record Form and a 529 Plan New Account Application without the consent or knowledge of the customer.

McGinty's suspension began November 15, 2004, and will conclude at the close of business February 14, 2005. (NASD Case #C02040039)

Raj Indrajit Mehta (CRD #2071197, Registered Representative, Staten Island, 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, Mehta consented to the described sanction and to the entry of findings that he falsified records and documents to willfully misrepresent the current value of positions maintained in the proprietary trading portfolio of his member firm and fabricated records and documents related to the positions maintained in the portfolio to prevent detection of the misrepresented positions valuations. (NASD Case #C10040105)

Robert Mendoza (CRD #3142893, Registered Representative, Reno, Nevada) and Gary Steven Wood (CRD #1787434, Registered Principal, Crystal Bay, Nevada) submitted an Offer of Settlement in which they were barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Mendoza and Wood consented to the described sanction and to the entry of findings that they participated in securities transactions outside the regular scope of their association with their member firms. The findings also stated that Mendoza and Wood did not provide written notice to nor receive written permission from their member firms to participate in these transactions. NASD also determined that Mendoza participated in collecting approximately \$2.8 million from investors and received more than \$150,000 in compensation therefrom; and Wood participated in collecting approximate \$9.7 million from investors and received more than \$1.1 million in compensation therefrom. (NASD Case #C01040022)

Cory Andrew Mongno (CRD #2648751, Registered Representative, Bridgewater, New Jersey) submitted an Offer or Settlement in which he was suspended from association with any NASD member in any capacity for six months and ordered to pay \$22,500 in restitution to a public customer. Restitution must be paid before Mongno reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Mongno consented to the described sanctions and to the entry of findings that he engaged in a pattern of

unsuitable mutual fund switches for profit in the accounts of a public customer. The findings also stated that Mongno recommended the transactions without having reasonable grounds for believing that such transactions were suitable for the customer in view of the frequency of the transactions, the type of investments being recommended, and the customer's financial situation and investment objectives.

Mongno's suspension began November 1, 2004, and will conclude April 30, 2005. (NASD Case #C9B040020)

William Robert Montes (CRD #1576939, Registered Representative, Rochester, 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, Montes consented to the described sanction and to the entry of findings that he recommended to public customers that they over-concentrate their investment assets in a speculative mutual fund without having reasonable grounds for believing that the recommendations were suitable for the customers in light of their financial situations, investment objectives, and financial needs. The findings also stated that Montes failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #C9B040095)

Neal Moskowitz (CRD #1111012, Registered Representative, Parkland, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Moskowitz reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Moskowitz consented to the described sanctions and to the entry of findings that, while registered with a member firm, he failed to disclose his association to other member firms with whom he maintained securities accounts in which he had a financial interest or for whom he had discretionary authority, and failed to disclose to his member firm that he maintained securities accounts at other member firms. The findings also stated that Moskowitz, while acting as an investment banker at a firm and while registered with a broker-dealer, purchased securities from an investment firm through an account he maintained at another firm and failed to disclose the transactions to his member firm. In addition, NASD found that Moskowitz failed to notify member firms with which he maintained securities accounts and in which he had a financial interest, or for which he had discretionary authority, that he was associated with other member firms.

Moskowitz's suspension began December 6, 2004, and will conclude at the close of business December 5, 2005. (NASD Case #CMS040171)

Jeffrey Patrick Murphy (CRD #2316701, Registered Representative, Oregon, Wisconsin) was barred from association with any NASD member in any capacity. The sanction was based on findings that Murphy acquired a public customer's signature on Withdrawal/Surrender forms without explaining the ramifications to the customer, had the form notarized, and sent the form to an insurance company, and that he failed to respond to NASD requests for documents and information. NASD also found that Murphy received checks totaling \$350,000 from a customer's annuity account and procured the customer's endorsement on the checks without explaining the ramifications to the customer. In addition, the findings stated that Murphy deposited the checks into his personal bank account without the knowledge or consent of the customer and used the proceeds from the checks for his own use and benefit or for some purpose other than the benefit of the customer. (NASD Case #C8A040001)

Babatunde Emmanuel Olubode (CRD #4378245, Registered Representative, Des Moines, Iowa) 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 Olubode reassociates with any NASD member or before requesting relief from statutory disqualification. Without admitting or denying the allegations, Olubode consented to the described sanctions and to the entry of findings that he failed to disclose material information on his Form U4. The findings also stated that Olubode failed to respond timely to NASD requests to appear for an on-the-record interview.

Olubode's suspension began November 15, 2004, and will conclude May 14, 2005. (NASD Case #C04040049)

Barbara Newman O'Shields aka Barbara Newman Leslie aka Barbara Newman (CRD #1031974, Registered Principal, Lexington, Virginia) 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 10 business days. Without admitting or denying the allegations, O'Shields consented to the described sanctions and to the entry of findings that she signed the names of public customers on non-solicitation letters required by her member firm in connection with sales of low-priced securities without the customers' prior knowledge.

O'Shields' suspension began November 15, 2004, and concluded at the close of business November 29, 2004. (NASD Case #C07040087)

Kenneth Christopher Pierson (CRD #2344998, Registered Representative, Lafayette, 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 60 days. The fine must be paid before Pierson

reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Pierson consented to the described sanctions and to the entry of findings that he signed a public customer's name on a 401(k) rollover form without the permission or knowledge of the customer.

Pierson's suspension began November 1, 2004, and will conclude at the close of business December 30, 2004. (NASD Case #C9B040090)

Aurangzeb Rashid Pirzada (CRD #868883, Registered Principal, Lookwood, California) was fined \$50,000 and barred from association with any NASD member in any capacity. The fine must be paid before Pirzada requests relief from any statutory disqualification. In addition, Pirzada is ordered to pay \$76,265.02, plus interest, in restitution to a public customer. The sanction was based on findings that Pirzada willfully failed to amend his Form U4 to disclose a material fact. NASD also found that Pirzada, in connection with the sales of securities in a public customer's 401(k) and Individual Retirement Account (IRA) accounts, utilized the instrumentalities of interstate commerce to engage in a device, scheme, and artifice to defraud in that he represented to a public customer that he would manage her funds in a new IRA account, but instead used the funds to make a clearing deposit for his member firm and to pay his own personal expenses. In addition, NASD determined that, in connection with the sale of securities to a public customer, Pirzada failed to disclose material facts to the customer. (NASD Case #C01020027)

Ryan Garrett Robinson (CRD #2682661, Registered Representative, Northridge, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Robinson consented to the described sanctions and to the entry of findings that he recommended the purchase of mutual fund "C" shares in the accounts of public customers without having a reasonable basis for believing these transactions were suitable for the customers; further, the recommendations were unsuitable because the customers' accounts were economically disadvantaged by the costs associated with the purchase of "C" shares relative to the costs they would have incurred by purchasing "A" shares of the same mutual funds.

Robinson's suspension began December 6, 2004, and will conclude at the close of business December 27, 2004. (NASD Case #C02040041)

Alex Roytman (CRD #2798166, Registered Representative, Brooklyn, New York) submitted an Offer of Settlement 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 Roytman reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Roytman consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to provide accurate and adequate written notice to his member firm describing in detail the proposed transactions and his role therein. The findings also stated that Roytman failed to provide truthful and accurate information to NASD during an on-the-record interview and failed to disclose a material fact on his Form U4.

Roytman's suspension began December 6, 2004, and will conclude at the close of business December 5, 2006. (NASD Case #C10040087)

Gary Philip Ruchwarger (CRD #3103556, Registered Representative, Lafayette, Colorado) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and ordered to pay \$38,375, plus interest, in restitution to public customers. Satisfactory proof of payment of restitution must be made before Ruchwarger reassociates with any NASD member. Without admitting or denying the allegations Ruchwarger consented to the described sanctions and to the entry of findings that he engaged in an outside business activity without providing prompt written notice to his member firm. NASD also found that Ruchwarger received \$38,375 from public customers of his member firm and used the funds for his own personal benefit. (NASD Case #C3A040042)

Marty Derwin Simpson (CRD #2631722, Registered Representative, Stuttgart, Arkansas) was barred from association with any NASD member in any capacity. The sanction was based on findings that Simpson received a check totaling \$15,272.64 from a public customer for the purchase of a deferred variable annuity and that he failed to respond to NASD requests for information. NASD found that Simpson deposited the check into his personal checking account, neglected to purchase a deferred variable annuity for the account of the customer, and converted the funds to his own use and benefit. (NASD Case #C05040037)

Jeannita Ann Stasyszen (CRD #4163913, Registered Representative, Meeker, Oklahoma) 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, Stasyszen consented to the described sanction and to the entry of findings that she caused checks totaling \$29,562.78 to issue from her insurance premium escrow account maintained with an insurance company. The findings also stated that Stasyszen converted the funds to her own use and benefit by endorsing and depositing the checks into a personal account under her control without the knowledge consent of either the insurance company or her member firm. (NASD Case #C05040070)

Joseph James Vastano, Jr. (CRD #1623074, Registered Representative, Solana Beach, California) was fined \$62,000 and suspended from association with any NASD member in any capacity for 18 months. The SEC imposed the sanction following appeal of a NAC decision. The sanctions were based on findings that Vastano engaged in private securities transactions without providing prior written notice to, or receiving prior written approval from, his member firm.

Vastano's suspension began November 1, 2004, and will conclude April 30, 2006. (NASD Case #C3A020013)

Glenn William Ward (CRD #2041881, Registered Representative, Tulsa, Oklahoma) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$6,000, including disgorgement of \$1,000 in commissions, and suspended from association with any NASD member in any capacity for 30 business days. The fine must be paid before Ward reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Ward consented to the described sanctions and to the entry of findings that he recommended and effected the purchase of a variable annuity by a public customer totaling \$50,000 without having reasonable grounds for believing that the recommendation and transactions were suitable for the customer based on the customer's financial situation and needs.

Ward's suspension began November 15, 2004, and will conclude at the close of business December 28, 2004. (NASD Case #C05040075)

Timothy Booth Watkins (CRD #1036169, Registered Representative, St. Louis, Missouri) 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 six months. The fine must be paid before Watkins reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Watkins consented to the described sanctions and to the entry of findings that he sold fixed annuities outside of the scope of his relationship with his member firm and received \$154,887 in commissions from these sales without providing prompt written notice to his member firm of the sales and commissions.

Watkins' suspension began November 1, 2004, and will conclude April 30, 2005. (NASD Case #C04040046)

Michelle Dawn Work (CRD #4254450, Registered Representative, Fairmont, West Virginia) 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, Work consented to the described sanction and to the entry of findings that she effected transactions totaling \$149,000 in the accounts of public

customers. NASD determined that Work fraudulently obtained possession of the funds and then converted the funds for her own use and benefit without the customers' knowledge or authorization. (NASD Case #C9A040047)

James William Fuller (CRD #1000509, Registered Principal, San Francisco, California) submitted an Offer of Settlement in which he was censured and fined \$20,000. Without admitting or denying the allegations, Fuller consented to the described sanctions and to the entry of findings that, on behalf of his member firm, he failed to establish and maintain a supervisory system reasonably designed to achieve compliance with federal securities laws regarding the receipt of restricted or controlled stock and the sale of unregistered securities. The findings also stated that Fuller, on behalf of his member firm, failed to supervise adequately the activities of an employee in contravention of the requirement under NASD Conduct Rule 3040. (NASD Case #CAF040020)

Brent David Hurt (CRD #1976536, Registered Principal, Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which he was censured and fined \$10,000. Without admitting or denying the allegations, he consented to the described sanctions and to the entry of findings that Hurt, acting on behalf of a member firm, rendered false and misleading representations that the purchasers' funds would be held in an escrow account and would not be released to the Limited Liability Corporation until all Membership Interest (MI) was sold. The findings also stated that Hurt, acting on behalf of a member firm, failed to escrow properly purchasers' funds while the MIs were being sold and improperly forwarded funds to the Limited Liability Corporation prior to sale of all MIs and collection of all Reservation Deposits. (NASD Case #C8A040095)

Jeffrey Mark Winik (CRD #1246434, Registered Supervisor, Roslyn Hills, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was censured and fined \$15,000. Without admitting or denying the allegations, Winik consented to the described sanctions and to the entry of findings that he sold shares of a new issue that traded at a premium in the immediate aftermarket to a restricted person. NASD also determined that Winik knew that the restricted person had a financial interest in an existing account at his member firm and failed to notify the restricted person's member firm in writing prior to the execution of further transactions in the account or of the restricted person's intent to maintain the account. (NASD Case #C05040077)

Decision Issued

The District Business Conduct Committee (DBCC) or the OHO have issued the following decision and it has been appealed to or called for review by the NAC as of November 5, 2004. The findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notice to Members*.

Gilbert Alan Cardillo (CRD #1110960, Registered Principal, Riverhead, New York) was fined \$6,600, suspended from association with any NASD member in any capacity for 10 business days, and ordered to offer to pay a public customer, upon the customer's surrender of his annuity, the difference, if any, between the amount the customer received upon surrender of the annuity and \$80,000, plus interest. The sanctions were based on findings that Cardillo made a recommendation to a public customer without reasonable grounds for believing the transaction was suitable for the customer based on the customer's financial situation and needs.

Cardillo has appealed this action to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C10030087)

Complaints Filed

NASD issued the following complaints. 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.

Cardinal Capital Management, Inc. (CRD #24605, Miami, Florida) was named as a respondent in an NASD complaint alleging that the firm sold shares of a penny stock to public customers and failed to obtain and preserve a penny stock risk disclosure document receipt from customers for the transactions. The complaint also alleges that the firm failed to make or obtain copies of written suitability determinations signed by customers or written purchase agreements for purchase transactions, and that the firm failed to make and preserve new account forms and order tickets for purchase transactions. In addition, the complaint alleges that the firm failed to establish, maintain, and enforce a supervisory system reasonable designed to achieve compliance with industry rules and regulations, including penny stock rules. Furthermore, the complaint alleges that the firm's supervisory system failed to establish processes by which supervisors would ensure the firm was complying with the penny stock rules. (NASD Case #C07040090)

Neal Ryan Clemens (CRD #3257789, Registered Representative, Milwaukee, Wisconsin) was named as a respondent in an NASD complaint alleging that he effected transactions in the accounts of a public customer without prior written authorization from the customer and prior written acceptance of the accounts as discretionary by his member firm. (NASD Case #C8A040093)

Dave Augustus Green (CRD #2787039, Registered Principal, Coral Springs, Florida) was named as a respondent in an NASD complaint alleging that he effected transactions in the accounts of public customers without the customers' prior authorization. (NASD Case #C07040084)

Jimmie Lee Griffith (CRD #2321620, Registered Representative, Richmond, California) was named as a respondent in an NASD complaint alleging that he effected purchases and sales of mutual funds in the account of public customers without the knowledge or consent of the customers. (NASD Case #C01040025)

Mitchell Hersh (CRD #874733, Registered Representative, Staten Island, New York) was named as a respondent in an NASD complaint alleging that he knowingly misrepresented, and/or caused to be misrepresented, the addresses of certain public customers of the firm in order to sell them variable annuity contracts not otherwise available to them. The complaint also alleges that such falsifications were made in furtherance of Hersh's improper sale of the annuities contracts to the customers, as the annuities were not approved for sale in the states where the customers actually resided. (NASD Case #C10040101)

Paul Joseph Leahy (CRD #2581030, Registered Representative, Staten Island, New York) was named as a respondent in an NASD complaint alleging that he effected, or caused to be effected, numerous and excessive transactions in the account of a public customer without having reasonable grounds for believing that such transactions were suitable for the customer in view of the size and frequency of the transactions, the nature of the account, and the customer's financial situation, investment objectives, and needs. The complaint also alleges that Leahy failed to respond to NASD requests for documents and information. (NASD Case #C9B040092)

Dennis Roy Roth (CRD #1418538, Registered Principal, McLean, Virginia) was named as a respondent in an NASD complaint alleging that he issued a fraudulently misleading research report and press release relating to a company that contained baseless sales projections, a forecast of profitability in the near future, a claim that the company could be listed on NASDAQ or the American Stock Exchange within a year, and a

prediction that the company's stock price could increase by over 400 percent within the next 12 months. The complaint also alleges that, at the time the report was published, Roth knew, or was reckless in not knowing, that the company had few or no firm customer orders in place to support his optimistic sales projections and as a result had no reasonable basis under the circumstances to assume that the company had the ability to obtain sufficient customer orders, manufacture the product, or ship and record the necessary sales to meet the year-end projections or any subsequent year. The complaint further alleges that Roth's research report and press release failed to provide a balanced treatment of risks and benefits associated with an investment in the company. In addition, the complaint alleges that Roth failed to disclose compensation agreement with the issuer. (NASD Case #CMS040016)

Kevin Mark Weaver (CRD #2845934, Registered Principal, Edwards, Colorado) was named as a respondent in an NASD complaint alleging that he participated in the fraudulent sale of securities in the form of limited partnership interests. The complaint also alleges that Weaver omitted to state material facts in connection with his offers and sales of securities and failed to disclose that the limited partnership would engage in an electronic day-trading investment strategy or the risks associated with electronic day trading. The complaint also alleges that Weaver failed to disclose to investors that he would personally be directing the trading in the limited partnership account and that he had no prior day-trading experience. The complaint further alleges that the Private Placement Memorandum (PPM) misrepresented the use of investment funds raised in connection with the offerings. In addition, the complaint alleges that the PPM contained a section entitled "Use of Proceeds," which states that a maximum of 12.5 percent of the offering proceeds can be paid to the general partner and syndicator for selling commissions and due diligence expenses. Based on the amount raised in the offering, a maximum of \$69,625 should have been taken out in expenses. However, the financial records of the Limited Partnership revealed that Weaver caused a total of \$138,642.37 to be paid to the general partner and syndicator for expenses. Additionally, the complaint alleges that Weaver caused \$41,750 to be transferred to himself for an unknown purpose. (NASD Case #C06040034)

Firm Expelled for Failing to Pay Fines and/or Costs in Accordance with NASD Rule 8320

Lloyd, Scott & Valenti
Ltd. Austin, Texas
(October 26, 2004)

Individual 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.)

Jao, Hsing L.
Flushing, New York
(November 3, 2004)

Individual Revoked for Failing to Pay Fines and/or Costs in Accordance with NASD Rule 8320

Salice, Philip
Bayshore, New York
(October 26, 2004)

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

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

Adair, Richard C.
Las Vegas, Nevada
(November 10, 2004)

Flynn, Patrick J.
Encinitas, California
(November 11, 2004)

Scaramuzzini, Pasquale Jr.
Staten Island, New York
(November 11, 2004)

NASD Fines Citigroup Global Markets \$275,000, Orders Restitution Relating To Managed Futures Sales

Unsuitable Recommendations, Failed Record Keeping, Inadequate Risk Disclosure Cited

NASD censured and fined Citigroup Global Markets, Inc. \$275,000 for a series of violations relating to its sales of two proprietary managed futures funds—Citigroup Diversified Futures Fund L.P. and Salomon Smith Barney Diversified 2000 Futures Fund L.P. Those funds, which invest in commodities including futures, options on futures and forward contracts, are speculative investments that carry a high degree of risk.

Citigroup's violations include making unsuitable recommendations of the funds to 45 customers, failing to maintain required suitability records on its sales to over 8,200 investors in the funds, and failing to adequately disclose in Web site advertising the risks of investing in managed futures.

In addition to the fine, NASD also ordered the firm to offer restitution to the 45 customers to whom the firm made unsuitable recommendations. Those customers invested a total of \$203,000 in the futures funds, in individual investments ranging from \$2,000 to \$20,000.

"Managed futures are complicated and risky investment products that are unsuitable for many investors," said NASD Vice Chairman Mary L. Schapiro. "Commodity trading is speculative. It is volatile. It involves a high degree of leverage. It is typically not well understood by average retail investors. So it is crucial that firms meet their suitability and disclosure obligations when selling these products."

From January 2002 to November 2003, Citigroup marketed and sold the two proprietary managed futures products to over 8,200 investors, raising approximately \$199 million. The funds have relatively high fees, with total sales and management fees ranging from 8.10 percent to 10.75 percent.

While NASD does not have jurisdiction over commodities, these funds were structured as limited partnerships and investors purchased units in a direct participation program (DPP), which is a securities product sold by brokers under NASD's jurisdiction. These units are relatively illiquid and there is no trading market for them, although investors can redeem their units once a month or at the discretion of the fund.

The prospectuses for the futures funds established minimum net worth and income requirements designed to ensure that only suitable customers purchased the funds. The prospectuses required each investor to have a net worth of at least \$150,000, or a minimum net worth of \$45,000 combined with an annual income of at least \$45,000. In addition, some states require that sales of the futures funds be limited to investors who meet more restrictive net worth and annual income requirements.

NASD found that Citigroup sold the funds to 45 customers who did not meet the minimum net worth and income requirements. For example, one customer had just lost her job and her futures fund investment of \$4,000 represented a rollover from her Individual Retirement Account. The customer's income was zero and her net worth was \$25,000. NASD found that the firm's unsuitable recommendations and sales occurred across 29 branch offices.

Because of the inherent risks of investing in DPPs, NASD rules require firms to maintain documents for each DPP customer disclosing the basis for determining that the investment was suitable. NASD found that the firm failed to maintain those records, and failed to establish and maintain a supervisory system and written procedures designed to ensure that suitability requirements were met.

Although Citigroup maintained a database of its customers that showed holdings in Citigroup brokerage accounts, investment objectives, net worth, income, and age, it could not be determined whether each broker reviewed that information and made suitability assessments based on that information. NASD found that Citigroup did not require its brokers to update the database and that the database was not consistently updated at the time of the sale of the futures funds.

Finally, NASD found that Citigroup posted an advertisement on its Web site that described managed futures products generally, but that failed to adequately disclose and describe the substantial risks of investing in these products, including that an investor could lose all of his/her investment; that an investor's ability to redeem units is limited and that no market exists for the units; and that managed futures funds' high fees and expenses may completely offset any profits or gains.

In settling with NASD, Citigroup neither admitted nor denied the allegations, but consented to the entry of NASD's findings.

NASD Fines Morgan Stanley \$100,000 for Municipal Bond Disclosure Violations

Over \$200,000 in Restitution Paid, Offer to Repurchase Bonds Required; Firm Fined Additional \$25,000 for Slow Response to Investigators' Inquiries

NASD sanctioned Morgan Stanley DW Inc. for failing to disclose to purchasers of municipal bonds that those bonds could be called prior their stated maturity dates, which could result in losses to the investors. Morgan Stanley's failure to disclose the call feature violates Municipal Securities Rulemaking Board (MSRB) Rule G-15.

NASD censured the firm, imposed a fine of \$100,000, and required the firm to offer to buy back bonds sold in up to 171 separate municipal bond transactions. Morgan Stanley has paid approximately \$211,510 in restitution to customers since the NASD investigation began.

Early in NASD's investigation into this matter, Morgan Stanley failed to respond in a timely way to requests for information, resulting in a second disciplinary action that included a censure and a \$25,000 fine.

"Municipal bond investors are entitled to receive all critical information about the bonds they are purchasing, especially call features which can impact the total return the investor expects," said NASD Vice Chairman Mary L. Schapiro. "As a result of today's enforcement action, those investors who were or who may be harmed by Morgan Stanley's violations will be compensated."

MSRB Rules require broker-dealers who sell bonds that can be redeemed, or "called," prior to maturity to provide the investor with a written disclosure, typically in the written purchase confirmation. NASD found that from 1997 through 2002, Morgan Stanley failed to disclose the existence of the call feature in confirmations for 258 municipal bond purchase transactions involving 133 escrowed-to-maturity bond issues.

Several bonds matured as scheduled without being called, resulting in no loss to investors. Other bonds were called before their stated maturity, resulting in the firm's payment of restitution to customers for losses from these early redemptions. Still other bonds have not yet matured and have not been called. Morgan Stanley will advise those purchasers of the call feature and offer to these investors the opportunity to sell the bonds back to the firm.

In agreeing to these sanctions, Morgan Stanley neither admitted nor denied the allegations.

NASD Fines 29 Firms over \$9.2 Million for Late Reporting

Failures Stall Disclosure of Potential Broker Misconduct to Public, Regulators, Brokerages

NASD censured and fined 29 securities firms over \$9.2 million for more than 8,000 late disclosures of reportable information about their brokers, including customer complaints, regulatory actions, and criminal charges and convictions.

NASD also prohibited two firms—Merrill Lynch and Wachovia—from registering new brokers for five business days, in view of the number of their reporting violations in this case and their previous regulatory filing histories. NASD imposed a similar prohibition and a \$2.2 million fine against Morgan Stanley in July for late reporting violations.

Under NASD rules, after a securities firm hires a broker, it must ensure that information on the broker's application for registration (Form U4) is kept current in NASD's Central Registration Depository (CRD). The firm must update that information whenever significant events occur, including regulatory actions against the broker, customer complaints, settlements involving the broker, and criminal charges and convictions. Normally, those updates must be filed within 30

days. If the reportable event involves a statutory disqualification (usually the result of a criminal conviction), the event must be disclosed within 10 days. In addition, firms must notify NASD within 30 days of learning that information disclosed on a termination notice (Form U5) filed for a broker has become inaccurate or incomplete.

Information maintained in CRD on all of the more than 665,000 registered brokers and the nearly 5,300 registered firms is available not only to regulators and law enforcement officials, but also to the public through NASD's BrokerCheck. Last year, more than 2.8 million investors investigated brokers' backgrounds through BrokerCheck.

"Investors, regulators, and others rely heavily on the integrity of the information in the CRD public reporting system—and, in turn, the integrity of that system depends on accurate and prompt reporting by firms," said NASD Vice Chairman Mary L. Schapiro. "The fact that so many firms failed in their obligation to report so much important information in a timely way is deeply troubling. These firms and others will understand from

the severity of the fines and other sanctions in this case that timely reporting of broker information is a fundamental obligation that cannot be neglected or ignored."

During the period January 2002 through March 2004, each of the 29 firms failed to timely report at least 25 percent of the required disclosures in the areas reviewed by NASD, and some firms failed to timely report over 70 percent. NASD also found that each firm failed to have supervisory systems and procedures in place reasonably designed to achieve compliance with these reporting requirements.

To resolve these actions, each firm agreed to conduct internal audits to evaluate the effectiveness of its system for ensuring compliance with these reporting obligations. In addition, an officer of each firm must certify that such audits have occurred, that recommendations from the audits have been implemented, and that the firm has established systems and procedures reasonably designed to achieve compliance with NASD reporting requirements.

NASD's action announced today includes the following firms:

Firm Name	Fine	No. of Late Disclosures	Failure Rate in Examined Areas
Merrill Lynch, Pierce, Fenner & Smith, Inc.	\$1,600,000	1,420	30%
American Express Financial Advisors, Inc.	\$700,000	770	44%
Wachovia Securities LLC	\$650,000	610	32%
Prudential Equity Group, LLC	\$550,000	490	27%
LINSCO/Private Ledger Corp.	\$450,000	390	71%
PFS Investments, Inc.	\$450,000	390	64%
Raymond James Financial Services, Inc.	\$400,000	350	60%
Metropolitan Life Insurance Co.	\$375,000	340	62%
NYLife Securities, Inc.	\$350,000	350	45%
WM Financial Services, Inc.	\$350,000	270	55%
Edward Jones & Co., LP	\$300,000	280	27%
Chase Investment Services Corp.	\$250,000	230	25%
AXA Advisors, LLC	\$250,000	210	31%
MML Investor Services, Inc.	\$250,000	220	69%
Banc of America Investment Services, Inc.	\$200,000	170	56%
ING Financial Partners, Inc.	\$200,000	160	77%
New England Securities	\$200,000	180	57%
J.P. Turner & Company, L.L.C.	\$185,000	140	62%
Financial Network Investment Corp.	\$185,000	130	74%
Allstate Financial Services, LLC	\$150,000	130	44%
RBC Dain Rauscher, Inc.	\$150,000	140	35%
Wells Fargo Investments, LLC	\$150,000	140	35%
World Group Securities, Inc.	\$150,000	140	61%
Farmers Financial Solutions, LLC	\$125,000	100	66%
InterSecurities, Inc.	\$125,000	120	41%
Jefferson Pilot Securities Corporation	\$125,000	110	48%
J.J.B. Hilliard, W.L. Lyons, Inc.	\$125,000	120	62%
Quick & Reilly, Inc.	\$125,000	120	51%
SunAmerica Securities, Inc.	\$100,000	95	33%

In settling with NASD, the firms neither admitted nor denied the allegations, but consented to the entry of NASD's findings.

NASD Bars Former AmSouth Broker for Fraud in the Sale of Variable Annuities

Sales Assistant Charged with Forgery and Falsification of Documents

NASD announced that James B. Moorehead of Starkville, MS, has been barred from the securities industry for engaging in fraud, forgery, and falsification of documents in connection with variable annuity sales. The transactions took place between March 2000 and April 2001 while Moorehead was a registered representative of AmSouth Investment Services, Inc.

Moorehead's sales assistant, Angela C. Wynne, has also been charged in connection with the scheme.

"The conduct of the broker in this case was reprehensible, and clearly merits the harshest penalty NASD can impose," said NASD Executive Vice President and Head of Enforcement Barry Goldsmith.

NASD found that Moorehead misrepresented the risks associated with investing in variable annuities and purposefully omitted risk disclosure statements from the performance hypotheticals his firm sent to customers. Moorehead also either forged, or caused his assistant to forge, customer signatures on 125 "Purchase Authorization Forms." These documents were intended to reflect customers' authorization to Moorehead to purchase variable annuities.

Moorehead also tried to make his variable annuity recommendations appear suitable by falsifying the suitability information on the Purchase Authorization Forms and on "Client Confidential Profiles." Moorehead directed his assistant to complete the forms with inaccurate information concerning the financial needs and condition of the customers.

In concluding this settlement, Moorehead neither admitted nor denied the charges, but consented to the entry of NASD's findings.

NASD has also filed a complaint against Moorehead's assistant, Angela C. Wynne, a general securities representative formerly associated with AmSouth. The complaint charges Wynne with forgery and falsification of documents. NASD is currently investigating the supervision of Moorehead and Wynne by AmSouth Investment Services, Inc.

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

NASD Permanently Bars Frank Quattrone from the Securities Industry for Refusal to Testify in NASD Investigation

Quattrone's Misconduct Termed "Egregious"

NASD's National Adjudicatory Council (NAC) has permanently barred Frank Quattrone from working in the securities industry in any capacity for refusing to testify in an NASD investigation concerning his role in possible document destruction, obstruction of justice, and other matters while at Credit Suisse First Boston (CSFB). The NAC overruled an earlier NASD hearing panel decision to fine Frank Quattrone \$30,000 and suspend him for one year. In ordering the permanent bar, the NAC called Quattrone's conduct "egregious" and said it "impeded an NASD investigation and undermined the NASD's ability to carry out its regulatory mandate."

In 2002, NASD's Enforcement Department had investigations underway that centered on the practices and policies of CSFB's Global Technology Group headed by Quattrone. The investigations centered on IPO spinning and conflicts of interest between research analysts and investment bankers. On Feb. 3, 2003, CSFB issued a press release announcing that it had placed Quattrone on administrative leave because of questions about whether Quattrone was aware of pending criminal and regulatory investigations when he sent an email to certain CSFB employees regarding document retention issues.

That same afternoon, NASD Enforcement sent Quattrone's attorneys a letter requesting that he appear on Feb. 12, 2003, for an on-the-record interview.

At his attorneys' request, NASD Enforcement agreed to postpone Quattrone's testimony and to take that testimony near Quattrone's home in San Francisco because of issues concerning Quattrone's health. But ultimately, Quattrone's attorneys informed NASD Enforcement that he declined to testify in any location, because of pending state and federal investigations into the same misconduct. In March 2003, NASD Enforcement charged Quattrone with violating NASD conduct rules by refusing to testify. Quattrone answered the charges by denying any wrongdoing; arguing that because of ongoing criminal investigations into the same misconduct, the Fifth Amendment prevented NASD from compelling him to testify, and asserting that by trying to force him to waive his constitutional right against self-incrimination, NASD violated its statutory duty to provide him with a fair opportunity to defend himself.

In a ruling issued on Jan. 16, 2004, an NASD hearing panel found that Quattrone violated NASD rules by failing to provide on-the-record testimony to NASD. The panel fined Quattrone \$30,000 and suspended him for one year, with the proviso that he would be barred in all capacities if he failed to testify, fully and unconditionally, within one year.

NASD Enforcement appealed the sanctions imposed by the hearing panel, arguing that the appropriate sanction was a permanent bar from the industry. Quattrone cross-appealed the panel's finding of liability.

NASD's NAC rejected Quattrone's Fifth Amendment privilege arguments, saying the Fifth Amendment "restricts only governmental conduct," and NASD's function as a regulator of the securities industry does not constitute government conduct. "NASD is incorporated as a private corporation, it does not receive state or federal funding, and its Board of Governors is not composed of government officials or appointed by a government official or agency," the NAC says in its ruling.

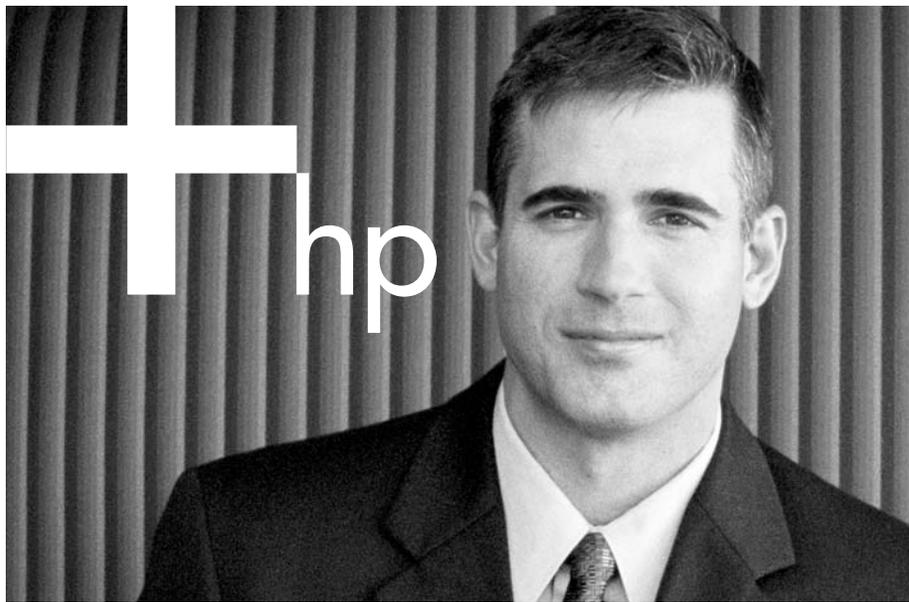
The NAC also rejected Quattrone's argument that NASD Enforcement failed to provide him with a fair opportunity to defend himself. To the contrary, it found that NASD Enforcement satisfied its statutory obligation and provided Quattrone with the procedural safeguards required by the federal securities laws.

"Enforcement made written requests for Quattrone's on-the-record testimony.... Pursuant to Quattrone's request, the testimony was rescheduled and relocated," the NAC's ruling says. "Enforcement's written requests for testimony stated that if Quattrone failed to comply, NASD could take disciplinary action against him that could result in sanctions, including a suspension or a bar from the securities industry. Quattrone was represented by counsel at all times, and he made a fully informed choice to refuse to provide testimony to NASD..."

The NAC ruling goes on to state that NASD's investigation into Quattrone's e-mail regarding document retention issues at CSFB was more than justified, saying, "There is no question that such questions regarding obstruction of justice are at the heart of NASD's regulatory role in preventing securities fraud and protecting investors."

"In view of the serious nature of Quattrone's misconduct and the lack of mitigating facts, we conclude that a bar is necessary in this case to protect the integrity of NASD's investigative responsibilities and its role as an SRO, serving the public interest," the NAC says in its ruling. "As a private entity without subpoena power, NASD must rely on (its procedural rules) to compel industry members to provide requested information about potential violations of the federal securities laws and NASD rules. Quattrone failed to meet his obligation to cooperate with Enforcement in its investigation, and therefore a bar is appropriately remedial.... We find that Quattrone's misconduct was egregious. Accordingly, we order that Quattrone be barred in all capacities."

The NAC is a 14-person committee composed of seven industry and seven non-industry members that decides appeals from disciplinary, membership, and exemption decisions; rules on statutory disqualification applications; and advises on other policy matters. NAC rulings can be appealed within 30 days to the SEC. An SEC ruling can be appealed to the U.S. Court of Appeals. Either party could petition the U.S. Supreme Court to review an appeals court decision



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