

SEPTEMBER 2005

# Notice to Members

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Reported for September



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# Notice to Members

SEPTEMBER 2005

## SUGGESTED ROUTING

Executive Representative  
Senior Management  
Institutional  
Internal Audit  
Legal & Compliance  
Operations  
Registration  
Systems

## KEY TOPICS

Business Continuity  
Disaster Recovery  
Emergency Preparedness  
Rule 3012  
(Supervisory Control Systems)

## GUIDANCE

### Guidance to Members Affected by Hurricane Katrina

#### Executive Summary

Due to the recent tragic events resulting from Hurricane Katrina, NASD is aware that members with offices in the affected areas are concerned with a number of regulatory and compliance issues. In this regard, NASD is providing guidance on these issue, including guidance on emergency office relocations, continuing education requirements for registered personnel, registered personnel engaged in active military duty, books and records, the handling of customers' funds and securities, and customer communications.

#### Questions/Further Information

Questions or comments concerning this *Notice* may be directed to Daniel M. Sibears, Executive Vice President and Deputy, Member Regulation, at (202) 728-6911 or Patricia Albrecht, Assistant General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8026.

#### Discussion

##### Emergency Office Relocations

To relocate displaced personnel, members not impacted by Hurricane Katrina are encouraged to make office space available and to otherwise assist those who have been recently displaced. If a member relocates displaced personnel to a temporary location that is not currently registered as a branch office or identified as a regular nonbranch location, members should use their best efforts to provide written notification to NASD as soon as possible after establishing a new temporary office or space sharing arrangement, to include at minimum: the office address, the entities involved, the names of registered personnel, a contact phone number and, if possible, the expected duration. The notification should also indicate whether the space sharing arrangement is with an organization in a securities or kindred business.

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Members designated to the New Orleans District Office may direct inquires to any of three NASD District Offices as follows:

Dallas District Office (972) 701-8554  
Florida District Office (561) 443-8000  
Atlanta District Office (404) 239-6100

#### **Form U-4**

The requirement to maintain updated Form U-4 information (e.g., office of employment address) for registered employees affected by the referenced relocations associated with this event will be temporarily suspended. In addition, it is not necessary to submit branch office applications for any newly opened temporary office locations or space sharing arrangements established as a result of recent events.

#### **Books and Records Maintained at the Affected Locations**

Members that maintained books and records at the affected locations should make every effort to retrieve or back-up such records. If any such records were permanently destroyed, a list of the types of books and records required to be maintained pursuant to NASD Rule 3110 and Exchange Act Rules 17a-3 and 17a-4 must be prepared. The list should include the time periods affected, but need not include records that can be recreated from an electronic database or that can be retrieved otherwise from a service bureau, back-up records storage facility, etc. All such lists must be submitted to the contact information listed above as soon as possible, but no later than October 30, 2005. If you are unable to meet this time frame, please contact NASD at the aforementioned contact information.

#### **Customer Funds and Securities**

As soon as possible, members should determine the dollar amount of any customer checks or securities held at affected business offices that cannot be located or accounted for. This information should be provided, in writing, to NASD using the previously provided contact information. In areas where postal service has been suspended or the firm is concerned about the customer's ability to receive mail, NASD will not object to interim solutions to dealing with customer dividend, interest and similar cash payments. See the U.S. Postal Web Site for further information on areas with disrupted or suspended mail service at <http://www.usps.com/communications/news/serviceupdates.htm?from=bannercommunications&page=katrina>.

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In instances where a nonbranch location or branch office has been relocated or customer calls are being rerouted to another office, we understand that firms may need to deviate from standard operating procedures to accommodate customers who need to access their funds. Procedures that generally require written letters of authorization to move funds or direct a check to a third party address may be waived but firms should exercise as much due diligence as possible in validating the identity of the customer as well as provide heightened supervision of these accounts. Validating the identity of customers remains each member's responsibility.

Members should also review their supervisory control policies and procedures to ensure that the policies and procedures relating to the transmittal of customer funds, customer change of address and increased requests for hand delivery of checks are adequate after considering changes to normal operations. Supervisory control policies and procedures should be considered that will mitigate risk that may arise due to reduced ability to communicate with customers, inability to rely on mail, or other disruption to the existing controls. Please consult Rule 3012 (Supervisory Control Systems) for further guidance.

Members that clear for introducing firms who are unable to conduct business are encouraged to accept liquidating orders from customers so that customers' access to funds is not restricted.

#### **Credit Regulation**

NASD will be accepting margin extensions on a case-by-case basis for reason code "Acts of God," for customers located in regions affected by the hurricane. Please contact Financial Operations at (240) 386-5156 prior to transmission.

#### **Confirmations and Customer Statements**

NASD will not object to members holding confirmations, statements, and other communications or notices on behalf of those customers located in the affected areas for a period not to exceed 90 calendar days, or until further notice. Members must exercise appropriate supervisory review of the accounts affected, maintain a log of those accounts whose mail is being held, and notify the customer that those communications are being held on their behalf, as soon as possible. If additional time is required beyond 90 calendar days, please contact NASD using the contact information provided above.

#### **Customer Communication**

Members are encouraged to promptly place a notice on their Web sites that indicates to affected customers whom they may contact concerning their accounts, access to funds or securities, etc. If feasible, members should consider the activation of toll free numbers dedicated to responding to customers.

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### **Business Continuity and Contingency Plans**

A member affected by Hurricane Katrina should contact NASD to discuss those business continuity and contingency plan actions implemented to address any problems that have resulted.

### **Qualifications Examinations and Continuing Education**

NASD is extending continuing education requirements and qualifications examination windows for candidates who reside in a Louisiana, Mississippi or Alabama county or parish declared a "major disaster" by the federal government. Registered representatives who have a qualifications examination or a continuing education window due to expire in September or October will have their windows extended to November 30, 2005. As more information becomes available, additional extensions may be provided. Please contact NASD Field Support Services at (800) 999-6647 with any questions or if you require additional information on test center status in these areas.

### **Information for Applicants for NASD Membership and Existing Member Firms**

NASD is currently unable to access its offices in New Orleans to retrieve membership application files. As a result, we are working to contact firms that have applications pending with the New Orleans District Office. Due to disruption in telephone service, among other things, we have not been able to reach all applicants. Accordingly, we may request that applicants assist us in re-constructing their application files at the appropriate time. NASD remains committed to working through membership applications so that decisions on applications may be issued as quickly as possible. If you wish to begin gathering and forwarding the information prior to being contacted by NASD, you may do so. In the event that an application was submitted on or around Monday, August 29, 2005, it may not have been received, so please feel free to re-file such applications in their entirety, or contact us for assistance at: NASD, 12801 North Central Expressway, Suite 1050, Dallas, TX 75243.

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### **Military Personnel & National Guard**

NASD By-Laws provide specific relief to NASD registered persons engaged in the investment banking and securities business who volunteer or are called into active military duty. Under Interpretive Material 1000-2, such persons will be placed in a specially designated "inactive" status once NASD is notified of their military call-up, but will remain registered for NASD purposes. Such persons will remain eligible to receive transaction-related compensation, including continuing commissions, because they remain registered with a firm while on inactive status. Also, an employing firm may allow a registered person on inactive status to enter into an arrangement with another person registered with the employing firm to service his or her accounts and to share in commissions generated by those accounts. However, such a person on inactive status may not perform any duties of a registered person. In addition, dues and assessments identified in Article VI of the NASD By-Laws will be waived for such persons. Member firms should notify NASD of such events by mailing or faxing to the Registration and Disclosure Department a letter (on firm letterhead) identifying the name and CRD number of the person called into active duty, the name and CRD number of the firm (or firms) with whom the person is associated, the date the firm received notification from the individual, and a copy of the official call-up notification. Member firms should mail letters notifying NASD of military call-ups to NASD Registration and Disclosure Department, P.O. Box 9495, Gaithersburg, MD 20898-9495 or fax them to (240) 386-4751. If you have questions about this process, please call the Gateway Call Center at (301) 590-6500. For more information view our Active Military Leave Guidance Web page at [http://www.nasd.com/web/ldcplg?IdcService=SS\\_GET\\_PAGE&ssDocName=NASDW\\_005228&ssSourceNodeId](http://www.nasd.com/web/ldcplg?IdcService=SS_GET_PAGE&ssDocName=NASDW_005228&ssSourceNodeId).

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# Notice to Members

SEPTEMBER 2005

## SUGGESTED ROUTING

Legal and Compliance  
Operations  
Senior Management

## KEY TOPICS

Blue Sheets

## ACTION REQUESTED

### Intermarket Surveillance Group (ISG)<sup>1</sup>

Intermarket Surveillance Group Requires Validation of Electronic Blue Sheet Submissions

#### Executive Summary

This *Notice to Members* reminds members of their reporting requirements concerning the automated submission of trading information via the Electronic Blue Sheet (EBS) System and provides information on the validation of certain data fields in a firm's EBS submission.

This *Notice* was prepared by the following self-regulatory organizations (SROs) acting jointly as members of the Intermarket Surveillance Group (ISG):

- ▶ American Stock Exchange LLC (AMEX)
- ▶ Boston Stock Exchange, Inc. (BSE)
- ▶ Chicago Board Options Exchange, Inc. (CBOE)
- ▶ Chicago Stock Exchange, Inc. (CHX)
- ▶ International Securities Exchange (ISE)
- ▶ NASD, Inc. (NASD)
- ▶ National Stock Exchange (NSX)
- ▶ New York Stock Exchange, Inc. (NYSE)
- ▶ Pacific Exchange, Inc. (PCX)
- ▶ Philadelphia Stock Exchange, Inc. (PHLX)

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## Questions/Further Information

Questions concerning this *Notice* may be directed to any of the following SRO staff:

<b>SRO</b>	<b>Individual</b>	<b>Telephone No.</b>	<b>Email</b>
AMEX	Robert Ulmer	(212) 306-1283	<i>robert.ulmer@nasd.com</i>
BOX	Bruce Goodhue	(617) 235-2022	<i>bruce.goodhue@bostonstock.com</i>
CBOE	Pat Sizemore	(312) 786-7752	<i>sizemore@cboe.com</i>
CHX	Marguerite Donovan	(312) 663-2548	<i>mdonovan@chx.com</i>
NSX	Nicole Guiffra	(312) 786-8809	<i>guiffran@nsx.com</i>
ISE	Willie Wong	(212) 897-8126	<i>wwong@iseoptions.com</i>
NASD	Rose Braisted	(240) 386-4987	<i>rose.braisted@nasd.com</i>
NYSE	John Kroog	(212) 656-6532	<i>jkroog@nyse.com</i>
PCX	John Chapin	(312) 442-7790	<i>jchapin@pacificex.com</i>
PHLX	Edward Deitzel	(215) 496-5298	<i>ed.deitzel@phlx.com</i>

If you have questions regarding the interpretation of SEC Rule 17a-25 under Section 17 of the Exchange Act of 1934, or if you need to report problems concerning EBS submissions to the SEC, please contact:

<b>Individual</b>	<b>Telephone No.</b>	<b>Email</b>
Joseph Cella	(202) 551-4951	<i>cellaj@sec.gov</i>
Alton Harvey	(202) 551-5691	<i>harveya@sec.gov</i>

## ISG Regulatory Memorandum, ISG 2005-01

Since 1988, member and member organizations have been submitting trading information requested by self-regulatory organizations (SROs) through the Electronic Blue Sheet (EBS) System. The ISG SROs and the Securities and Exchange Commission (SEC), during the course of inquiries and investigations, have encountered an increase in the number of EBS data submissions containing inaccuracies (e.g., options symbol, trade date, name address, buy/sell indicators, TIN1 and others). Some of these inaccuracies have been in existence for a significant period of time and have resulted in regulatory action being initiated by one or more of the ISG SROs. This is a reminder that EBS information is to be furnished in a timely and accurate manner.<sup>2</sup>

In order to ensure that members and member organizations are reporting EBS data correctly, the ISG SROs require that all members and member organizations or their EBS data providers immediately conduct a validation of all required EBS data elements to ensure that EBS transmissions are consistent with current standards and accurately reflect members' books and records. The validation is to be conducted and completed by no later than March 31, 2006, and will require that documentation confirming that the validation has occurred be retained by members and member organizations.

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Members and member organizations have a **continuing obligation** to ensure that EBS submissions meet the requirements noted.

Attachment A, *Record Layout for Submission of Trading Information*, describes the data elements required in EBS transmissions. While all EBS data is important and needs to be reported correctly for the purpose of complying with the validation requirement noted above, all layout records that include an "R" in the "Field Format" must be validated.

**Any inconsistency with overall EBS standards (discovered either as a result of the validation process or otherwise) should be reported immediately as follows:**

- ▶ if the firm is a member of only one SRO, report to that SRO;
- ▶ if the firm is a member of multiple SROs including the NYSE, report to the NYSE; or
- ▶ if the firm is a member of multiple SROs and is not a NYSE member, report to the NASD.

**If pursuant to an individual EBS request a member firm experiences reporting difficulties, it should contact the requesting SRO.**

Members and member organizations are reminded of their obligations as to timeliness, accuracy and completeness of data submitted by them or by service bureaus on their behalf.

## Timeliness

Members and member organizations, pursuant to the rules governing the submission of blue sheet information, are required to meet the following requirements:

- [1] **Response Time**—In general, blue sheet submissions are to be received by a requesting organization within ten (10) business days following the date of the request for such information. However, members and member organizations may be requested to furnish blue sheet information in less than the normal ten-day reporting period and are expected to comply. Incomplete submissions do not fulfill a member's or member organization's obligation to make timely submissions.
- [2] **Retention Time**—Members and member organizations are required to maintain blue sheet information for the period of time set forth in Rule 17a-4(b) of the Securities Exchange Act of 1934, and in a manner that permits the submission of such data in accordance with [1] above.

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## Accuracy

It is the responsibility of members and member organizations to ensure that the EBS information submitted to the requesting organization is accurate. Items [1] through [6] below are areas in which inaccurate reporting of EBS data by certain members/member organizations has surfaced. Therefore, the ISG SROs are restating members' obligations with respect to certain codes in an effort to assist the membership in the submission of accurate EBS data. (This list is not all-inclusive as to EBS requirements. See above and also Attachment A.)

- [1] Buy/Sell Code**—Members and member organizations are reminded that buy/sell codes for each trade must be designated:

0 = Buy	A = Buy Cancel
1 = Long Sale	B = Long Sale Cancel
2 = Short Sale	C = Short Sale Cancel
3 = Open Long or Buy Open	D = Open Long or Buy Open Cancel
4 = Open Short or Sell Open	E = Open Short or Sell Open Cancel
5 = Close Long or Sell Close	F = Close Long or Sell Close Cancel
6 = Close Short or Buy Close	G = Close Short or Buy Close Cancel

**NOTE:** Buy/Sell Codes 3 through 6 and D through G pertain only to options information. Only these codes can be used when reporting options transactions.

- [2] Exchange Code**—Each trade reported must contain the marketplace of execution:

A = New York Stock Exchange	L = London (OTC or Exchange)
B = American Stock Exchange	M = Toronto Stock Exchange
C = Chicago Stock Exchange	N = Montreal Stock Exchange
D = Philadelphia Stock Exchange	O = TSX Venture Exchange
E = Pacific Exchange	Q = NASD ADF
F = Boston Stock Exchange	R = NASDAQ
G = National Stock Exchange	S = Over-the-Counter
I = International Securities Exchange	T = Tokyo (OTC or Exchange)
K = Chicago Board Options Exchange	Z = Other – Foreign

- 
- [3] **Ticker Symbol** – When submitting EBS information, all members and member organizations are required to use the recognized stock symbol, or when options information is requested, the appropriate OPRA symbol to identify transactions in the different option series of the underlying issue. The OPRA symbol must be reported in the following format:

*OPRA option symbol (space), OPRA expiration month symbol and OPRA strike price symbol. (For example, the Maytag January 25 call option series would be reported via blue sheets as MYG AE. This example uses six spaces in the field designated by SIAC as "symbol" in the automated format.)*

- [4] **Manual Components** – Any members/member organizations that have to manually input any data as part of their EBS submission must use upper case alphas.
- [5] **Average Price Account** – The average price account field should be used to identify whether the account is the average price account itself or the recipient of transactions for an average price account.
- [6] **Account Type Identifiers** – In January 1993, members and member organizations were required to submit EBS information that contained expanded account type identifiers used by the SROs for audit trail purposes. A matrix containing the current account type identifiers is attached as Attachment B. To the extent that account type identifiers are expanded/changed in the future by one or more SRO, all EBS information, going forward, should reflect any such expansion/change. The account type identifier in the EBS submission should correspond to the audit trail requirements of the market of execution. It should be noted that NASD currently accepts all expanded account type identifiers.

In no event should EBS information contain summarized activity for accounts that purchased and/or sold the security under review. Transactions made through an average price account must be identified by the price of execution, as well as the average price given to the customer's account for which the transactions were effected. Every trade executed in a requested security by a member or member organization must be reported to the requesting organization, including partial fills on orders not completed.

\* \* \* \* \*

Members and member organizations must ensure that all EBS information is provided correctly to the SROs and SEC and that EBS information is regularly validated. Validation procedures and records pertaining to such validations are subject to examination by the SROs and SEC. These records must be retained for the time period set forth by Section 17 of the Securities Exchange Act of 1934. Any inconsistencies should be reported to the SROs immediately, in the manner previously described. Members and member organizations are reminded that failure to comply with EBS requirements will subject them to disciplinary action.

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To facilitate timely receipt of SROs' EBS requests, members and member organizations are to promptly notify the SROs of any changes regarding the identities and locations of the designated recipients of such EBS requests. This includes the situation where an SRO uses the Internet as its medium for transmitting its EBS requests. It is suggested that in situations where a member or member organization receives EBS requests via the Internet, such member/member organization create a shared Internet email mailbox address that would be accessible by several individuals, to facilitate transmission in the event that the primary recipient of EBS requests is unable to access his/her mailbox.

Additionally, please be advised that the ISG SROs are contemplating possible future enhancements to EBS (e.g., the inclusion of order identification information to facilitate market reconstructions and more defined account name and address fields). In this context, the SROs would welcome having dialogue with the member and member organization community as such enhancements are initiated.

## Endnotes

- 1 This *Notice* was prepared by the following self-regulatory organizations as members of the ISG: American Stock Exchange LLC (AMEX), Boston Stock Exchange, Inc. (BSE), Chicago Board Options Exchange, Inc. (CBOE), Chicago Stock Exchange, Inc. (CHX), International Securities Exchange (ISE), NASD Inc. (NASD), National Stock Exchange (NSX), New York Stock Exchange, Inc. (NYSE), Pacific Exchange, Inc. (PCX) and Philadelphia Stock Exchange, Inc. (PHLX).
- 2 AMEX Rule 153A; CBOE Rule 15.7; ISE Rule 1404; NASD Rules 8211, 8212 and 8213; NSX Rules 5.3 and 8.2; NYSE Rules 342.20, 410A and 476(a) (11); PCX Rule 10.2 (c); PHLX Rule 785; and SEC Rule 17a-25 under Section 17 of the Securities Exchange Act of 1934, as amended.

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# ATTACHMENT A Record Layout for Submission of Trading Information

Field Position		Field Length	Field Name/Description/Remarks	Field Format	Justify	Picture Clause	Default Value
From	To						
			***This Record Must Be the First Record of the File***				
1	3	3	FILLER	A	LJ	X (3)	HDR
4	5	2	FILLER	A	LJ	X (2)	.S
6	10	5	DTRK-SYSID	N	LJ	9 (5)	12343
11	12	2	FILLER	A	LJ	X (2)	.E
13	14	2	FILLER	N	LJ	9 (2)	00
15	16	2	FILLER	A	LJ	X (2)	.C
17	20	4	DTRK-ORIGINATOR Please call SIAC for assignment (212) 383-2210	A	LJ	X (4)	—
21	22	2	FILLER	A	LJ	X (2)	.S
23	26	4	DTRK-SUB-ORIGINATOR Please call SIAC for assignment (212) 383-2210	A	LJ	X (4)	—
27	27	1	FILLER	A	LJ	X (1)	B
28	33	6	DTRK-DATE Contains submission date.	N	LJ	9 (6)	MMDDYY
34	34	1	FILLER	A	LJ	X (1)	B
35	59	25	DTRK-DESCRIPTION Required to identify this file.	A	LJ	X (25)	FIRM TRADING INFORMATION
60	80	21	FILLER	A	LJ	X (21)	B
1	1	1	HEADER RECORD CODE Value: Low Values OR ZERO	A	—	X	—
2	5	4	SUBMITTING BROKER NUMBER If NSCC member, use NSCC clearing number. If not a NSCC member, use clearing number assigned to you by your clearing agency.	A-R	LJ	X (4)	B
6	40	35	FIRM'S REQUEST NUMBER Tracking number used by the firm to record requests from an organization.	A	—	X (35)	B
41	46	6	FILE CREATION DATE Format is YYMMDD	A	—	X (6)	—
47	54	8	FILE CREATION TIME Format is HH:MM:SS	A	—	X (8)	—
55	55	1	REQUESTOR CODE Requesting Organization Identification Values:	A	—	X	—
			A = New York Stock Exchange				
			B = American Stock Exchange				
			C = Chicago Stock Exchange				
			D = Philadelphia Stock Exchange				
			E = Pacific Exchange				
			F = Boston Stock Exchange				
			G = National Stock Exchange				
			I = International Securities Exchange				
			K = Chicago Board Options Exchange				
			R = NASD				
			X = Securities Exchange Commission				
			Z = Other				
			<b>Field Format</b> A = Alphanumeric (all caps) N = Numeric P = Packed B = Binary R = Validation Required	<b>Default Values—Code</b> B = Blanks Z = Zero	<b>Justify</b> RJ = Right Justification of Data LJ = Left Justification of Data		

# ATTACHMENT A Report Layout for Submission of Trading Information

Field Position		Field Length	Field Name/Description/Remarks	Field Format	Justify	Picture Clause	Default Value
From	To						
56	70	15	REQUESTING ORGANIZATION NUMBER Number assigned by requesting organization	A	LJ	X (15)	B
71	80	10	FILLER	A	—	X (10)	B
1	1	1	RECORD SEQUENCE NUMBER ONE The first record of the transaction. Value: 1	A	—	X	—
2	5	4	SUBMITTING BROKER NUMBER Identical to Submitting Broker Number in Header Record	A-R	LJ	X (4)	—
6	9	4	OPPOSING BROKER NUMBER The NSCC clearing house number of the broker on the other side of the trade.	A-R	LJ	X (4)	B
10	21	12	CUSIP NUMBER The cusip number assigned to the security. Left justified since the number is nine characters at present (8+ check digit) but will expand in the future	A	LJ	X (12)	B
22	29	8	TICKER SYMBOL The symbol assigned to this security. For options, the OPRA option symbol (space), OPRA expiration month symbol and OPRA strike price symbol should be used. (Ex. Maytag May 20 call option series would be reported as MYG ED. This example uses six spaces in the field with a space between the OPRA symbol and the OPRA expiration month.)	A-R	LJ	X (8)	B
30	35	6	TRADE DATE The date this trade executed. Format is YYMMDD.	A-R	—	X (6)	B
36	41	6	SETTLEMENT DATE The date this trade will settle. Format is YYMMDD	A	—	X (6)	B
42	53	12	QUANTITY The number of shares or quantity of bonds or option contracts.	N-R	RJ	9 (12)	Z
54	67	14	NET AMOUNT The proceeds of sales or cost of purchases after commissions and other charges.	N	RJ	S9(12)V99	Z
68	68	1	BUY/SELL CODE Values: 0 = Buy 1 = Sale 2 = Short Sale 3 = Buy Open 4 = Sell Open 5 = Sell Close 6 = Buy Close A = Buy Cancel B = Sell Cancel C = Short Sale Cancel D = Buy Open Cancel E = Sell Open Cancel F = Sell Close Cancel G = Buy Close Cancel Values 3 to 6 and D to G are for options only	A-R	—	X	B
			Field Format A = Alphanumeric (all caps) N = Numeric P = Packed B = Binary R = Validation Required	Default Values—Code B = Blanks Z = Zero	Justify RJ = Right Justification of Data LJ = Left Justification of Data		

# ATTACHMENT A Report Layout for Submission of Trading Information

Field Position		Field Length	Field Name/Description/Remarks	Field Format	Justify	Picture Clause	Default Value
From	To						
69	78	10	PRICE The transaction price. Format: \$\$\$\$ CCCCCC.	N-R	RJ	9(4)V(6)	Z
	79	79	1 EXCHANGE CODE Exchange where trade was executed. Values: A = New York Stock Exchange B = American Stock Exchange C = Chicago Stock Exchange D = Philadelphia Stock Exchange E = Pacific Exchange F = Boston Stock Exchange G = National Stock Exchange I = International Securities Exchange K = Chicago Board Options Exchange L = London Stock Exchange M = Toronto Stock Exchange N = Montreal Stock Exchange O = TSX Venture Exchange Q = NASD ADF R = NASDAQ S = Over-the-Counter T = Tokyo Stock Exchange Z = Other	A-R	—	X	B
80	80	1	BROKER/DEALER CODE Indicate if trade was done for another Broker/Dealer. Values: 0 = No; 1 = Yes	A-R	—	X	B
1	1	1	RECORD SEQUENCE NUMBER TWO Value: 2	A	—	X	—
2	2	1	SOLICITED CODE Values: 0 = No; 1 = Yes	A-R	—	X	B
3	4	2	STATE CODE Standard Postal two character identification.	A-R	—	X (2)	B
5	14	10	ZIP CODE/COUNTRY CODE Zip Code—five or nine character (zip plus four) Country code—for future use.	A-R	LJ	X (10)	B
15	22	8	BRANCH OFFICE/REGISTERED REPRESENTATIVE NUMBER Each treated as a four-character field. Both are left justified.	A-R	LJ	X (8)	B
23	28	6	DATE ACCOUNT OPENED Format is YYMMDD	A-R	—	X (6)	B
29	48	20	SHORT NAME FIELD Contains last name followed by comma (or space) then as much of first name as will fit.	A	LJ	X (20)	B
49	78	30	EMPLOYER NAME	A	LJ	X (30)	B
79	79	1	TIN 1 INDICATOR Values: 1 = SS#; 2 = TIN	A-R	—	X	B
			Field Format A = Alphanumeric (all caps) N = Numeric P = Packed B = Binary R = Validation Required	Default Values—Code B = Blanks Z = Zero	Justify RJ = Right Justification of Data LJ = Left Justification of Data		

# ATTACHMENT A Report Layout for Submission of Trading Information

Field Position		Field Length	Field Name/Description/Remarks	Field Format	Justify	Picture Clause	Default Value
From	To						
80	80	1	TIN 2 INDICATOR Values: 1 = SS#; 2 = TIN—for future use.	A	—	X	B
1	1	1	RECORD SEQUENCE NUMBER THREE Value: 3	A	—	X	—
2	10	9	TIN ONE Taxpayer Identification Number Social Security or Tax ID Number.	A-R	LJ	X (9)	B
11	19	9	TIN TWO Taxpayer Identification Number #2 Reserved for future use.	A	LJ	X (9)	B
20	20	1	NUMBER OF N&A LINES	A	—	X	B
21	50	30	NAME AND ADDRESS LINE ONE	A-R	LJ	X (30)	B
51	80	30	NAME AND ADDRESS LINE TWO	A-R	LJ	X (30)	B
1	1	1	RECORD SEQUENCE NUMBER FOUR Value: 4	A	—	X	—
2	31	30	NAME AND ADDRESS LINE THREE	A-R	LJ	X (30)	B
32	61	30	NAME AND ADDRESS LINE FOUR	A-R	LJ	X (30)	B
62	62	1	ACCOUNT TYPE IDENTIFIERS See Attachment B for current codes.	A-R	—	X	B
63	80	18	ACCOUNT NUMBER Account number	A-R	LJ	X (18)	B
1	1	1	RECORD SEQUENCE NUMBER FIVE Value: 5	A	—	X (1)	—
2	31	30	NAME AND ADDRESS LINE FIVE	A-R	LJ	X (30)	B
32	61	30	NAME AND ADDRESS LINE SIX	A-R	LJ	X (30)	B
62	65	4	PRIME BROKER Clearing number of the account's prime broker.	A-R	LJ	X (4)	B
66	66	1	AVERAGE PRICE ACCOUNT 1 = recipient of average price transaction. 2 = average price account itself.	N-R	—	9 (1)	Z
67	71	5	DEPOSITORY INSTITUTION IDENTIFIER Identifying number assigned to the account by the depository institution.	A-R	LJ	X (5)	B
72	80	9	FILLER	A	—	X (9)	B
1	1	1	TRAILER RECORD DATE One record per submission. Must be the last record on the file. Value: High Values or "9"	A	—	X	—
2	17	16	TOTAL TRANSACTIONS The total number of transactions. This total excludes Header and Trailer Records.	N	RJ	9 (16)	B
18	33	16	TOTAL RECORDS ON FILE The total number of 80 byte records. This total includes Header and Trailer Records, but not the Datatrak Header Record ( <i>i.e.</i> , does not include the first record on the file).	N	RJ	9 (16)	Z
34	80	47	FILLER	A	—	X (47)	B
			Field Format A = Alphanumeric (all caps) N = Numeric P = Packed B = Binary R = Validation Required	Default Values—Code B = Blanks Z = Zero	Justify RJ = Right Justification of Data LJ = Left Justification of Data		

# ATTACHMENT B Account Type Identifiers

Transaction Type	Security Type	
	Equity*	Options
Non-Program Trading, Agency	A	C
Non-Index Arbitrage, Program Trading, Proprietary	C	
Index Arbitrage, Program Trading, Proprietary	D	
Index Arbitrage, Program Trading, Individual Investor	J	
Non-Index Arbitrage, Program Trading, Individual Investor	K	
Non-Program Trading, Proprietary	P	F
Non-Program Trading, Individual Investor	I	
Non-Index Arbitrage, Program Trading, Agency	Y	
Index Arbitrage, Program Trading, Agency	U	
Index Arbitrage, Program Trading, as Agent for Other Member	M	
Non-Index Arbitrage, Program Trading, as Agent for Other Member	N	
Non-Program Trading, as Agent for Other Member	W	
Specialist	S	S
Market-Maker		M
Non-Member Market-Maker/Specialist Account		N
Stock Specialist – Assignment		Y
Short Exempt, Agency	B	
Customer Range Account of a Broker/Dealer		B
Registered Trader	G	
Error Trade	Q	
Competing Market Maker Proprietary Transaction: Affiliated w/ Clearing Member	O	
Competing Market Maker: Unaffiliated Member's Competing Market Maker	T	
Competing Market Maker: Non-Member	R	
Short Exempt Transaction: Proprietary Account of Clearing Member Organization or Affiliated Member/Member Organization	E	
Short Exempt Transaction: Proprietary Account of Unaffiliated Member/Member Organization	F	
Short Exempt Transaction: Individual Customer Account	H	
Short Exempt Transaction: Competing Market Maker this is a Member/Member Organization Trading for own account	L	
Short Exempt Transaction: One Member Acting as Agent for Another Member's Competing Market Maker Account	X	
Short Exempt Transaction: Account of Non Member Competing Market Maker	Z	
Amex Option Specialist/Market Maker Trading Paired Security	V	
Registered Trader Market Maker Transaction Regardless of the Clearing Number		P
Transactions cleared for a NASDAQ market maker that is affiliated w/ the clearing member that resulted from telephone access to the specialist. Amex Only.	3	
Transactions cleared for a member's NASDAQ market maker that is not affiliated with the clearing member that resulted from telephone access to the specialist. Amex Only.	4	
Transactions cleared for a non-member NASDAQ market maker that is not affiliated with the clearing member that resulted from telephone access to the specialist. Amex Only.	5	

\* Equity securities include those securities that trade like equities. For instance, ETFs and Structured Products.

# Notice to Members

SEPTEMBER 2005

## SUGGESTED ROUTING

Internal Audit  
Legal and Compliance  
Retail  
Senior Management

## KEY TOPICS

Derivatives  
Options  
Structured Products  
Structured Securities

## GUIDANCE

### Structured Products

#### NASD Provides Guidance Concerning the Sale of Structured Products

#### Executive Summary

As a result of a recent review of members that sell structured products, NASD staff is concerned that members may not be fulfilling their sales practice obligations when selling these instruments, especially to retail customers. This *Notice to Members* provides guidance to members concerning their obligations when selling structured products, including the requirements to: (1) provide balanced disclosure in promotional efforts; (2) ascertain accounts eligible to purchase structured products; (3) deal fairly with customers with regard to derivative products; (4) perform a reasonable-basis suitability determination; (5) perform a customer-specific suitability determination; (6) supervise and maintain a supervisory control system; and (7) train associated persons.

#### 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

Structured products are securities derived from or based on a single security, a basket of securities, an index, a commodity, a debt issuance and/or a foreign currency.<sup>1</sup> As the foregoing definition suggests, there are myriad types of structured products. Some structured products offer full protection of the principal invested, whereas others offer limited or no protection of the principal.

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Most structured products pay an interest or coupon rate substantially above the prevailing market rate.<sup>2</sup> Structured products also frequently cap or limit the upside participation in the reference asset, particularly if some principal protection is offered or if the security pays an above-market rate of interest.

Structured products, which are typically issued by investment banks or their affiliates, have a fixed maturity. Some, but not all, structured products may be listed on a national securities exchange. Moreover, even those structured products listed on a national securities exchange may be very thinly traded.

Structured products typically have two components—a note and a derivative (often an option). The note pays interest to the investor at a specified rate and interval. The derivative component establishes the payment at maturity. In some products, the derivative is, in effect, a put option sold by the investor that gives the issuer the right, but not the obligation, to sell the investor the reference security or securities at a predetermined price. In other products, the derivative is, in effect, a call option sold by the investor that gives the issuer the right, but not the obligation, to buy from the investor the reference security or securities at a predetermined price. Despite the derivative component of a structured product, they are often marketed to investors as debt securities.

Sales of structured products began in the 1980s. The products gained popularity with institutional investors in the 1990s. More recently, members have reported to NASD that structured products have been increasingly targeted at retail investors. Many of the structured products targeted at retail investors are based upon “blue-chip” and “household-name” stocks that comprise the S&P 500 or the NASDAQ-100 indexes. NASD staff has concerns about the manner in which structured products may be marketed to retail investors and the types of investors purchasing such products. As such, NASD is issuing this guidance to members addressing sales practice issues.

## Regulatory Requirements

The application of NASD rules to activities involving structured products, including Rules 2110 (Standards of Commercial Honor and Principles of Trade), 2210 (Communications with the Public), 2310 (Recommendations to Customers), 2720 (Distribution of Securities of Members and Affiliates—Conflicts of Interest), 3010 (Supervision), and 3012 (Supervisory Control Systems), is discussed below.

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## 1. Promotion of Structured Products

Offerings of structured products generally are conducted as public offerings of securities registered under the Securities Act of 1933. In most cases, structured products are offered from a shelf registration. An investor purchasing a structured product as part of a shelf distribution will, prior to purchase, receive a preliminary prospectus supplement that describes the characteristics and risks of the structured product being offered. To varying degrees, members also use supplemental sales materials. NASD staff has observed that the disclosures provided in supplemental sales materials tend to be less balanced and offer fewer risk disclosures than are contained in the preliminary and final prospectus supplements.

NASD reminds members that pursuant to Rule 2210, all sales materials and oral presentations regarding structured products must present a fair and balanced picture regarding both the risks and benefits. For example, marketing materials should not portray structured products as “conservative” or a source of “predictable current income” unless such statements are accurate, fair, and balanced. In addition, Rule 2210 prohibits exaggerated statements and the omission of any material fact or qualification that would cause a communication to be misleading. Moreover, in promoting the advantages of structured products, such as the interest rate offered and the creditworthiness of the issuer, it is necessary that members balance their promotional materials with disclosures concerning the attendant risks, which may include loss of principal and the possibility that at expiration the investor will own the reference asset at a depressed price. In general, NASD staff believes that sales materials and oral presentations that omit a description of the derivative component of the product and instead present such products as ordinary debt securities would violate Rule 2210. In addition, members should be careful to balance any statements concerning the fact that a structured product has a ticker symbol or has been approved for listing on an exchange with the risks that an active and liquid trading market may not develop. Members are further reminded that providing risk disclosure in a prospectus supplement does not cure otherwise deficient disclosure in sales material, even if such sales material is accompanied or preceded by the prospectus supplement.<sup>3</sup>

In some cases, structured products are assigned a credit rating by a nationally recognized statistical rating organization. To the extent that such credit rating pertains to the creditworthiness of the issuer (*i.e.*, the ability of the issuer to meet its obligations under the terms of the structured product) and is not indicative of the market risk associated with the structured product or the reference security, members must be careful to delineate these distinctions. Presentation of a credit rating for a structured product that suggests that the rating pertains to the safety of the principal invested or the likely investment returns will be viewed as misleading. Members presenting a credit rating must address the fact that the creditworthiness of the issuer does not affect or enhance the likely performance of the investment other than the ability of the issuer to meet its obligations.

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## 2. Eligible Accounts

### A. Approved Accounts

Member firms also should consider whether purchases of some or all structured products should be limited to investors that have accounts that have been approved for options trading. Given the similar risk profile of many structured products and options, particularly those where principal invested is at risk from market movements in the reference security, it may be an appropriate investor safeguard to require that such structured products only be purchased in accounts approved for options trading. Firms that determine not to limit purchases of structured products in which investors' principal is at risk from market movements in the reference security to accounts approved for options trading should develop other comparable procedures designed to ensure that structured products are only sold to persons for whom the risk of such products is appropriate. These firms should be prepared to demonstrate the basis for allowing investors with accounts not approved for trading options to purchase structured products.

Members also are reminded that approving an account to trade structured products is not a substitute for a thorough suitability analysis. Not every structured product will be suitable for every account approved to trade structured products. A discussion of suitability is provided below.

### B. Discretionary Accounts

Sales of structured products issued by a member, or an affiliate of a member, to discretionary accounts must comply with Rule 2720 (Distribution of Securities of Members and Affiliates—Conflicts of Interest). Specifically, paragraph (l) (Discretionary Accounts) provides that "a transaction in securities issued by a member or an affiliate of a member, or by a company with which a member has a conflict of interest shall not be executed by any member in a discretionary account without prior specific written approval of the customer." Members should review their written supervisory procedures and practices to ensure that they request and obtain the necessary written approval of the customer before purchasing structured products in a discretionary account.

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### 3. Suitability and Fair Dealing with Customers

#### A. Fair Dealing with Customers with Regard to Derivative Products or New Financial Products

IM-2310-2(e) (Fair Dealing with Customers with Regard to Derivative Products or New Financial Products) emphasizes members' obligations to deal fairly with customers when making recommendations or accepting orders for new financial products. The IM states that "[a]s new products are introduced from time to time, it is important that members make every effort to familiarize themselves with each customer's financial situation, trading experience, and ability to meet the risks involved with such products and to make every effort to make customers aware of the pertinent information regarding the products."

For certain enumerated products, including a type of structured product listed on NASDAQ known as "Selected Equity-Linked Debt Securities" (SEEDS), IM-2310-2(e) provides specific guidelines that members must follow for "qualifying accounts to trade the products and for supervising the accounts." In this regard, Rule 4420(g)(5) requires prior to the commencement of trading of particular SEEDS, delivery to a broker-dealer of a circular providing guidance regarding its compliance responsibilities (including suitability recommendations and account approval) when handling transactions in SEEDS.<sup>4</sup> Similar disclosure requirements exist with respect to the listing standards of structured products on national securities exchanges.<sup>5</sup>

#### B. Reasonable Basis Suitability

As noted in *Notices to Members (NTMs) 03-07* and *03-71*, a member has an obligation to perform a reasonable basis suitability determination before recommending a product to investors. A reasonable basis suitability determination is necessary to ensure that a security—in this case a structured product—is suitable for some investors (as opposed to the customer-specific suitability determination, which is made on an investor-by-investor basis). To discharge its reasonable basis suitability obligation, a member must perform appropriate due diligence to ensure that it understands the nature of the product, as well as the potential risks and rewards. Members also are reminded of the guidance issued in *NTM 05-26*, which provides best practices for developing and vetting new products, including structured products.

Members should consider whether an investment in a structured product meets the reasonable basis suitability standard if the instrument is priced such that the potential yield is not an appropriate rate of return in relation to the volatility of the reference asset based upon comparable or similar investments, in terms of structure, volatility, and risk in the market as determined at the time the structured product is issued. For example, similar structured products based on reference securities that possess substantially similar volatility characteristics, but which offer materially different rates of return in the note component, should call into question whether the instrument with the lower yield meets the reasonable basis suitability standard. While an exact risk/reward calibration among different instruments or investments may not be

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possible, NASD expects members to exercise their market expertise to recognize those situations where the materiality of difference is not in doubt and, consequently, identify that the lower yielding instrument does not represent a reasonable rate of return given the attendant risks as compared to other similarly composed products or direct investments in the underlying components of such products with similar risk/reward attributes.

### C. Customer Specific Suitability

A member also must determine that its recommendation to purchase a structured product is suitable for that particular investor. Under Rule 2310, members must ensure that a recommendation is suitable for a specific customer by examining (1) the customer's financial status, (2) the customer's tax status, (3) the customer's investment objectives, and (4) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

The derivative component of structured products and the potential loss of the principal for many such products may make them unsuitable for investors seeking alternatives to debt securities. While structured products pay interest like debt securities, they often exhibit very different profit and loss potential. The profit and loss potential of many structured products is more akin to an option contract, particularly those where principal invested is at risk from market movements in the reference security. For such products, it may be useful for registered representatives to consider whether the customer meets the suitability requirements for options trading.<sup>6</sup> In particular, Rule 2860(b)(19)(B) requires that "no member or person associated with a member shall recommend to a customer an opening transaction in any option contract unless the person making the recommendation has a reasonable basis for believing, at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks of the recommended transaction, and is financially able to bear the risks of the recommended position in the option contract" (emphases added).

Members also should not make any generalized conclusions about the "relative" suitability of a structured product and an investment in the reference asset. NASD does not believe that members should assume that if an investment in the reference asset is suitable, then an investment in a structured product pertaining to such reference asset also must be suitable. Conversely, members should not assume that if an investment in the structured product is suitable, then so too is an investment in the reference asset. As discussed above, structured products may have very different risk-reward profiles than their reference assets. Suitability must be determined on an investor-by-investor basis, with reference to the specific facts and circumstances of each investor.

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Moreover, where an instrument is structured such that there is a risk of losing all or a substantial portion of the principal in return for above-market rate current income, the volatility of the reference asset upon which total return of the investment depends will be an important factor in determining whether it is suitable for a customer. For example, structured product ABC with a highly volatile reference asset may pay an interest rate of 40 percent to account for the risk, whereas structured product XYZ with a less volatile reference asset may only pay an interest rate of 20 percent. Despite the higher interest rate of structured product ABC, the risk of principal owing to the increased volatility of the reference asset may make structured product ABC less suitable for an investor than structured product XYZ notwithstanding its lower interest rate.

#### **4. Supervision and Supervisory Control System**

Under Rule 3010, members must establish written supervisory procedures that are reasonably designed to ensure that sales of structured products comply with all applicable securities laws, and SEC and NASD rules. Members must ensure that their written procedures for supervisory and compliance personnel include that (1) reasonable-basis suitability is completed before products are offered for sale; (2) associated persons perform appropriate customer-specific suitability analysis; (3) the firm has procedures to determine accounts eligible to purchase structured products; and (4) all promotional materials are accurate and balanced. In addition, members are reminded that their written supervisory control system required under Rule 3012 requires members to test and verify that their written supervisory procedures are reasonably designed to ensure adequate compliance with all applicable securities laws, and SEC and NASD rules.

Firms also should consider the best practices for vetting new products discussed in *NTM 05-26*. These best practices include having compliance and legal personnel involved in the initial product assessment and having supervisory personnel participate in the product review process.

#### **5. Training**

Members must train registered personnel about the characteristics, risks, and rewards of each structured product before they allow registered persons to sell that product to investors. In connection with such training, members should train registered persons about the factors that would make such products either suitable or unsuitable for certain investors. Members' focus on training should not be limited to representatives selling structured products; members also should provide appropriate training to supervisors of registered persons selling structured products.

Training for all persons should emphasize that, due to the unique nature of these products, many investors, especially retail investors, may not understand the features of the product, and may not fully appreciate the associated risks of investing in them. Moreover, in light of the fact that investors may be turning to these products as an alternative to traditional equity and fixed income investments, it is crucial for registered persons to have a full and balanced understanding regarding both the risks and the rewards of these products.

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## Endnotes

- 1 There is no standardized definition of a structured product in the federal securities laws. SEC Rule 434 (Prospectus Delivery Requirements in Firm Commitment Underwritten Offerings of Securities for Cash) defines structured securities as “securities whose cash flow characteristics depend upon one or more indices or that have embedded forwards or options or securities where an investor’s investment return and the issuer’s payment obligations are contingent on, or highly sensitive to, changes in the value of underlying assets, indices, interest rates or cash flows.” The Pacific Exchange defines structured products as “products that are derived from and/or based on a single security or securities, a basket of stocks, an index, a commodity, debt issuance and/or a foreign currency, among other things” and would include “index and equity linked notes, term notes and units generally consisting of a contract to purchase equity and/or debt securities at a specified time.” Securities Exchange Act Rel. No. 51094 (Jan. 28, 2005), 70 FR 6489 (Feb. 7, 2005) (Order Approving Proposed Rule Change and Amendment No. 1 and 2 Thereto by the Pacific Exchange, Inc. and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 Thereto Relating to a Proposed Listing Fee Schedule for Structured Products). The NYSE defines a structured product as “a security, which is based on the value of another security.” Securities Exchange Act Rel. No. 42746 (May 2, 2000), 65 FR 30171 n.7 (May 10, 2000) (Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto Relating to the NYSE’s Allocation Policy and Procedures).
  - 2 NASD staff has observed structured products paying interest rates as high as 40 percent per year.
  - 3 See, e.g., *Department of Enforcement v. Hornblower & Weeks*, 2004 NASD Discip. LEXIS 27 (respondent could not cure defects in disclosure by providing more detail and further disclosure in the same package or by answering questions); *DOE v. Ryan Mark Reynolds*, 2001 NASD Discip LEXIS 17 (“The SEC has held that, in the enforcement context, a registered representative may be found in violation of the NASD’s rules and the federal securities laws for failure to fully disclose risks to customers even though such risks may have been discussed in a prospectus delivered to customers.”); *Department of Enforcement v. Pacific On-Line Trading & Securities*, 2002 NASD Discip. LEXIS 19 (finding that the subsequent dissemination of disclosure information does not cure earlier misleading disclosures).
- Members also should consider whether their disclosures concerning structured products provide a basis for liability under sections 12(a)(2) and 17(a) of the Securities Act of 1933 (Securities Act) or section 10(b)(5) of the Securities Exchange Act of 1934 (Exchange Act). See *In the Matter of Robert A. Foster*, 51 SEC 1211 (1994) (notwithstanding distribution of the prospectuses, party is liable under Section 10(b)(5) of the Exchange Act and Section 17(a) of the Securities Act for making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made not misleading).

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- 4 A nearly identical requirement also exists with respect to listings of “Other Securities” pursuant to Rule 4420(f). See Rule 4420(f)(3).
  - 5 See, e.g., AMEX Rule 107A, PHLX Rule 803(f), NSX Section 1.3, CHX Rule 13.
  - 6 For structured products that are listed on an exchange (or traded on NASDAQ), the applicable listing standards typically require the exchange (or NASDAQ) to issue an information circular regarding compliance responsibilities, including suitability and account approval). See *supra* note 5. Member firms should review these information circulars to ensure that they adhere to the appropriate standards.

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# Special Notice to Members

SEPTEMBER 2005

## SUGGESTED ROUTING

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

## KEY TOPICS

Rule 6740  
SEC Rule 15c2-11  
SEC Rule 15c3-3

## GUIDANCE

### Important Information Regarding the Suspension of Trading in the Securities of Bancorp International Group, Inc. (BCIT.PK)

#### Executive Summary

NASD is issuing this *Special Notice to Members (Special NTM)* to advise member firms and other interested parties of certain actions and issues relating to the trading of securities of Bancorp International Group, Inc. This *Special NTM* also is intended to remind members of their responsibilities with respect to Securities and Exchange Commission (SEC) Rule 15c2-11 and NASD Rule 6740.

#### Questions/Further Information

Questions regarding this *Special NTM* may be directed to Susan DeMando, Associate Vice President, Financial Operations, Member Regulation, at (202) 728-8411.

#### Discussion

On August 31, 2005, the SEC temporarily suspended trading in the securities of Bancorp International Group, Inc. (Pink Sheets—Symbol: BCIT) pursuant to Section 12(k) of the Securities Exchange Act of 1934. In its Release, the SEC stated that it temporarily suspended trading in the securities of BCIT because it appears that all of the securities currently trading in the name of Bancorp International Group, Inc. and purportedly signed by Thomas Megas as President and M. Puig as Secretary are counterfeit. The SEC trading suspension began on August 31, 2005, at 9:30 a.m. E.T., and terminates on September 14, 2005, at 11:59 p.m. E.T.<sup>1</sup> Furthermore, The Depository Trust Company (DTC) issued a special alert regarding BCIT on August 16, 2005, which included a notice that DTC had discontinued all services relating to BCIT, other than custody services, as of August 11, 2005.

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Although trading will no longer be suspended, members should exercise great caution when executing customer or proprietary trades, including member-to-member transactions for the purposes of resolving open fails, until such time as members can be assured that the shares in circulation were part of a bona-fide issuance by the issuer.

Members are reminded that, pursuant to SEC Rule 15c2-11 and NASD Rule 6740, no quotation may be entered unless and until a member has complied with all of the requirements of the rules, including SEC Rule 15c2-11(a)(5). SEC Rule 15c2-11(a) requires, among other things, that based on a member's review of the issuer information specified therein, a member must have a reasonable basis under the circumstances to believe that the issuer information is accurate in all material respects and the sources of such information are reliable. Until the questions surrounding the information and documents of Bancorp International Group, Inc. are resolved, member firms should be aware that, in the context of Form 211 filings, NASD has significant concerns as to whether a member would have a reasonable basis to believe the accuracy or reliability of information relating to Bancorp International Group, Inc.

Based on the SEC Release and other information released by the company, member firms should consider the following with regard to BCIT shares:

- 1) Deposit of physical shares by a customer should be scrutinized for authenticity and, at a minimum, should be checked against the outstanding shares recognized by the transfer agent. Firms are reminded of their obligation to "know your customer" under NASD Rules 2110 and 2310 and Section 326 of the USA PATRIOT Act.
- 2) Any purchases should be undertaken with the knowledge that settlement is uncertain given the fact that the National Securities Clearing Corporation (NSCC) will not net obligations through the Continuous Net Settlement (CNS) system and that such trades will need to be settled broker-to-broker.
- 3) Any sales should be completed only to the extent that delivery can be made.
- 4) Member firms are reminded of their responsibilities to comply with the sales practices requirements under SEC Rules 15g-1 through 15g-9.

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Additionally, NASD has confirmed the position of the SEC staff relative to the application of SEC Rule 15c3-3(m) Completion of Sell Orders on Behalf of Customers and SEC Rule 15c3-3(d)(2) Requirement to Reduce Securities to Possession or Control. SEC Rule 15c3-3 requires member organizations to take prompt steps to buy-in securities to obtain physical possession or control under paragraph (d) (2) and to complete customer sell orders under paragraph (m). Such buy-in requirements related to BCIT are temporarily suspended until further notice.

Similarly, the NYSE has issued Information Memorandum 05-67 stating that buy-in requirements pursuant to NYSE Rules 282 Mandatory Buy-In and 284 Procedures for Defaulted contracts, if applicable, are also suspended until further notice.

## Endnote

- 1 See Securities Exchange Act Release No. 52363 (August 31, 2005).

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# Notice to Members

SEPTEMBER 2005

## SUGGESTED ROUTING

Legal and Compliance  
Operations Managers  
Senior Management

## KEY TOPICS

NASD By-Laws  
Trading Activity Fee

## REQUEST FOR COMMENT

### Trading Activity Fee

NASD Solicits Member Comment on Possible  
Realignment of the Trading Activity Fee;  
Comment Period Expires October 31, 2005

### Executive Summary

NASD is issuing this *Notice to Members* to solicit comments from members on possible changes to the Trading Activity Fee (TAF). In 2003, the Securities and Exchange Commission (SEC or Commission) approved revisions to NASD By-Laws, eliminating the former regulatory fee assessed upon NASD members and instituting a new transaction-based TAF.<sup>1</sup> The TAF, along with other revenue components, funds NASD's member regulatory activities. Recently, questions have arisen regarding whether the TAF should be modified to ensure that NASD's member regulatory fees are distributed appropriately among the member firms that drive member regulatory costs. NASD seeks input from the membership on the impact of any potential realignment of the fee. Specifically, NASD is seeking feedback on the potential impact on member firms if the TAF were restructured to assess any customer transaction in a covered security, regardless of whether an NASD member firm is on the buy or sell side of the transaction, and all proprietary transactions not effected in a firm's capacity as a market maker. NASD is committed to seeking additional member input as it refines its analysis, and is committed to ensuring that any realignment be revenue neutral to NASD. Therefore, in conjunction with the proposed realignment, NASD will re-analyze the funding required for its member regulatory program in order to determine any further rate reduction as previously committed to reduce the percentage that the TAF contributes to the overall funding structure.

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## Questions/Further Information

Questions concerning this *Notice* should be directed to NASD Finance at (240) 386-5397; or the Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8071.

## Request for Comment

NASD encourages all members to comment on the proposed changes to the TAF. Comments must be received by **October 31, 2005**. Members and other interested parties can submit their comments using the following methods:

- ▶ **Mail** Attachment A to the address below;
- ▶ **Mail** comments in hard copy to the address below; or
- ▶ **E-mail** comments to [pubcom@nasd.com](mailto:pubcom@nasd.com).

To help NASD process and review comments more efficiently, persons commenting on this proposal should use only one method; however, if a person wishes to submit comments using both Attachment A and one of the other methods listed above, he or she should indicate that in the submissions.

Attachment A is intended to offer a convenient way to participate in the comment process. It includes several specific questions that should be addressed, regardless of what method of comment is submitted. Furthermore, because the specific questions in Attachment A do not address all potential issues raised in this *Notice*, NASD encourages members using Attachment A to review the entire *Notice* and provide any additional written comments in Section 3 of Attachment A.

Attachment A and/or comments sent by hard copy should be mailed to:

Barbara Z. Sweeney  
Office of the Corporate Secretary  
NASD  
1735 K Street, NW  
Washington, DC 20006-1506

**Important Notes:** The only comments that will be considered are those submitted pursuant to the methods described above. All comments received in response to this *Notice* will be made available to the public on the NASD Web site. Generally, comments will be posted on the NASD Web Site one week after the end of the comment period.<sup>2</sup>

Before becoming effective, a proposed rule change must be authorized for filing with the SEC by the NASD Board, and then must be approved by the SEC, following publication for public comment in the *Federal Register*.<sup>3</sup>

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## Background and Discussion

In 2003, the SEC approved NASD's new member regulatory pricing structure, which: (1) eliminated the NASDAQ-based regulatory fee; (2) instituted a new transaction-based TAF applied across a broader range of equity, options and securities futures transactions; (3) increased the rates assessed to member firms under the Personnel Assessment (PA); and (4) implemented a simplified three-tiered flat rate for the Gross Income Assessment (GIA), whereby deductions and exclusions were eliminated.<sup>4</sup> NASD uses fees collected under the member regulatory pricing structure to fund member regulatory activities, including the regulation of members through examination, processing of membership applications, financial monitoring, policymaking, rulemaking, and interpretive and enforcement activities. The changes to the regulatory pricing structure were designed to be revenue neutral to NASD and were intended to align NASD's regulatory fees with its regulatory functions, efforts and costs. Additionally, to minimize the impact on member firms, the restructuring of the fees was to be phased-in over a three-year period. As of 2005, the three-year phase-in for the GIA and PA are complete. Revenues generated from these fees have met expectations. One year of TAF rate reductions remains to be implemented, and separately, questions have been raised about whether restructuring of the scope of the TAF would better align that fee with NASD's costs.

## Realignment of the Trading Activity Fee

NASD is seeking input from the membership on the fairness and feasibility of a potential TAF realignment. The primary issue that has been identified is that the TAF, a fee with the specific purpose of funding NASD's member regulatory efforts, is currently assessed for covered equity securities upon a class of transactions where there is no public customer involved in the transaction (*i.e.*, a market maker trading as principal with another broker-dealer), and not assessed on certain transactions that have direct customer involvement.<sup>5</sup> As a result, TAF assessments are concentrated to a certain extent in a small number of member firms or business lines within member firms that may not be significant drivers of member regulatory expenses. Further, for covered equity securities, registered NASDAQ market makers have identified what they believe to be certain competitive disparities resulting from assessing the fee on market maker transactions occurring in the NASDAQ marketplace, but exempting transactions that occur on an exchange in a floor capacity. Presently, NASD provides an exemption for floor-based activity that occurs on an exchange, because these transactions do not result directly in an NASD registration requirement (many specialists and other floor traders are NASD-registered for other reasons). NASDAQ market makers, however, do not get the benefit of this TAF exemption.

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As noted, NASD is analyzing whether to assess the TAF on all buy and sell transactions where a member trades as principal or riskless principal with a customer or acts as agent on behalf of a customer; and on all principal transactions with another broker-dealer not effected in a member's capacity as a registered market maker, exempting trades between a market maker in its market making capacity with another broker-dealer. In short, the contemplated changes to the scope of the TAF would spread the fee over a wider group of NASD members, re-distributing the fee in part from firms or business lines within firms that execute large numbers of transactions to firms or business lines within firms that deal directly with customers or trade proprietarily. As NASD proceeds with its analysis, it seeks member comment on whether a realignment is equitable, whether the proposed changes in scope would achieve the proposed re-distribution and whether such changes would require substantial re-programming of member firm systems.

### Rate Reduction for the Trading Activity Fee

In order to ensure a member regulatory pricing structure that is revenue neutral to NASD, NASD management committed to a periodic analysis of rates, volumes and regulatory responsibilities to ensure adequate funding levels for its member regulatory programs. Further, as part of the three-year phase-in plan included in the proposed pricing structure, NASD stated its intent to reduce the percentage that the TAF contributes to the overall funding structure in 2004 and again in 2005 by increasing the percentage funded by the PA. In conjunction with the proposed realignment, NASD will re-analyze revenues and expenses to determine the appropriate rate reduction needed in order to reduce the share of the member regulatory program funded by transaction activity.

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## Endnotes

- 1 Securities Exchange Act Rel. No. 47946 (May 30, 2003) , 68 FR 34021 (June 6, 2003) (approving SR-NASD-2002-148).
- 2 See *Notice to Members 03-73* (November 2003) (NASD Announces Online Availability of Comments). Personal identifying information, such as names or e-mail addresses, will not be edited from submissions. Persons commenting on this proposal should submit only information that they wish to make publicly available.
- 3 Section 19 of the Securities Exchange Act of 1934 (Exchange Act) permits certain limited types of proposed rule changes to take effect upon filing with the SEC. The SEC has the authority to summarily abrogate these types of rule changes within 60 days of filing. See Exchange Act Section 19 and rules thereunder.
- 4 See Securities Exchange Act Rel. No. 47946 (May 30, 2003), 68 FR 34021 (June 6, 2003) (approving SR-NASD-2002-148) and Securities Exchange Act Rel. No. 47106 (Dec. 30, 2002), 68 FR 819 (Jan. 7, 2003) (approving SR-NASD-2002-99).
- 5 See *Notice to Members 02-63*, Question 14, which states that riskless principal transactions reported correctly will be viewed as one transaction for purposes of assessing the TAF. Because the TAF is applied in a manner consistent with Section 31 of the Exchange Act and Rule 31 thereunder, this results in the first leg of a riskless principal transaction being assessed while the second leg of the transaction with the customer being exempt from the fee.

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## ATTACHMENT A

### Proposed Change to TAF and Related Financial Impact

1. Do you support assessing the TAF on all buy and sell transactions effected with a public customer, as principal, riskless principal or agent; and on all proprietary transactions not effected in a member's capacity as a market maker?

Yes       No

Please provide a written statement addressing your firm's position below.

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2. Will such a proposed change require significant programming efforts on your firm's behalf?

Yes       No

Please explain your answer below and include an estimate of the necessary time frame required to implement such a change.

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3. Please comment below on any additional issues your firm would like to address regarding this *Notice*.

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Contact Information

Name: 

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Firm: 

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Clearing #: 

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Address: 

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City/State/Zip: 

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Phone: 

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E-Mail: 

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# Special Notice to Members

SEPTEMBER 26, 2005

## SUGGESTED ROUTING

Executive Representatives  
Legal & Compliance  
Operations  
Registration  
Senior Management

## KEY TOPICS

District Elections

## INFORMATIONAL

### District Elections

Nominees for District Committee and District Nominating Committee

#### Executive Summary

The purpose of this *Special Notice to Members* is to announce the nominees for the District Committees and the District Nominating Committees. The individuals identified in this *Special Notice to Members* (see Attachment A) have been nominated for three-year terms<sup>1</sup> on the District Committees and for one-year terms on the District Nominating Committees starting in January 2006. These nominees will be considered duly elected on **October 11, 2005**, unless an election is contested in accordance with the procedures summarized below.

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

#### Contested Election Procedures

If an officer, director or employee of an NASD member is interested in being considered as an additional candidate, he/she must indicate his/her interest to the District Director by **October 10, 2005**. If an additional candidate or candidates come forward by that date, the Corporate Secretary 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 with signatures from at least 10 percent of Executive Representatives of members eligible to vote in the District.

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Please be advised that, due to Hurricane Katrina, NASD's District 5 office in New Orleans is temporarily closed. Any individuals wishing to contest the District Committee or District Nominating Committee elections for District 5 may do so by contacting:

Virginia F. M. Jans  
District Director, District 6  
12801 N. Central Expressway, Suite 1050  
Dallas, TX 75243  
(972) 701-8554

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

### Questions/Further Information

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

### Endnote

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

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## ATTACHMENT A

### District Committee and District Nominating Committee Nominees

#### District 1

##### **Elisabeth P. Owens, Regional Director**

525 Market Street, Suite 300, San Francisco, CA 94105-2711 (415) 882-1200

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

#### 2005 District Nominating Committee Chair

**L. Robert McKulla**                      Wachovia Securities, LLC                      Walnut Creek, CA

#### District 1 Nominees

**Christopher D. Charles**                      Wulff, Hansen & Company                      San Francisco, CA

**Kevin T. Kitchin**                      Wachovia Securities, LLC                      San Francisco, CA

**Edward M. Stephens**                      FSC Securities Corporation                      Santa Rosa, CA

#### District 1 Nominating Committee Nominees

**S. Katherine Campbell**                      Protected Investors of America                      Berkeley, CA

**Nicholas C. Cochran**                      American Investors Company                      San Ramon, CA

**Gerard P. Gloisten**                      GBS Financial Corporation                      Santa Rosa, CA

**Robert A. Muh**                      Sutter Securities, Inc.                      San Francisco, CA

**Francis X. Roche, II**                      RBC Dain Rauscher, Inc.                      San Francisco, CA

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## District Committee and District Nominating Committee Nominees

### District 2

#### Lani M. Sen Woltmann, District Director

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

(213) 229-2300

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

### 2005 District Nominating Committee Chair

**Richard B. Gunter**                      Wedbush Morgan Securities                      Los Angeles, CA

### District 2 Nominees

**Steven K. Klein**                      Farmers Financial Solutions, LLC                      Simi Valley, CA

**Ismael Manzanares, Jr.**                      WFP Securities                      San Diego, CA

**Gary A. Martino**                      brokersXpress, LLC                      Thousand Oaks, CA

### District 2 Nominating Committee Nominees

**M. LaRae Bakerink**                      WBB Securities, LLC                      San Diego, CA

**James E. Biddle**                      The Securities Center, Inc.                      Chula Vista, CA

**Don Dalis**                      UBS Financial Services, Inc.                      Newport Beach, CA

**Barbara A. Kelley**                      Pacific Global Fund Distributors, Inc.                      Glendale, CA

**Joel H. Ravitz**                      Quincy Cass Associates                      Los Angeles, CA

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## District Committee and District Nominating Committee Nominees

### District 3

**Joseph M. McCarthy, District Director**

370 17th Street, Suite 2900  
Denver, CO 80202-5629  
(303) 446-3100

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

**James G. Dawson, District Director**

Two Union Square, 601 Union Street  
Suite 1616, Seattle, WA 98101-2327  
(206) 624-0790

*Alaska, Idaho, Montana, Oregon and  
Washington*

### 2005 District Nominating Committee Chair

**Kathryn A. Supko**

Northwestern Mutual  
Investment Services, LLC

Boise, ID

### District 3 Nominees

**David Director**

McAdams Wright Ragen, Inc.

Seattle, WA

**Daniel Lind**

Wells Fargo Investments

Tucson, AZ

**Stephen Youhn**

M Holdings Securities, Inc.

Portland, OR

### District 3 Nominating Committee Nominees

**Gregory R. Anderson**

MCL Financial Group, Inc.

Denver, CO

**L. Hoyt DeMers**

Wells Fargo Investments, LLC

Seattle, WA

**Bridget Gaughan**

AIG Financial Advisors, Inc.

Phoenix, AZ

**John Goodwin**

Goodwin Browning & Luna Securities, Inc.

Albuquerque, NM

**C. Fredrick Roed**

McAdams Wright Ragen, Inc.

Bellevue, WA

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## District Committee and District Nominating Committee Nominees

### District 4

#### **Thomas D. Clough, District Director**

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

(816) 421-5700

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

### 2005 District Nominating Committee Chair

**Pamela R. Ziermann**      Dougherty & Company LLC      Minneapolis, MN

### District 4 Nominees

**Steven F. McWhorter**      Securities America, Inc.      Omaha, NE

**Arthur S. Montgomery<sup>1</sup>**      Walnut Street Securities, Inc.      St. Louis, MO  
(One-Year Term)

**Brian D. Murphy**      Woodbury Financial Services, Inc.      Woodbury, MN

**Andrew C. Small**      Scottrade, Inc.      St. Louis, MO

### District 4 Nominating Committee Nominees

**Deborah M. Castiglioni**      Cutter & Company, Inc      Chesterfield, MO

**Robert M. Chambers**      A.G. Edwards & Sons, Inc.      West Des Moines, IA

**Frank H. Kirk**      Wachovia Securities, LLC      Kansas City, MO

**Kevin P. Maas**      PrimeVest Financial Services, Inc.      St. Cloud, MN

**Jeffrey A. Schuh**      Residential Funding Securities Corp.      Minneapolis, MN

<sup>1</sup> Mr. Montgomery has been appointed to serve the remaining one-year term of Richard M. Hurwitz, who has resigned from the District Committee.

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## District Committee and District Nominating Committee Nominees

### District 5

#### Warren A. Butler, Jr., Regional Director

Alabama, Arkansas, Louisiana, Mississippi, Oklahoma and Tennessee

**Note:** Please be advised that, due to Hurricane Katrina, NASD's District 5 office in New Orleans is temporarily closed. Any individuals wishing to contest the District Committee or District Nominating Committee elections for District 5 may do so by contacting:

#### Virginia F. M. Jans

District Director, District 6  
12801 N. Central Expressway, Suite 1050  
Dallas, TX 75243  
(972) 701-8554

### 2005 District Nominating Committee Chair

<b>David A. Knight</b>	Stephens Inc.	Little Rock, AR
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### District 5 Nominees

<b>Curtis F. Bradbury, Jr.</b>	Stephens Inc.	Little Rock, AR
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<b>William A. Geary</b>	Morgan Keegan & Company, Inc.	Jackson, MS
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<b>Jefferson G. Parker</b>	Howard Weil Incorporated	New Orleans, LA
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### District 5 Nominating Committee Nominees

<b>John J. Dardis</b>	Jack Dardis & Associates, Ltd.	Metairie, LA
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<b>Carolyn R. May</b>	Simmons First Investment Group, Inc.	Little Rock, AR
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<b>Douglas W. McQueen</b>	The Baker Group, LP	Oklahoma City, OK
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<b>LeRoy H. Paris, II</b>	InvestLinc Securities, L.L.C.	Jackson, MS
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<b>David W. Wiley, III</b>	Wiley Bros., Aintree Capital, L.L.C.	Nashville, TN
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## District Committee and District Nominating Committee Nominees

### District 6

#### Virginia F. M. Jans, District Director

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

(972) 701-8554

Texas

### 2005 District Nominating Committee Chair

<b>William B. Madden</b>	Madden Securities Corporation	Dallas, TX
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### District 6 Nominees

<b>Alan K. Goldfarb</b>	Oakbrook Financial Group, LLC	Dallas, TX
<b>Brent T. Johnson<sup>2</sup></b> (One-Year Term)	Multi-Financial Securities Corporation	Houston, TX
<b>John Christopher Melton</b>	Coastal Securities, L.P.	Houston, TX
<b>Ralph E. Poppell</b>	Stanford Group Company	Houston, TX

### District 6 Nominating Committee Nominees

<b>William D. Felder</b>	Southwest Securities, Inc.	Dallas, TX
<b>Sennett Kirk, III</b>	Kirk Securities Corporation	Denton, TX
<b>Gary V. Murray</b>	Murray Traff Securities	Tyler, TX
<b>John R. Muschalek</b>	First Southwest Company	Dallas, TX
<b>V. Keith Roberts</b>	Stanford Group Company	Houston, TX

<sup>2</sup> Mr. Johnson has been nominated to serve the remaining one-year term of Darryl W. Traweek, who has resigned from the District Committee. The District Committee appointed Sennett Kirk, III to fill this vacancy until Mr. Johnson's term commences in January 2006.

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## District Committee and District Nominating Committee Nominees

### District 7

**Daniel J. Stefek, District Director**

One Securities Centre, Suite 500  
3490 Piedmont Road, NE, Atlanta, GA 30305  
(404) 239-6100

*Georgia, North Carolina and  
South Carolina*

**Mitchell C. Atkins, District Director**

2500 N. Military Trail, Suite 302  
Boca Raton, FL 33431  
(561) 443-8000

*Florida, Puerto Rico, the Canal Zone and  
the Virgin Islands*

### 2005 District Nominating Committee Chair

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

### District 7 Nominees

<b>Douglas R. Aldridge</b>	H & R Block Financial Advisors, Inc.	Dunwoody, GA
<b>Valerie G. Brown</b>	ING Advisors Network	Atlanta, GA
<b>Dennis W. Zank</b>	Raymond James & Associates	St. Petersburg, FL

### District 7 Nominating Committee Nominees

<b>Richard G. Averitt, III</b>	Raymond James Financial Services, Inc.	St. Petersburg, FL
<b>Joseph B. Gruber</b>	FSC Securities Corporation	Atlanta, GA
<b>Dennis S. Kaminski</b>	Mutual Service Corporation	West Palm Beach, FL
<b>James A. Klotz</b>	FMSBonds, Inc.	North Miami Beach, FL
<b>Roark A. Young</b>	Young, Stovall & Company	Miami, FL

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## District Committee and District Nominating Committee Nominees

### District 8

#### **Carlotta A. Romano, District Director**

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

(312) 899-4400

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

### 2005 District Nominating Committee Chair

<b>Bruce J. Young</b>	Mesirow Financial, Inc.	Chicago, IL
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### District 8 Nominees

<b>Stephen F. Anderson</b>	Waterstone Financial Group	Itasca, IL
<b>Eric A. Bederman</b>	Bernardi Securities, Inc.	Chicago, IL
<b>Mari Buechner<sup>3</sup></b> (One-Year Term)	Coordinated Capital Securities Inc.	Madison, WI
<b>Barbara A. Turner</b>	The O.N. Equity Sales Company	Cincinnati, OH

### District 8 Nominating Committee Nominees

<b>George E. Bates</b>	Bates Securities, Inc.	Rockford, IL
<b>Bernard A. Breton</b>	Carillon Investments, Inc.	Cincinnati, OH
<b>Carol P. Foley</b>	Podesta & Company	Chicago, IL
<b>Jill R. Powers</b>	Oberlin Financial Corporation	Bryan, OH
<b>James J. Roth</b>	Pershing LLC	Oak Brook, IL

<sup>3</sup> Ms. Buechner has been nominated to serve the remaining one-year term of Lora Rosenbaum, who has resigned from the District Committee.

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## District Committee and District Nominating Committee Nominees

### District 9

**Gary K. Liebowitz, District Director**

581 Main Street, 7th Floor  
Woodbridge, NJ 07095  
(732) 596-2000

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

**John P. Nocella, District Director**

Eleven Penn Center, 1835 Market Street  
19th Floor, Philadelphia, PA 19103  
(215) 665-1180

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

### 2005 District Nominating Committee Chair

**J. Lee Keiger, III**                      Davenport & Company, LLC                      Richmond, VA

### District 9 Nominees

**Michael T. Corrao<sup>4</sup>**                      Knight Equity Markets LP                      Jersey City, NJ  
(Two-Year Term)

**Wayne F. Holly<sup>5</sup>**                      Sage, Rutty & Co., Inc.                      Rochester, NY  
(One-Year Term)

**John M. Ivan**                      Janney Montgomery Scott LLC                      Philadelphia, PA

**Brand F. Meyer**                      Wachovia Securities, LLC                      Richmond, VA

**Thomas T. Wallace**                      Johnston, Lemon & Co. Incorporated                      Washington, DC

### District 9 Nominating Committee Nominees

**Richard Grobman**                      Oppenheimer & Co. Inc.                      Philadelphia, PA

**W. Dean Karrash**                      Burke, Lawton, Brewer & Burke                      Spring House, PA

**Gregg A. Kidd**                      Pinnacle Investments Inc.                      East Syracuse, NY

**Michael S. Mortensen**                      PNC Investments                      Pittsburgh, PA

**Michael B. Row**                      Pershing, LLC                      Jersey City, NJ

4 Mr. Corrao has been nominated to serve the remaining two-year term of Dorothy G. Sanders, who has resigned from the District Committee.

5 Mr. Holly has been nominated to serve the remaining one-year term of Barry M. Cash, who has resigned from the District Committee.

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## District Committee and District Nominating Committee Nominees

### District 10

#### Hans Reich, Regional Director

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)*

### 2005 District Nominating Committee Chair

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

### District 10 Nominees

**Barry M. Cash**                              Citigroup Global Markets, Inc.                      New York, NY

**Joseph DeBellis**                              Sanford C. Bernstein & Co., LLC                      New York, NY

**Robyn Jeffrey**                                  Oppenheimer & Co., Inc.                      New York, NY

**Allen Meyer**                                      Credit Suisse First Boston LLC                      New York, NY

### District 10 Nominating Committee Nominees

**Margaret M. Caffrey**                              Schonfeld & Company, LLC                      Jericho, NY

**Jennifer A. Connors**                              Lehman Brothers Inc.                      New York, NY

**Raymond C. Holland, Jr.**                              Triad Securities Corp.                      New York, NY

**Richard J. Paley**                                  Carey Financial Corporation                      New York, NY

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

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## District Committee and District Nominating Committee Nominees

### District 11

#### Frederick F. McDonald, District Director

99 High Street, Suite 900, Boston, MA 02110

(617) 532-3400

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

### 2005 District Nominating Committee Chair

**John I. Fitzgerald**                      Leerink Swann & Company                      Boston, MA

### District 11 Nominees

**Martin W. Courage**                      Bank of America Investment Services                      Boston, MA

**Todd A. O'Connor**                      Investors Securities Services LLC                      Boston, MA

**Robert J. Reilly**                      Piper Jaffray & Co.                      Boston, MA

### District 11 Nominating Committee Nominees

**Michael C. Braun**                      Moors & Cabot, Inc.                      Boston, MA

**Andrew F. Detwiler**                      Virtua Research, an Affiliate  
of Vandham Securities Corp.                      Boston, MA

**Mark R. Hansen**                      State Street Global Markets, LLC                      Boston, MA

**Lee G. Kuckro**                      Advest, Inc.                      Hartford, CT

**Wilson G. Saville**                      Barrett & Company                      Providence, RI

# Notice to Members

SEPTEMBER 2005

## SUGGESTED ROUTING

Legal & Compliance  
Operations

## KEY TOPICS

Rule 3360  
Short Interest Reporting  
Short Sales

## REQUEST FOR COMMENT

### Short Interest Reporting

NASD Seeks Comment on Increasing the Frequency of Short Interest Reporting; **Comment Period Expires November 28, 2005**

#### Executive Summary

NASD is issuing this *Notice to Members* to solicit comments from members and other interested parties on proposed changes to Rule 3360, Short Interest Reporting. Currently, Rule 3360(a) requires members to maintain a record of total short positions in all customer and proprietary firm accounts in NASDAQ securities—and listed securities if not reported to another self-regulatory organization (SRO)—and requires members to report such information to NASD on a monthly basis. NASD is seeking comment on a proposed change to Rule 3360 that would require members to record and report total short position information to NASD twice per month. NASD believes that increasing the frequency of short interest reporting requirements will provide additional and more timely information related to short selling to investors and other interested parties.

#### Action Requested

NASD encourages all interested parties to comment on this proposal.

Comments must be received by **November 28, 2005**. Members and interested persons can submit their comments using the following methods:

- ◆ **Mail** Attachment A (Request for Comment Form) along with written comments;
- ◆ **Mail** comments in hard copy to the address on the following page; or
- ◆ **Email** written comments to [pubcom@nasd.com](mailto:pubcom@nasd.com).

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To help NASD process and review comments more efficiently, persons commenting on this proposal should use only one method; however, if a person wishes to submit comments using both Attachment A and one of the other methods listed above, he or she should indicate that in the submissions. Attachment A and/or comments sent by hard copy should be mailed to:

Barbara Z. Sweeney  
Office of the Corporate Secretary  
NASD  
1735 K Street, NW  
Washington, D.C. 20006-1506

**Important Notes:** The only comments that will be considered are those submitted pursuant to the methods described above. All comments received in response to this *Notice* will be made available to the public on the NASD Web site. Generally, comments will be posted on the NASD Web site one week after the end of the comment period.<sup>1</sup>

Before becoming effective, a proposed rule change must be authorized for filing with the Securities and Exchange Commission (SEC) by the NASD Board, and then must be approved by the SEC, following publication for public comment in the *Federal Register*.<sup>2</sup>

## Questions/Further Information

As noted above, hard copy comments should be mailed to Barbara Z. Sweeney. Questions concerning this *Notice* may be directed to the Legal Section, Market Regulation at (240) 386-5126; or Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8071.

## Background and Discussion

Currently, Rule 3360(a) requires members to maintain a record of total short positions in all customer<sup>3</sup> and proprietary firm accounts in NASDAQ securities (and listed securities if not reported to another SRO) and requires members to report such information to NASD on a monthly basis.<sup>4</sup> Rule 3360(b) provides that short positions required to be reported under the rule are those resulting from short sales as the term is defined in SEC Rule 200 of Regulation SHO,<sup>5</sup> with limited exceptions. The aggregate short interest data is, in turn, made publicly available. Investors and other interested parties can obtain short interest information from NASDAQ's Web site, other commercial Web sites, and certain newspapers.

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NASD is soliciting comment on a proposed change to Rule 3360 to require members to record and report such short position information to NASD twice per month. NASD would then make the short interest information publicly available twice per month. NASD is analyzing whether increasing the frequency of the current monthly short interest reporting requirements may provide additional pertinent information to investors and other interested parties. In particular, NASD is soliciting comment on whether disseminating short interest information on a more frequent basis would be of value to investors and other interested parties. NASD also is soliciting comment on what technology and system changes would be required to implement this proposal, as well as the burdens and costs associated with increasing the frequency of short interest reporting.

## Endnotes

1. See *Notice to Members 03-73* (November 2003) (NASD Announces Online Availability of Comments). Personal identifying information, such as names or email addresses, will not be edited from submissions. Submit only information that you wish to make publicly available.
2. Section 19 of the Securities Exchange Act of 1934 (Exchange Act) permits certain limited types of proposed rule changes to take effect upon filing with the SEC. The SEC has the authority to summarily abrogate these types of rule changes within 60 days of filing. See Exchange Act Section 19 and rules thereunder.
3. Short sale positions held for other broker-dealers that fall within the definition of short position provided in Rule 3360(b) must be reported under Rule 3360(a), unless these positions already are reported to an SRO. See *Notice to Members 03-08* (January 2003).
4. Non-self-clearing broker-dealers generally are considered to have satisfied their reporting requirement by making appropriate arrangements with their respective clearing organizations. See *Notice to Members 03-08*.
5. SEC Rule 200 of Regulation SHO provides, in part, the following: "The term 'short sale' shall mean any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller."

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## ATTACHMENT A

### Request for Comment Form

We have provided below a form that members and other interested parties may use in addition to or in lieu of written comments. This form is intended to offer a convenient way to participate in the comment process, but does not cover all aspects of the proposal described in the *Notice*. We therefore encourage members and other interested parties to review the entire *Notice* and provide written comments, as necessary.

### Instructions

Comments must be received by November 28, 2005. Members and interested persons can submit their comments using the following methods:

- ◆ **Mail** Attachment A (Request for Comment Form) along with written comments;
- ◆ **Mail** comments in hard copy to the address below; or
- ◆ **Email** written comments to [pubcom@nasd.com](mailto:pubcom@nasd.com).

To help NASD process and review comments more efficiently, persons commenting on this proposal should use only one method; however, if a person wishes to submit comments using both Attachment A and one of the other methods listed above, he or she should indicate that in the submissions. Attachment A and/or comments sent by hard copy should be mailed to:

Barbara Z. Sweeney  
Office of the Corporate Secretary  
NASD  
1735 K Street, N.W.  
Washington, D.C. 20006-1506

**Important Notes:** The only comments that will be considered are those submitted pursuant to the methods described above. All comments received in response to this *Notice* will be made available to the public on the NASD Web site. Generally, comments will be posted on the NASD Web site one week after the end of the comment period.

Before becoming effective, a proposed rule change must be authorized for filing with the Securities and Exchange Commission (SEC) by the NASD Board, and then must be approved by the SEC, following publication for public comment in the *Federal Register*.

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## Proposed Change to Short Interest Reporting

NASD requests input from members and other interested parties on the proposed changes to the short interest reporting requirements described in this *Notice*.

### Increasing the Frequency of Short Interest Reporting

1. Do you support the proposal that would require members to record and report short position information to NASD twice per month?

Yes     No    See my attached written comments

2. For what purposes do you use the publicly disseminated short interest information?  
What are the benefits of more frequent short interest reporting?

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3. What technology and systems changes would be required by increasing the frequency of short interest reporting?

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4. What are the estimated burdens and costs associated with implementation of this proposal?

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5. What amount of time do you believe would be adequate for implementation of the proposal?

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### Contact Information

Name: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Are you:  An NASD Member       An Investor       A Registered Representative

Other: \_\_\_\_\_

# Disciplinary and Other NASD Actions

## REPORTED FOR SEPTEMBER

NASD® has taken disciplinary actions against the following firms and individuals for violations of NASD rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this *Notice* is current as of the end of August 2005.

### Firms Expelled, Individuals Sanctioned

Cardinal Capital Management, Inc. (CRD# 24605, Miami, Florida), Hershel Francis Smith, Jr. (CRD #427817, Registered Principal, Key Largo, Florida), and Christopher Alan Sweeney (CRD #823375, Registered Principal, Palm City, Florida) submitted a Letter of Acceptance, Waiver and Consent in which the firm was expelled from NASD membership. Sweeney and Smith were barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they engaged in a course of conduct involving the unregistered offer and sale of common stock and promissory notes. The findings stated that in connection with the unregistered offer and sale of the common stock and notes, Smith and Sweeney failed to establish and maintain a supervisory system reasonably designed to achieve compliance by Cardinal Capital Management, Inc., and its registered representatives with applicable sales practice rules, and failed to reasonably supervise its registered representatives in connection therewith. The findings also stated that they failed to ensure full disclosure of all material facts, including the risks associated with the purchase of the notes, to the note purchasers. The findings further stated that the firm, acting through Smith and Sweeney, sent sales communication to shareholders that contained exaggerated statements and price predictions concerning the stock. NASD found that Smith and Sweeney personally guaranteed the repayment of the notes when they had no reasonable basis for believing that they could fulfill their obligation. In addition, the findings that the firm, acting through Smith and Sweeney, failed to prepare and preserve records for each transaction as required by Securities Exchange Act Rules 17a-3 and 17a-4, failed to reflect said transactions on the firm's books and records, and issued promissory notes to public customers without their knowledge or authorization. NASD also found that the firm, acting through Smith and Sweeney, held customer subscription funds in a firm bank account before forwarding the funds onto the issuer and failed to respond to NASD requests for information. (NASD Case #E072003004201)

### Firms Suspended, Individuals Sanctioned

Hennion & Walsh, Inc. (CRD #25766, Parsippany, New Jersey), William Walter Walsh (CRD #1174993, Registered Principal, Mountain Lakes, New York) and Richard Hennion (CRD #1315386, Registered Principal, Totowa, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was fined \$35,000, including \$15,000 that was jointly and

severally with Walsh and \$15,000 that was jointly and severally with Hennion. In addition, the firm was suspended as an underwriter or selling group member for any offering of closed-end mutual funds for 30 days and required to retain an independent consultant to review and make recommendations concerning the adequacy of the firm's current policies and procedures relating to past deficiencies, as well as the firm's 3070 reporting, underwriting activities, and suitability of recommendations. Walsh and Hennion were also each suspended from association with any NASD member in a general securities principal capacity for 10 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm failed to report written grievances from public customers on quarterly reports and reported written grievances from customers in an untimely manner. The findings also stated that the firm solicited and received payment from public customers for the purchase of shares prior to the effective date in the underwritings of closed-end mutual funds in violation of Section 5(a) of the Securities Act of 1933. NASD found that the firm, acting through Walsh and Hennion, failed to establish and maintain a supervisory system and written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules.

The firm's suspension began September 1, 2005, and will conclude at the close of business September 30, 2005. Walsh's suspension will begin November 18, 2005, and will conclude at the close of business December 2, 2005. Hennion's suspension will begin September 19, 2005, and will conclude at the close of business September 30, 2005. (NASD Case #E9B02004201)

**Edgetrade.com, Inc. (CRD #42071, New York, New York) and Joel Rosenfeld (CRD #1344127, Registered Principal, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$30,000, including disgorgement of \$290, and required to revise its systems and procedures regarding the purchase and sale of restricted securities. Rosenfeld was fined \$10,000 including disgorgement of \$590, and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, the firm and Rosenfeld consented to the described sanctions and to the entry of findings that they participated in the public sale of unregistered securities, thereby failing to comply with Section 5 of the Securities Act of 1933. The findings also stated that the firm's supervisory system was not reasonably designed to achieve compliance with NASD rules related to the purchase and sale of restricted securities.

Rosenfeld's suspension will begin September 19, 2005, and will conclude at the close of business October 7, 2005. (NASD Complaint #EAF0401060001)

## Firms and Individuals Fined

**Great Eastern Securities, Inc. (CRD #2061, New York, New York) and Alphonse Mekalainas, Jr. (CRD #1276859, Registered Principal, Las Vegas, Nevada)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000, including \$5,000 that is joint and several with another individual. Mekalainas was fined \$5,000, jointly and severally, and suspended from association with any member in any principal or supervisory capacity for five days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Mekalainas failed to timely report customer complaints on registered representatives' Forms U4 (Uniform Applications for Securities Industry Registration or Transfer) that alleged one or more sales practice violations and contained a claim for compensatory damages of \$5,000 or more. The findings also stated that the firm, acting through Mekalainas, failed to timely report on registered representatives' Forms U4 a settlement of a customer complaint that alleged one or more sales practice violations and was settled for an amount of \$10,000 or more. The findings also stated that the firm permitted excessive commissions to be charged in agency transactions. In addition, the findings stated that the firm permitted its president to conduct a securities business while his securities registration was inactive due to his failure to satisfy the continuing education regulatory element in a timely manner.

Mekalainas' suspension will begin September 19, 2005, and will conclude at the close of business September 23, 2005. (NASD Case #ELI2002004801)

**Gryphon Financial Securities Corp. (CRD #100420, Palm Beach, Florida) and Younis Zubchevich (CRD #2164438, Registered Principal, Royal Palm Beach, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which the firm and Zubchevich were censured, and the firm was fined \$17,500, including \$12,500 that was assessed jointly and severally with Zubchevich. Without admitting or denying the allegations, the firm and Zubchevich consented to the described sanctions and to the entry of findings that the firm, acting through Zubchevich, failed to prepare a written needs analysis and training plans for the firm element of the continuing education program, and failed to show that the training was executed and that all covered persons attended. The findings stated that the firm, acting through Zubchevich, failed to establish a bank escrow account to safeguard customer funds for contingent private placement offerings and failed to maintain records reflecting the receipt and disbursement of customer funds. The findings also stated that the firm failed to develop and implement an anti-money laundering (AML) program that was reasonably designed to

achieve and monitor compliance with the requirements of the Bank Secrecy Act and the regulations promulgated thereunder by the Department of Treasury. (NASD Case #E072004006003)

**Interactive Planning Corp. (CRD #40261, Lexington, Kentucky) and Lawrence St. John York (CRD #1264745, Registered Principal, Lexington, Kentucky)** submitted a Letter of Acceptance, Waiver and Consent in which the firm and York were censured and fined \$10,000 jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through York, entered into an account purchase contract with a public customer that contained restrictive language prohibiting the customer from disclosing any information regarding the contract to securities regulators. The findings also stated that the firm, acting through York, failed to maintain a record of the complaints filed by a customer, failed to file the customer's complaint with NASD within 10 business days, and failed to amend York's Form U4 as a securities representative to disclose a customer's complaint. (NASD Case #E052003037401)

**Ridgeway & Conger, Inc. (CRD #113055, New Woodstock, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000, including \$5,000 that was assessed jointly and severally with an individual. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, acting through a representative, it permitted an individual to maintain his securities license with the firm although he was not actively involved in its investment banking or securities business, and permitted an individual to act as the firm's FINOP, although she possessed an inactive registration status with NASD. The findings also stated that the firm reported Trade Reporting and Compliance Engine (TRACE)-eligible securities and municipal securities transactions late or with the wrong MPID. (NASD Case #E9B2004013201)

**T.J. Raney & Sons, Inc. (CRD #19243, Little Rock, Arkansas), Thomas D. Raney (CRD #370852, Registered Principal, Little Rock, Arkansas), Alton B. Raney, II (CRD #1497403, Registered Principal, Little Rock, Arkansas) and Ian Carter Malone (CRD #2730170, Registered Principal, Little Rock, Arkansas)** submitted a Letter of Acceptance, Waiver and Consent in which they were censured and fined \$25,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Thomas Raney, Alton Raney and Ian Malone, engaged in a securities business when the firm's net capital was below the required minimum. The findings stated that the firm, acting through Thomas Raney and Ian Malone, failed to establish, maintain and enforce adequate supervisory policies and

procedures relating to the sale of variable products and mutual funds. NASD found that the firm, acting through Thomas Raney, maintained the securities registrations of representatives who were not active in the firm's investments banking or securities business. (NASD Case #E052004006001)

## Firms Fined

**American Enterprise Investment Services, Inc. (CRD #26506, Minneapolis, Minnesota)** 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 to report to TRACE transactions in TRACE-eligible securities within 75 minutes after execution. The findings also stated that the firm misreported to TRACE transactions on non-TRACE-eligible securities and failed to cancel such reports that resulted in an inaccurate audit trail. (NASD Case #CLG050097)

**Auto Club Funds, Inc. (CRD #10580, Dearborn, Michigan)** 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 failed to develop and implement an AML program that was reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act and the regulations promulgated thereunder by the Department of Treasury. (NASD Case #E8A2004030401)

**Capital Securities Management, Inc. (CRD #14169, McLean, Virginia)** 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 to report to TRACE transactions in TRACE-eligible securities within 75 minutes after execution as well as the correct execution time. (NASD Case #CLG050098)

**Carlin Equities Corp. (CRD# 31295, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to immediately display customer limit orders in NASDAQ securities in its public quotation, when each such order would have improved the firm's bid or offer in each such security; or when the order was priced equal to its bid or an offer and the national best bid or offer for each such security, and the size of the order represented more than a de minimis change in relation to the size associated with the firm's bid or offer in each security. (NASD Case #CLG050090)

**CIBC World Markets (CRD #630, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$60,000 and ordered to pay \$1,235.17, plus interest, in restitution. In addition, the firm must revise its written supervisory procedures regarding SEC Rule 11Ac1-6, best execution, anti-intimidation/coordination education, trade reporting and short sale reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit through the Automated Confirmation Transaction Service<sup>SM</sup> (ACT<sup>SM</sup>) last sale reports of transactions in consolidated quotation service (CQS) securities and failed to designate through ACT such last sale reports as late. The findings stated that the firm failed to execute orders fully and promptly, 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 executed sale transactions and failed to correctly mark the order memorandum for each such order as long or short. NASD also found that the firm failed to preserve for a period of not less than three years, the first two in an accessible place, records documenting its supervisory reviews relating to the Order Audit Trail System<sup>SM</sup> (OATS<sup>SM</sup>), the 1 Percent Rule, and books and records. The findings further stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and the NASD rules concerning SEC Rule 11Ac1-6, best execution, anti-intimidation/coordination education, trade reporting and short sale reporting. **(NASD Case #CLG050091)**

**Crown Financial Group, Inc. (CRD #540, Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$45,000 and required to revise its written supervisory procedures regarding trade reporting to the fixed income pricing system (FIPS) and TRACE within 30 business days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report transactions in high-yield securities to FIPS as required during the FIPS review period. The findings stated that the firm did not report any transactions in TRACE-eligible securities to TRACE from its inception until a later time. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and NASD rules concerning FIPS and TRACE trade reporting. NASD found that the firm failed to reasonably and properly supervise the activities relating to bond transaction reporting so as to detect and prevent violation of NASD rules applicable to bond transactions reporting. **(NASD Case #CLG050102)**

**Empire Financial Group, Inc. (CRD# 28759, Longwood, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to transmit through ACT last sale reports of transactions within 90 seconds after execution, constituting a pattern or practice of late trade reporting without exceptional circumstances. The findings stated that the firm failed to report OTC equity securities through ACT within 90 seconds after execution and to designate these as late. The findings also stated that the firm had inadequate supervisory systems and procedures that were not reasonably designed to achieve compliance with respect to applicable securities laws and regulations, and NASD rules concerning trade reporting. **(NASD Case #CLG050092)**

**Equity Trading Online, LLC (CRD #104038, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$11,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of finding that it submitted to OATS reports regarding equity securities traded on NASDAQ that were not in the electronic form prescribed by NASD and were repairable. The findings also stated that the firm failed to report reportable order events (ROEs) to OATS in a timely manner. NASD also found that the firm's supervisory system was not reasonably designed to achieve compliance with respect to applicable securities laws and regulations concerning OATS. **(NASD Case #CLG050083)**

**Evolution Financial Technologies, LLC (CRD #104249, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$17,500 and required to revise its written supervisory procedures regarding OATS reporting within 30 business days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it submitted to OATS reports with respect to equity securities traded on NASDAQ that were not in the electronic form prescribed by NASD and were repairable. The findings also stated 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. NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations, and NASD rules concerning OATS. **(NASD Case #2005000022901)**

**EWT, LLC (CRD #45986, Beverly Hills, California)** 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 to report

ROEs to OATS in a timely manner. The findings stated that the firm submitted to OATS reports regarding equity securities traded on NASDAQ that were not in the electronic form prescribed by NASD and were repairable. (NASD Case #CLG050084)

**Financial West Group (CRD #16668, Westlake Village, California)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$50,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that its written supervisory procedures outlined certain requirements for transfers of securities and funds between customer accounts, and for disbursement from customer accounts, but failed to provide for the firm's compliance department to monitor and review these transactions. The findings also stated that the firm's procedures provided requirements for customer authorization for disbursement of funds and transfers of securities between accounts, but failed to require the firm to compare customer signatures on letters of authorization with the signatures on the original new account document, and to verify customer approval of specific account transactions. (NASD Case #E0220021063-02)

**First Allied Securities, Inc. (CRD# 32444, San Diego, California)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$408,459 and ordered to pay \$326,500 in restitution. In addition, an officer of the firm shall verify in writing to NASD that the firm has reviewed its procedures regarding market timing and has established systems and procedures reasonably designed to achieve compliance with the laws, regulations and rules concerning market timing and to ensure that prospectus fund exchange limits and provisions of selling agreements are enforced. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to supervise a registered representative's activities and failed to establish, maintain and enforce an adequate supervisory system and written procedures regarding the representative's activities. (NASD Case #EAF0300890002)

**Golden Beneficial Securities Corporation (CRD #48029, Houston, Texas)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$15,000 and required to revise its written supervisory procedures regarding OATS reporting within 30 business days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report ROEs to OATS in a timely manner. The findings stated that the firm submitted to OATS reports with equity securities traded on NASDAQ that were not in the electronic form prescribed by NASD. NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve

compliance regarding applicable securities laws and regulations, and NASD rules concerning OATS reporting. (NASD Case #CLG050105)

**Goldman, Sachs & Co. (CRD #361, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it effected short sales in certain securities for the firm's proprietary account(s) and failed to make/annotate an affirmative determination that the firm could borrow the securities or otherwise provide for the delivery of the securities by settlement date. The findings stated that the firm failed to correctly report to ACT riskless principal transactions in NASDAQ National Market® (NNM®) securities. The findings also stated that the firm executed short sale transactions and failed to report each of these transactions to ACT with a short sale modifier. NASD found that the firm failed to report to ACT the correct symbol indicating whether the transaction was a buy, sell, sell short, sell short exempt or cross for transactions in eligible securities. In addition, the findings stated that the firm transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data. NASD also found that the firm's supervisory system was not reasonably designed to achieve compliance with applicable securities laws and regulations, and NASD rules concerning trade reporting, short sales and customer sale transaction reporting obligations. (NASD Case #20042000105)

**Granite Financial Group, Inc., (CRD #44732, San Diego, California)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to submit required information to OATS. The findings stated that the firm failed to enforce its written supervisory procedures, which stated that a designated compliance officer would perform a daily review of the OATS Web site to ensure compliance with the firm's procedures, and perform periodic reviews of accepted OATS data for proper coding and reporting of transactional events. NASD also found that the firm transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data. (NASD Case #CLG050085)

**HealthPoint Capital Advisors, LLC (CRD #126546, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to have in place an adequate system for retaining electronic mail. (NASD Case #E1020040191-01)

**Herbert J. Sims & Co., Inc. (CRD #3420, Southport, Connecticut)** 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, while acting as an underwriter in a primary offering of municipal securities, it failed to submit the final official statement and a Form G-36 to the Municipal Securities Rulemaking Board (MSRB) within the time period specified in MSRB Rule G-36. The findings also stated that the firm acted as a placement agent in a private offering being sold on a contingency basis with all subscription payments to be deposited in the account of a bank acting as the escrow agent, and that the firm broke escrow prematurely by disbursing funds prior to the offering being consummated. **(NASD Case #E112004015301)**

**Hornor, Townsend & Kent, Inc. (CRD # 4031, Horsham, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$150,000. Without admitting or denying the allegations the firm consented to the described sanctions and to the entry of findings that it failed to establish and maintain a supervisory system and written procedures reasonably designed to detect and prevent late trading in mutual fund transactions. The findings stated that the firm failed to preserve certain mutual fund trading records for three years and failed to create and maintain records reflecting the time of receipt of mutual fund orders. **(NASD Case #CE2050014)**

**J. Scott Securities Corporation (CRD #47007, Golden, Colorado)** 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 its supervisory system and the written procedures established to implement that system were not reasonably designed to achieve compliance with rules regarding the suitability of mutual fund share class recommendations and the disclosure of all information relevant to a customer's election to purchase a particular share class. The findings stated that the firm failed to develop and implement a written AML program reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act, 32 U.S.C. sec. 5311, et seq., and the regulations promulgated thereunder. NASD also found that the firm conducted securities business while failing to maintain the required net capital. **(NASD Case #E3A2004005401)**

**Janney Montgomery Scott LLC (CRD #463, Philadelphia, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$1,200,000 and required to revise its written supervisory procedures regarding

market timing, late trading, recordkeeping and responses to regulatory inquiries within 30 days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it permitted two institutional clients to evade attempts by mutual fund companies to block or restrict the client's market timing transactions. The findings stated that the firm failed to establish and maintain a supervisory system and written procedures reasonably designed to detect and prevent late trading in mutual fund transactions. In addition, the findings stated that the firm failed to create records reflecting the time of receipt of mutual fund orders and failed to create required records showing mutual fund exchanges for certain accounts. NASD also found that the firm failed to make adequate inquiries when responding to an NASD request for information because the firm did not have a supervisory system or written procedures reasonably designed to ensure that it conducted adequate due diligence or made sufficient inquiry when responding to regulatory inquiries. **(NASD Case #EAF03009 20002)**

**Jefferies & Company, Inc. (CRD #2347, Los Angeles, California)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$100,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report to OATS ROEs relating to orders in NASDAQ securities that were captured in the firm's electronic order management system (OMS). The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations, and NASD rules concerning OATS reporting. The findings also stated that firm's written supervisory procedures failed to provide a method for the OATS administrator's supervisor to perform a supervisory review of the firm's overall OATS reporting. **(NASD Case #CLG050100)**

**J. P. Morgan Securities, Inc. (CRD #18718, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$100,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to submit official statements and/or other documents to the Municipal Securities Rulemaking Board (MSRB) in a timely manner. The findings stated that the firm failed to adequately monitor its underwriting filings with the MSRB to ensure that its filings were timely and therefore in compliance with MSRB Rule G-36. **(NASD Case #E102003026501)**

**Knight Capital Markets, LLC (CRD #38379, Purchase, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$12,000 and required to

revise its written supervisory procedures regarding accurate trade reporting within 30 business days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report the correct execution time through the NASDAQ Market Center in last sale reports of transactions in eligible securities. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations, and NASD rules concerning accurate trade reporting. (NASD Case #CLG050106)

**LaBranche Financial Services, Inc. (CRD #7432, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$17,000 and required to revise its written supervisory procedures regarding OATS reporting within 30 business days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it transmitted to OATS reports that contained inaccurate, incomplete or improperly formatted data. The findings stated that the firm failed to report ROEs to OATS in a timely manner. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations, and NASD rules concerning OATS reporting. (NASD Case #2005000014402)

**Lincoln Financial Advisors (CRD# 3978, Fort Wayne, Indiana)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$75,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it received notice of events that were subject to the reporting requirements of NASD Rule 3070(a), but failed to report to NASD within 10 business days after it knew or should have known of the existence of the reportable events. The findings stated that the firm failed to report customer grievances to NASD as statistical and summary information by the required deadline. The findings also stated that the firm failed to prepare and maintain adequate written supervisory procedures to ensure compliance with NASD Rule 3070(a) (NASD Case #C8A050067)

**Merrill Lynch, Pierce, Fenner & Smith Inc. (CRD #7691, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$50,000 and required to certify to NASD that it has reviewed and established systems and procedures reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules regarding the Mortgage 100® program. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it offered information regarding a mortgage

program of an affiliate on its public Web site that constituted advertising material, and included statements and representations that were misleading or unbalanced and failed to disclose material information about the program. NASD found that the firm failed to establish any guidelines or written supervisory procedures reasonably designed to achieve compliance with the firm's activities relating to the mortgage program. In addition, NASD determined that the firm did not use any exception reports or other documents or procedures that might assist managers, compliance personnel or other staff in reviewing accounts that used the mortgage program. (NASD Case #EAF0300610002)

**Millennium Brokerage, LLC (CRD #47728, Chatham, New Jersey)** 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 allowed a representative to perform duties as a registered person while his registration with NASD was inactive due to his failure to complete the regulatory element of the continuing education program. The findings stated that the firm failed to establish, implement and enforce policies, procedures and internal controls that were reasonably designed to achieve compliance with all requirements imposed by the Bank Secrecy Act and books and records retention requirements. The findings also stated that the firm's supervisory system and procedures were not reasonably designed to ensure that the required written consent was obtained before pre-registration searches on Web CRD® and that the firm retained the required documentation. The findings further stated that the firm did not maintain and preserve all electronic instant messaging as required and failed to report trades within 90 seconds of execution. In addition, the findings included that the firm permitted employees to function in a capacity that required fingerprinting under SEC Rule 171-2, but failed to submit fingerprint cards to NASD. NASD found that the firm also failed to file Forms U5 for representatives in a timely manner, in contravention of Article V of NASD's By-Laws. (NASD Case #E9B2003041708)

**Moors & Cabot, Inc. (CRD #594, Boston, Massachusetts)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$11,000. 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 regarding equity securities traded on NASDAQ that were not in the electronic form prescribed by NASD and were repairable. NASD found that the firm failed to enforce its written supervisory procedures, which specified that rejected reportable order events not "associated with a new order or cancel/replace report must be repaired within five business days." (NASD Case #2005000005601)

**Murphy & Durieu (CRD #6292, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$17,000. 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 the NASDAQ Market Center last sale reports of transactions in OTC equity securities, and failed to designate such last sale reports as late. **(NASD Case #CLG050107)**

**Muzinich & Co., Inc. (CRD #22998, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it permitted representatives to engage in activities that required registration without being properly registered with NASD. **(NASD Case #E1020040292-01)**

**Newbridge Securities Corporation (CRD #104065, Fort Lauderdale, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$11,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions. **(NASD Case #CLG050103)**

**NYLIFE Securities Inc. (CRD #5167, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$200,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to adequately supervise the activities of a registered representative who violated the firm's policy involving unapproved advertising and sales material and outside business activities. NASD found that the firm failed to conduct adequate inspections of activities in a branch office. The findings also stated that the firm's review and approval of variable annuity and mutual fund transactions was deficient in that the firm failed to aggregate transactions and consider all customer holdings when reviewing individual transactions, thereby allowing a registered representative to circumvent the financial tests established by the firm. **(NASD Case #E052004010401)**

**OTA, LLC (CRD #25816, Purchase, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it permitted a representative to engage in activities that required registration

without being properly registered with NASD. **(NASD Case #E9B20040115-01)**

**Schonfeld Securities, LLC (CRD #23304, Jericho, New York)** 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 submitted to OATS reports regarding equity securities traded on NASDAQ that were not in the electronic form prescribed by NASD. The findings stated that the firm failed to show that it had enforced its written supervisory procedures. **(NASD Case #2004200012001)**

**Scotttrade, Inc. (CRD #8206, St. Louis, Missouri)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$10,000 and required to revise its written supervisory procedures regarding trade reporting within 30 business days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report through ACT the correct symbol indicating whether the transaction was a buy, sell or cross in transactions in eligible securities. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations, and NASD rules concerning trade reporting. **(NASD Case #CLG050096)**

**STC Securities Corporation (CRD #118812, Fort Lauderdale, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$13,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it made available a report on covered orders in National Market System securities that included incorrectly published order execution information in order type/size categories and an improperly categorized buy stop limit order as a covered order. The findings stated that the firm failed to make publicly available on its order routing practices report, for a period of time, all material aspects of its order routing relationship with all significant execution venues included on such report. The findings also stated that the firm failed to report to ACT the correct symbol indicating whether it executed transactions in eligible securities in a principal, riskless principal or agency capacity. **(NASD Case #2004200025301)**

**Stephens Inc. (CRD #3496, Little Rock, Arkansas)** 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 properly prepare customer confirmations and improperly transmitted data to OATS. The findings stated that the firm's supervisory

system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations, and NASD rules concerning order handling and execution, best execution, trade reporting, OATS and books and records maintenance. **(NASD Case #CLG050109)**

**Sterne, Agee & Leach, Inc. (CRD #791, Birmingham, Alabama)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to promptly and/or correctly display customer limit orders. The findings state that the firm failed to accurately report municipal transactions of correspondent firms by reporting the trades under the symbol "SALI" rather than reporting the trade under the symbol for the correspondent firm. The findings also stated that the firm failed to update representatives' Forms U4 to disclose customer complaints against them. In addition, NASD found that the firm failed to establish, maintain and enforce a supervisory system reasonably designed to achieve compliance with NASD rules. **(NASD Case #E052003008601)**

**Sungard Institutional Brokerage, Inc., (CRD #8509, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it submitted to OATS reports with regarding equity securities traded on NASDAQ that were not in the electronic form prescribed by NASD and were repairable. NASD also found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations, and NASD rules concerning OATS. **(NASD Case #CLG050086)**

**TD Securities (USA) L.L.C. (CRD #18476, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$11,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it transmitted to OATS reports that contained inaccurate timestamps. **(NASD Case #CLG050087)**

**Track Data Securities Corporation (CRD #103802, Brooklyn, New York)** 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 executed short sales in listed securities on a minus or zero-minus tick. The findings stated that the firm failed to enforce its written supervisory procedures, which provide for periodic reviews for compliance with applicable

securities laws and regulations, and NASD rules concerning best execution, limit order display, ACT reporting, bid test, tick test, Regulation ATS 5% and 20%, and OATS compliance. **(NASD Case #CLG050088)**

**UBS International, Inc. (CRD #107726, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$15,000 and required to revise its written supervisory procedures regarding TRACE trade reporting within 30 business days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report to TRACE transactions in TRACE-eligible securities within 30 minutes after execution. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations, and NASD rules concerning TRACE trade reporting. **(NASD Case #2005000456401)**

**UBS Securities LLC (CRD #7654, Stamford, Connecticut)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$2,100,000 and required to review its procedures regarding the preservation of electronic communications for compliance with NASD rules and the federal securities laws. The amount paid to NASD by the firm shall be reduced by \$700,000 pursuant to a civil money penalty paid to the U.S. Treasury, and by \$700,000 pursuant to a fine paid to the New York Stock Exchange (NYSE) in related proceedings with the NYSE and the U.S. Securities Exchange Commission (SEC). Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to keep electronic communications for three years and/or failed to preserve electronic mail communications for the first two years in an accessible place. The findings stated that the firm lacked adequate supervisory systems and procedures that were not reasonably designed to achieve compliance with Section 17(a), Rule 17a-4 and NASD Rule 3110. **(NASD Case #CE1050008)**

**WM Financial Services, Inc. (CRD #599, Irvine, California)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$21,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report to TRACE transactions in TRACE-eligible securities within 75 minutes after execution. The findings stated that the firm misreported to TRACE transactions on non-TRACE-eligible securities and failed to cancel such reports during the review period resulting in an inaccurate audit trail. NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations, and NASD rules concerning timely reporting to TRACE. **(NASD Case #2004200011001)**

## Individuals Barred or Suspended

**Thomas Way Bayley, III (CRD #1833753, Registered Representative, Vienna, West Virginia)** submitted an Offer of Settlement in which he was fined \$29,966 and suspended from association with any NASD member in any capacity for one month. Without admitting or denying the allegations, Bayley consented to the described sanctions and to the entry of findings that he engaged in business activities outside the scope of his association with his member firm and failed to give prompt written notice of his outside business activities to his member firm.

Bayley's suspension will begin September 19, 2005, and will conclude at the close of business October 18, 2005. (NASD Case #C9A040063/ E9A2002073703)

**Edward Carlsen, Sr. (CRD #40698, Registered Representative, Lancaster, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$40,000 and suspended from association with any NASD member in any capacity for 18 months. The fine must be paid before Carlsen reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Carlsen consented to the described sanctions and to the entry of findings that he effected transactions in the accounts of public customers and made unsuitable use of margin in their accounts without having reasonable grounds for believing that those recommendations and resultant transactions were suitable based on the customers' financial situation, investment objectives and needs. The findings also stated that Carlsen exercised discretion in the accounts of public customers without written authorization.

Carlsen's suspension will begin September 19, 2005, and will conclude March 18, 2007. (NASD Case # E9B2004019101)

**Michael Charles Caska (CRD #1275838, Registered Principal, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Caska consented to the described sanctions and to the entry of findings that he actively engaged in the management of a former member firm's investment banking or securities business without being registered as a general securities principal. The findings also stated that Caska, acting on behalf of his member firm, failed to file an application with NASD prior to transferring 25 percent or more of the firm's assets or brokerage business to another NASD member firm.

Caska's suspension began August 29, 2005, and will conclude at the close of business September 19, 2005. (NASD Case #E102004102902)

**Susan M. Castro (CRD #4661014, Associated Person, Greendale, Wisconsin)** 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, Castro consented to the described sanction and to the entry of findings that she affixed the signature of her supervisor to insurance policy loan checks totaling \$53,000, and to checks drawn on her supervisor's business checking account totaling \$41,728 without the supervisor's knowledge and consent. The findings stated that Castro improperly used her supervisor's funds and made the checks payable to herself or to a third party that provided a benefit to her. In addition, the findings stated that Castro refused to appear for an on-the-record interview with NASD. (NASD Case #E8A2004104301)

**Val Dee Christoffersen (CRD #1072274, Registered Principal, West Jordan, Utah)** 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, Christoffersen consented to the described sanction and to the entry of findings that he received \$109,500 from public customers for investment purposes, deposited \$85,000 into an account he controlled and used \$24,500 for his own use and benefit. (NASD Case # E3A2004025201)

**Rebecca Ann Clayton (CRD #3228952, Registered Representative, New London, Minnesota)** was barred from association with any NASD member in any capacity. The sanction was based on the findings that Clayton received checks totaling \$5,883.18 from public customers for investment purposes, but Clayton instead endorsed the checks without the customer's knowledge, consent or authorization and converted the proceeds to her own use. The findings also stated that Clayton failed to respond to NASD requests for information. (NASD Case #C04050003)

**Richard Arnold Collins (CRD #2632137, Registered Representative, Waterford, Michigan)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Collins consented to the described sanction and to the entry of findings that he prepared and submitted falsified documents by affixing public customers' signatures without their knowledge or consent that purported to show that they had received financial plans on fictitious dates, for which the customers had previously paid \$9,200, but had not been delivered to the customers. (NASD Case #E8A2003098301)

**Blesilda A. Daluz (CRD #2952407, Registered Representative, Fairfax, 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, Daluz consented to the described sanction and to the entry of findings that she failed to respond to NASD requests for information. (NASD Case #E9B2004055501)

**Steven James Davis (CRD #1141258, Registered Representative, Williamsville, 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, Davis consented to the described sanction and to the entry of findings that he failed to execute a public customer's instructions, and failed to respond to NASD requests for information. (NASD Case #E9B2004039101)

**Lara Debry (CRD #1720653, Registered Representative, Salt Lake City, Utah)** was barred from association with any NASD member in any capacity. The sanction was based on findings that she converted funds from a public customer to her own use without the customer's knowledge or consent. (NASD Case #C3A040049)

**Frank Demolfetto (CRD #4312473, 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, Demolfetto consented to the described sanction and to the entry of findings that he failed to comply with an NASD request to appear for an on-the-record interview. (NASD Case #ELI20040103-01)

**Edward Thomas Dold (CRD #1584675, Registered Supervisor, Lubbock, Texas)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any member in any capacity. Without admitting or denying the allegations, Dold consented to the described sanction and to the entry of findings that he operated a fraudulent Ponzi scheme by which he raised \$2,204,500 from public customers. The findings stated that Dold solicited customers to invest in a fictitious entity by providing them with documents that he prepared on his member firm's letterhead, and that he provided bogus periodic statements on his member firm's letterhead that showed growth in their accounts. NASD found that he commingled the customers' funds and used them to make purported profit payments to earlier investors and for his personal use and benefit without the customers' knowledge, authorization or

consent. The findings further stated that Dold failed to respond to NASD requests for information. (NASD Case #E062004025101)

**Anthony Francis Dudzinski, Jr. (CRD #1043511, Registered Principal, Middletown, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which he was suspended from association with any NASD member in a principal capacity for 30 days. In light of the financial status of Dudzinski, no monetary sanctions have been imposed. Without admitting or denying the allegations, Dudzinski consented to the described sanction and to the entry of findings that he failed to reasonably and properly supervise his member firm's activities relating to bond transaction reporting to detect and prevent violations of NASD rules regarding bond transaction reporting.

Dudzinski's suspension began September 6, 2005, and will conclude at the close of business October 5, 2005. (NASD Case #CLG050101)

**Brian David Durham (CRD #4558363, Registered Representative, Lafayette, Indiana)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for two months. The fine must be paid before Durham reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Durham consented to the described sanctions and to the entry of findings that he affixed the signature of a public customer without the customer's approval or knowledge on an acknowledgement form, essentially authorizing an insurance company to obtain the customer's medical history.

Durham's suspension will begin September 19, 2005, and will conclude at the close of business November 18, 2005. (NASD Case #E8A2004088301)

**Judith Margaret Engle (CRD #2956944, Registered Representative, Eugene, Oregon)** submitted a Letter of Acceptance, Waiver and Consent in which she was suspended from association with any NASD member in any capacity for 15 business days. In light of the financial status of Engle, no monetary sanctions have been imposed. Without admitting or denying the allegations Engle consented to the described sanction and to the entry of findings that she exercised discretion in the account of a public customer without prior written authorization from the customer and without written consent from her member firm.

Engle's suspension will begin September 19, 2005, and will conclude at the close of business October 7, 2005. (NASD Case #E3B2004007501)

**Vladimir William Feldman (CRD #4238992, Registered Principal, Brooklyn, New York) and Robert Neal Meyer (CRD #1912267, Associated Person, Studio City, California)** were barred from association with any NASD member in any capacity, and Feldman was ordered to pay \$107,701.53, plus interest, in restitution to public customers. The sanctions were based on findings that Feldman engaged in fraudulent sales practices and made material misrepresentations and omissions regarding securities, including unsubstantiated price predictions. Feldman also made unsuitable recommendations to his public customers to purchase securities without having reasonable grounds for believing that the investment was suitable for the customers based on their other security holdings, financial situations and needs. The findings also stated that Meyer engaged in securities activities requiring registration and failed to register as a representative and principal with a member firm. **(NASD Case #CMS040049)**

**Jarl Glenn Ferko (CRD #2879418, Registered Representative, Willow Street, 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 60 days. The fine must be paid before Ferko reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Ferko consented to the described sanctions and to the entry of findings that he recommended and effected the purchases of various securities on margin in the account of a public customer without reasonable grounds to believe that the recommendations were suitable based on the customer's financial situation, needs and other circumstances.

Ferko's suspension will begin September 19, 2005, and will conclude at the close of business November 17, 2005. **(NASD Case #E9A2004025901)**

**Gary Nicholas Ferraro (CRD #2470858, Registered Representative, Buffalo Grove, Illinois)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$136,733, including disgorgement of \$68,366.34 in commissions, and suspended from association with any NASD member in any capacity for nine months. The fine must be paid before Ferraro reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Ferraro consented to the described sanctions and to the entry of findings that he facilitated the deceptive efforts of his public customers to engage in market timing transactions in mutual funds that exceeded the limits of the funds' prospectuses.

Ferraro's suspension began August 1, 2005, and will conclude April 30, 2006. **(NASD Case #EAF0300890003)**

**Anne Elizabeth Finley (CRD #4499125, Registered Representative, Ridgewood, New Jersey)** 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, Finley consented to the described sanction and to the entry of findings that she signed a customer's signature on a variable life insurance illustration without the customer's knowledge, authorization or consent. The findings also stated that Finley failed to respond to NASD requests for information. **(NASD Case #E9B2004043101)**

**Alfonso Forero (CRD #2797194, Registered Representative, Port Reading, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Forero consented to the described sanction and to the entry of findings that he caused \$72,000 to be withdrawn from public customers' bank accounts and used these funds to pay other customers or for his own personal benefit without the authorization or consent of the customers. **(NASD Case #2005000886301)**

**James Ralph Frith (CRD #4394217, Registered Representative, Cave Creek, Arizona)** 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 \$30,000, plus interest, to a public customer. Restitution must be paid before Frith reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Frith consented to the described sanctions and to the entry of findings that he made improper use of customer funds totaling \$85,000 received for investment purposes. **(NASD Case #E3A2004025901)**

**Gregory Ian Gatto (CRD #2815275, Registered Principal, 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, Gatto consented to the described sanction and to the entry of findings that he engaged in outside business activities and failed to provide prompt written notice to his member firm. The findings stated that Gatto appeared for an on-the-record interview and failed to cooperate by refusing to answer NASD's questions. **(NASD Case #E1020032137-01)**

**Gordon Trevor Gibson (CRD #2698717, Registered Principal, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$2,500 and suspended from association with any NASD member in a financial and operations principal (FINOP) capacity for two

months. The fine must be paid before Gibson reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Gibson consented to the described sanctions and to the entry of findings that he failed to ensure that his member firm accurately computed its net capital and complied with its minimum net capital requirement.

Gibson's suspension began September 6, 2005, and will conclude November 5, 2005. (NASD Case #E102003022304)

**Yoland Gonzalez (CRD #4766497, Associated Person, San Diego, 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, Gonzalez consented to the described sanction and to the entry of findings that she willfully failed to disclose material information on her Form U4 and failed to respond to NASD requests for information. (NASD Case #E022004037401)

**Izzateen Hanif (CRD #1777495, Registered Representative, Weston, Florida)** submitted an Offer of Settlement in which she was fined \$8,500, including disgorgement of \$6,000, and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Hanif reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Hanif consented to the described sanctions and to the entry of findings that she recommended transactions to a public customer without having reasonable grounds to believe that such transactions were suitable based on the nature of recommended transactions, the costs associated with the transactions, and the customer's financial situation, investment objectives circumstances and needs.

Hanif's suspension began September 6, 2005, and will conclude at the close of business December 5, 2005. (NASD Case #C9B040086)

**Kristin Stockmar Hetzer (CRD #1098705, Registered Supervisor, San Pedro, California)** submitted an Offer of Settlement in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. The fine must be paid before Hetzer reassociates with any NASD member following suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Hetzer consented to the described sanctions and to the entry of findings that she filed an anonymous complaint on the SEC's and NASD's Web sites, posing as a public customer, without the customer's knowledge or consent. The findings also stated that in addition to falsely

identifying herself as the customer, the material allegations in the NASD and SEC Web site postings were false.

Hetzer's suspension will begin September 19, 2005, and will conclude at the close of business November 18, 2005. (NASD Case #C02040049)

**Michael Patrick Hood (CRD #4442895, Registered Representative, Toledo, Ohio)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member any capacity for 60 days. The fine must be paid before Hood reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Hood consented to the described sanctions and to the entry of findings that he affixed the name of a public customer on a financial services agreement without the customer's knowledge or consent.

Hood's suspension will begin September 19, 2005, and will conclude at the close of business November 17, 2005. (NASD Case #E8A2004075901)

**Douglas Mark Houtstra (CRD #3252204, Registered Representative, Ada, Michigan)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000, ordered to pay \$280,000 in disgorgement and suspended from association with any NASD member in any capacity for two years. The fine and disgorgement must be paid before Houtstra reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Houtstra consented to the described sanctions and to the entry of findings that he failed to give written notice of his intention to participate in the sales of promissory notes to his member firm, and failed to receive written approval from his firm prior to engaging in such activities.

Houtstra's suspension will begin September 19, 2005, and will conclude at the close of business September 18, 2007. (NASD Case # E8A2003076501)

**Alan John Justin, Jr. (CRD #1132041, Registered Principal, Lancaster, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member as a supervisor or principal and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Justin consented to the described sanctions and to the entry of findings that he failed to adequately supervise a registered representative of his member firm.

Justin's suspension began June 6, 2005, and will conclude at the close of business June 5, 2007. (NASD Case #C8A050028)

**Jeffrey Michael Knutsen (CRD #2767219, Registered Principal, Bellingham, Washington)** 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, Knutsen consented to the described sanction and to the entry of findings that he caused funds to be withdrawn from the brokerage account of a public customer in the form of automated clearing house payments totaling \$89,973.16 without the customer's knowledge, consent or authorization. The findings also stated that Knutsen caused the payments to be made from the customer's account to Knutsen's credit card accounts, thereby converting \$89,973.16 of customer funds to his own use and benefit. **(NASD Case #C3B050014)**

**Brian Wallace Laing (CRD #2128928, Registered Representative, Elyria, Ohio)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before Laing reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Laing consented to the described sanctions and to the entry of findings that he failed to disclose material information on his Form U4.

Laing's suspension began September 6, 2005, and will conclude at the close of business October 5, 2005. **(NASD Case #E8A2004054201)**

**John Li (CRD #2651168, Registered Representative, Lansdale, 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, Li consented to the described sanction and to the entry of findings that he wrongfully obtained a credit card in the name of individuals without the individuals' knowledge or consent, and used the cards to obtain cash advances for his own benefit. The findings also stated that Li failed to respond to NASD requests for information. **(NASD Case #2005000479801)**

**Gou Zhan Ma (CRD #4855611, Associated Person, 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 30 business days. Without admitting or denying the allegations, Ma consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information in a timely manner.

Ma's suspension will begin September 19, 2005, and will conclude at the close of business October 28, 2005. **(NASD Case # ELI2004040001)**

**Clay Katsumi Matsuda (CRD #2541661, Registered Representative, Montebello, California)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Matsuda consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for documents and information. **(NASD Case #E0220040688-01)**

**David Bruce Medansky (CRD #4626553, Registered Representative, Phoenix, Arizona)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Medansky consented to the described sanction and to the entry of findings that he obtained a credit card in the name of an individual by submitting an application and representing himself to be the individual. The findings stated that Medansky used the credit card to obtain goods, services or funds for his own benefit. The findings also stated that he made payments on the card's balance due, accepted an offer of a second credit card, and cashed a \$500 promotional check drawn on the account of the credit card company payable to the individual. **(NASD Case #E3A2004024201)**

**Terrence Michael Meter (CRD #1386223, Registered Representative, Beverly Hills, Michigan)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Meter reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Meter consented to the described sanctions and to the entry of findings that he engaged in outside business activities for compensation without giving prompt written notice to his member firm.

Meter's suspension will begin September 19, 2005, and will conclude December 18, 2005. **(NASD Case #E8A2002124004)**

**Harry Robert Monsky (CRD #1420260, Registered Principal, Jacksonville Beach, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$35,000 and suspended from association with any NASD member in any capacity for one month. Without admitting or denying the allegations, Monsky consented to the described sanctions and to the entry of findings that he entered limit orders to sell shares out of his individual retirement account (IRA), then entered a near-simultaneous limit order to buy the same number of shares in his taxable margin account. The findings stated that the limit orders were placed at identical prices in the after-hours market, which was lower than the closing price. The findings also stated that he entered limit

orders to sell shares out of his taxable margin account and entered near-simultaneous limit orders to buy the same number of shares in his IRA. The findings further stated that Monsky entered a limit order to sell shares that was higher than the closing price and his broker routed these orders to the ECN, which matched his limit orders, executing the trades between his accounts. NASD determined that his trading knowingly or recklessly created a false appearance of market activity in the stock, in trades effected at prices that did not reflect the true supply and demand for the stock.

Monsky's suspension will begin September 19, 2005, and conclude at the close of business on October 18, 2005. (NASD Case #CLG050080)

**Amanda Moon (CRD #4358745, Registered Representative, Morris Plains, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$5,000 and suspended from association with any member of NASD in any capacity for three months. The fine must be paid before Moon reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Moon consented to the described sanctions and to the entry of findings that she engaged in business activities outside the scope of her business relationship with her member firm without providing her firm with prompt written notice of these activities.

Moon's suspension will begin September 19, 2005, and will conclude December 18, 2005. (NASD Case #E9B2004058401)

**Patrick John Moran (CRD #1496354, Registered Principal, Paradise Valley, Arizona)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Moran consented to the described sanction and to the entry of findings that he failed to respond to an NASD request for information. (NASD Case #E3A2004033801)

**Joel Ellis Moskowitz (CRD #500460, Registered Representative, Boca Raton, Florida)** was fined \$12,500 and suspended from association with any NASD member in any capacity for 35 business days. The sanctions were based on the findings that Moskowitz disseminated, or attempted to disseminate, options communications to the public without obtaining advance approval from his employer and NASD, and such communications failed to comply with the content requirements for options communications.

Moskowitz's suspension began August 1, 2005, and will conclude at the close of business September 19, 2005. (NASD Case #C9B040093)

**Craig Ross Myers (CRD #3187909, Registered Representative, Dearborn, Michigan)** 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 six months. The fine must be paid before Myers reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Myers consented to the described sanctions and to the entry of findings that he engaged in outside business activities for compensation without giving prompt written notice to his member firm.

Myers' suspension will begin September 19, 2005, and will conclude March 18, 2006. (NASD Case #E8A2002124003)

**Tanveer Ahmad Paracha (CRD #4601108, Registered Representative, Chicago, Illinois)** was barred from association with any NASD member in any capacity and ordered to pay \$16,078 in restitution to a public customer. The sanction was based on findings that Paracha effected transactions in the account of a public customer without the customer's knowledge or consent and without having a reasonable basis for believing that the recommendations were suitable for the customer based on the nature of the customer's account, financial situation and needs. The findings also stated that Paracha failed to respond to NASD requests for on-the-record interviews. (NASD Case #C9B050001)

**Jygnesh Rohit Patel (CRD #2387765, Registered Principal, Glenview, Illinois)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Patel consented to the described sanction and to the entry of findings that he misrepresented to a public customer that a securities account would be opened for the customer into which \$50,000 of the customer's investment funds would be deposited and carried, and that the investment would be protected by his member firm's fidelity bond and other insurance. The findings also stated that Patel created and sent to the customer a purported account statement from his firm falsely showing that the customer's funds had been deposited into an account in his name at the firm. NASD found that Patel failed to open a securities account for the customer at this firm and failed to deposit the customer's funds in the account. The findings also stated that Patel failed to respond to an NASD request for information. (NASD Case #C0705000303)

**Chris Howard Pipkin (CRD #4357879, Registered Supervisor, Cedar Rapids, 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 two years. The fine must be paid before Pipkin

reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Pipkin consented to the described sanctions and to the entry of findings that he willfully failed to disclose material information on his Form U4.

Pipkin's suspension began September 6, 2005, and will conclude at the close of business September 5, 2007. (NASD Case #E042004015901)

**David Francis Polus (CRD #365423, Registered Representative, Grosse Pointe Farms, Michigan)** 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 six months. The fine must be paid before Polus reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Polus consented to the described sanctions and to the entry of findings that he engaged in outside business activities for compensation without giving prior written notice to his member firm.

Polus' suspension will begin September 19, 2005, and will conclude March 19, 2006. (NASD Case #E8A2002124002)

**Robert Edmond Pompey (CRD #2121635, Registered Representative, Holt, Michigan)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$7,500, ordered to pay \$79,447 in disgorgement and suspended from association with any NASD member in any capacity for one year. The fine and disgorgement must be paid before Pompey reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Pompey consented to the described sanctions and to the entry of findings that he participated in private securities transactions for compensation without providing written notice, and failed to receive written approval from his member firm prior to engaging in such activities. The findings also stated that Pompey failed to timely respond to NASD requests for information.

Pompey's suspension will begin September 19, 2005, and will conclude at the close of business September 18, 2006. (NASD Case # E8A2004094801)

**Gregory Martin Power (CRD #1342377, Registered Principal, Los Angeles, California)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$2,000, suspended from association with any NASD member in any capacity for 15 business days and required to requalify by exam as a general securities principal prior to acting again in that capacity. The fine must be paid before Power reassociates

with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Power consented to the described sanctions and to the entry of findings that he failed to advise any of his superiors that his member firm was not accurately reporting electronic order management system (OMS) information to OATS. The findings stated that Power realized that significant modifications were required to his firm's OATS reporting system before it could accurately report OMS information to OATS, and suppressed OATS reporting of OMS information while modifications were being made without consulting anyone at his firm. NASD found that by suppressing the OATS reporting, Power caused his firm to fail to report to OATS ROEs relating to orders in NASDAQ securities that were captured in OMS.

Power's suspension began September 6, 2005, and will conclude at the close of business September 26, 2005. (NASD Case #2004200002101)

**Ralph Guadalupe Primo Jr. (CRD #1001021, Registered Representative, Santa Monica, California)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Primo consented to the described sanction and to the entry of findings that he willfully failed to disclose a material fact on his Form U4. (NASD Case #E0220040538-01)

**Ignacio Leon Restrepo, Jr. (CRD #3008679, Registered Representative, Corona, 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, Restrepo consented to the described sanction and to the entry of findings that he converted \$34,101 by making unauthorized withdrawals from the bank accounts of public customers that were linked to their brokerage accounts at Restrepo's member firm. NASD also found that Restrepo failed to respond to NASD requests for information. (NASD Case #C1020050059)

**Michael George Robinson (CRD #3018670, Registered Representative, San Diego, California)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Robinson reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Robinson consented to the described sanctions and to the entry of findings that he willfully failed to disclose material information on his Form U4.

Robinson's suspension began September 6, 2005, and will conclude at the close of business December 5, 2005. (NASD Case #2005000790201)

**Keith Adam Rogers (CRD #4523445, Registered Representative, Franklin Square, New York)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Rogers consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for documents and information. (NASD Case #C10050008)

**Kenneth Vincent Rosato (CRD #725629, Registered Supervisor, Eatontown, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$370,000, including disgorgement of \$185,000 in commissions, and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Rosato reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Rosato consented to the described sanctions and to the entry of findings that he assisted institutional clients in evading the restrictions placed on market timing by mutual funds. The findings stated that Rosato suggested deceptive strategies that could be employed by the customers to evade restrictions of mutual funds on market timing, opened multiple accounts for the clients to enable them to market time the mutual funds without detection, used different broker numbers and different addresses for the accounts, and placed trades in related accounts to escape detection by the mutual funds. The findings also stated that the clients received approximately \$1 million in profits and Rosato received \$185,000 in commissions.

Rosato's suspension began September 6, 2005, and will conclude at the close of business September 5, 2006. (NASD Case #EAF0300920003)

**Linda Mary Rosato (CRD #1085831, Registered Representative, Long Beach, New York)** submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Rosato consented to the described sanction and to the entry of findings that she failed to appear for an NASD on-the-record interview. (NASD Case #EAF0300290004)

**William Randal Sabo (CRD #2045150, Registered Representative, Gibsonia, 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, Sabo consented

to the described sanction and to the entry of findings that he withdrew \$86,000 from a public customer's bank account and used the funds for his own purposes without the authorization or consent of customer. (NASD Case #2005001352102)

**Jayant H. Shahani (CRD #4533103, Registered Representative, Fort Lee, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Shahani consented to the described sanction and to the entry of findings that he found a bank debit card belonging to a public customer, took possession of the card and, in contravention of the rights and interests of the card owner, gave it to another person, intending that the person to whom he gave the card would use it, and the person did thereafter use the debit card for their own benefit. (NASD Case #2005001605401)

**David Allan Skjerven (CRD #1414499, Registered Representative, Moorhead, 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, Skjerven consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. (NASD Case #E0420040464-03)

**Luwana J. Smith (CRD #4018994, Associated Person, Riverhead, New York)** submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$2,500 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before Smith reassociates with any NASD member following the suspension, or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Smith consented to the described sanctions and to the entry of findings that she failed to disclose material facts on her Form U4.

Smith's suspension began August 1, 2005, and concluded at the close of business August 30, 2005. (NASD Case #ELI2004024201)

**Francisco R. Torres (CRD #4341453, Associated Person, Miami, Florida)** submitted an Offer of Settlement 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 Torres reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Torres consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on his Form U4.

Torres' suspension began September 6, 2005, and will conclude March 5, 2006. (NASD Case #C07050032)

**Victor Thomas Travaglianti (CRD #2994825, Registered Representative, Lake Ronkonkoma, 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 nine months. The fine must be paid before Travaglianti reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Travaglianti consented to the described sanctions and to the entry of findings that he signed or affixed customer signatures on firm account documentation for public customers as an accommodation to the customers in question and failed to disclose this fact to his member firm.

Travaglianti's suspension began September 6, 2005, and will conclude at the close of business June 5, 2006. (NASD Case #ELI20040403-03)

**Charles Arvin Utter (CRD #841231, Registered Representative, Broomfield, Colorado)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$15,000, including disgorgement of \$8,800, and suspended from association with any NASD member in any capacity for five months. Without admitting or denying the allegations, Utter consented to the described sanctions and to the entry of findings that he engaged in outside business activities without providing prompt written notice to his member firm. The findings also stated that Utter continued to engage in outside business activity knowing that his member firm disapproved of this activity.

**Samuel John Trigillo (CRD #1303837, Registered Representative, Spled, Illinois)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Trigillo affixed a customer's signature to securities related documents without the customer's knowledge or consent. The findings stated that Trigillo transferred a customer's funds from a fixed annuity to a variable annuity without the customer's knowledge or consent. NASD also found that Trigillo affixed another registered representative's signature on customer forms without the registered representative's knowledge or consent. In addition, NASD determined that Trigillo engaged in outside business activity without providing prompt written notice to his member firm. (NASD Case #C8A040082)

Utter's suspension began September 6, 2005, and will conclude February 5, 2006. (NASD Case #E3A2004030701)

**Glen Michael Varkoly (CRD #4147851, Registered Representative, Smyrna, Georgia)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 90 days. The fine must be paid before Varkoly reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Varkoly consented to the described sanctions and to the entry of findings that he forged a customer's signature on a request form to withdraw funds from the customer's variable annuity account and transfer them to the customer's checking account.

Varkoly's suspension began September 6, 2005, and will conclude December 4, 2005. (NASD Case #E07200489201)

**James Robert Vura, Jr. (CRD #2318119, Registered Representative, Addison, Illinois)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Vura reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Vura consented to the described sanctions and to the entry of findings that he failed to disclose material facts on his Form U4.

Vura's suspension began September 6, 2005, and will conclude at the close of business December 5, 2005. (NASD Case #E8A20040925)

**Kathryn Veness Wilcher (CRD #4783371, Associated Person, Jacksonville, Florida)** 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, Wilcher consented to the described sanction and to the entry of findings that she converted funds from a bank customer totaling \$1,900. (NASD Case #E072004067501)

**John Foster Wilkinson (CRD #2156376, Registered Representative, Birmingham, 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 30 days. Without admitting or denying the allegations, Wilkinson consented to the described sanctions and to the entry of findings that he engaged in outside business activities for compensation without giving prior written notice to his member firm.

Wilkinson's suspension will begin September 19, 2005, and will conclude at the close of business October 18, 2005. (NASD Case #E8A2002124005)

## 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.

**Brett Aaron Jurica (CRD #2535339, Registered Principal, Scottsdale, Arizona)** was named as a respondent in an NASD complaint alleging that he completed and submitted applications to establish trust accounts in his name and that of a public customer at a broker-dealer other than his member firm, and named himself as the trustee and authorized agent for the accounts. The complaint alleges that Jurica transferred funds or securities from the customer's account to the account he opened under his name without the knowledge, authorization or consent of the customer. The complaint also alleges that Jurica willfully failed to provide written notification to the broker-dealer of his association with a member firm, and did not provide notification to his member firm of his transactions with the broker-dealer. In addition, the complaint alleges that Jurica failed to respond to NASD requests for information. (NASD Case #E3A2004031001)

**Robert W. Krusec (CRD #4633666, Associated Person, Bolingbrook, Illinois)** was named as a respondent in an NASD complaint alleging that he caused the electronic transfer of funds totaling \$129,173 from his member firm's affiliate to his own personal bank accounts without the knowledge and approval of his member firm's affiliate, and converted the funds to his own personal use. In addition, the complaint alleged that Krusec failed to appear for an on-the-record interview with NASD. (NASD Case #C8A050061)

**Kenneth James Nemetz (CRD #1299654, Registered Principal, The Woodlands, Texas)** was named as a respondent in an NASD complaint alleging that he received a \$23,000 check payable to him from public customers for investment purposes, but Nemetz endorsed the customers' check and deposited it into a bank account that he controlled without the customers' knowledge, authorization or consent. (NASD Case #E0620030534-02)

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

**Mills, Jeffrey Johnathan**  
W. Orange, New Jersey  
(August 5, 2005)

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

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

**Bago, Mario**  
Long Island City, New York  
(July 25, 2005)

**Bonney, Michael James**  
Pompano Beach, Florida  
(July 25, 2005)

**Elliott, Michael Scott**  
Sarasota, Florida  
(July 25, 2005)

**Eposito Sr., Jeffrey Marc**  
Dallas, Texas  
(August 17, 2005)

**Miranda, Eduardo Jose**  
Lutz, Florida  
(July 13, 2005)

## Individuals Barred Pursuant to NASD Rule 9552 for Failure to Provide Information Requested under NASD Rule 8210

**Christensen, Brian Andrew**  
Bradenton, Florida  
(August 8, 2005)

**Crippen, Toni Gail**  
Medford, Oregon  
(August 3, 2005)

**Donnauro, Frank Charles**  
Freehold, New Jersey  
(August 17, 2005)

**Dvorznak, James Anthony**  
Dix Hills, New York  
(July 12, 2005)

**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.)

**Bila, James Leonard**  
Holbrook, New York  
(July 21, 2005)

**Eminente, Christian Luciano**  
Delray Beach, Florida  
(July 18, 2005)

**Galicki, Brian Eric**  
Monmouth Junction, New Jersey  
(July 18, 2005)

**Garfinkel, David Abbot**  
New Rochelle, New York  
(August 19, 2005)

**Lamberts, Ross Edwin**  
La Center, Washington  
(July 20, 2005)

**Langston, Paul Anthony**  
New York, New York  
(July 12, 2005)

**Palmiere, Robert Anthony**  
Boca Raton, Florida  
(July 15, 2005)

**Smith, Judson Darryl**  
Portland, Maine  
(July 18, 2005)

**Smith, Michael Christopher**  
Netcong, New Jersey  
(August 10, 2005)

**Taylor, Patience Lane**  
Plymouth, Massachusetts  
(July 20, 2005)

**Turner, John David**  
N. Wilkesboro, North Carolina  
(July 20, 2005)

**NASD Fines Hantz Financial \$675,000 for Fraud, Misrepresentations Related to Undisclosed Revenue Sharing Arrangements**

*Firm's Owner/CEO Censured, Fined and Suspended*

NASD fined Michigan-based Hantz Financial Services, Inc., \$675,000 for fraud and misrepresentations relating to undisclosed revenue sharing arrangements, as well as other violations. John Hantz, the firm's President, CEO, founder and primary owner, was censured and fined \$25,000 for failing to supervise the firm's revenue sharing activities and suspended from acting in a supervisory capacity for 30 days.

The firm also agreed to implement substantial remedial measures, including making specific and immediate disclosures on its Web site about its potential conflicts, updating its policies, procedures and training, and retaining an independent consultant who will verify that Hantz Financial has completed the appropriate remedial activities.

NASD found that while Hantz Financial represented itself to clients as an independent firm offering a range of product choices from a variety of suppliers, the firm in fact had a single "preferred supplier" for each product category and directed the vast majority of sales to those preferred suppliers—in exchange for millions of dollars in marketing fees or special cash compensation. In representing itself to preferred suppliers, Hantz Financial emphasized that it had a proprietary rather than independent sales force, that it could determine what its employees sold and that it expected 90 percent of its sales of each investment product to be the preferred supplier's product.

"This firm portrayed itself as independent, unbiased and armed with a myriad of product alternatives to meet its clients' needs—when in fact it was captive to a few preferred suppliers," said Barry Goldsmith, NASD Executive Vice President and Head of Enforcement. "Hantz Financial failed to meet its fundamental obligation to put its customers' interests first, and to disclose material conflicts of interest arising from revenue sharing arrangements, not to hide them."

NASD's investigation showed that from 2002 to 2004, Hantz Financial misrepresented to its clients that the firm and its financial advisors (brokers) were "independent," "objective" and not "captive to one or a few product companies." A script brokers generally followed closely in their initial conversations with clients stated:

"I am an independent financial consultant. Do you know what that means? To be an independent financial consultant means a lot more freedom and flexibility to offer a number of different products and services without being captive to one or

a few product companies. It allows me to better service my clients to help them reach their financial goals because there is more objectivity."

However, in confidential presentations to its preferred suppliers, Hantz Financial conceded that it was not "independent." NASD found that the firm entered into arrangements with a single "preferred supplier" in each product category, then encouraged its brokers to focus their sales almost exclusively upon its preferred suppliers' products. As Hantz Financial stated in a confidential marketing presentation to its preferred suppliers:

"Since [Hantz Financial's] entire sales force are employees, not independent contractors, [Hantz Financial] can dictate how they do business... Unlike independent broker/dealer firms, almost all of [Hantz Financial's] new hires come from outside the industry, so [Hantz Financial] can train them to do business its way."

NASD found that Hantz Financial's brokers successfully directed between 81 percent and 99 percent of their sales in each product category to the designated preferred suppliers. The firm did not disclose to its customers that, contrary to its representations, it had preferred suppliers, or that it was selling their products almost exclusively. Hantz Financial also failed to disclose that it had negotiated deals with the preferred suppliers that allowed it to collect revenue sharing payments on sales of the preferred products. Between 2002 and 2004, Hantz Financial collected more than \$4.2 million in marketing fees. The revenue sharing was so important to the firm's profitability that, without it, Hantz Financial's net profits in 2002 would have fallen from over \$1 million to just \$57,602. By 2004, its annual income from marketing fees had doubled and accounted for seven percent of the firm's overall revenues.

NASD also found that when Hantz Financial learned that its mutual fund preferred supplier was no longer willing to pay the firm marketing fees in 2002, it dropped that mutual fund firm as a preferred supplier and effectively stopped recommending its products to its customers. After signing an agreement to collect marketing fees from a new preferred supplier, Hantz Financial's sales of the new preferred supplier's mutual funds skyrocketed.

NASD's investigation also revealed that Hantz Financial recommended that thousands of its customers refinance their home mortgages through its affiliated mortgage broker, Tranex Financial, while mischaracterizing or not adequately disclosing its relationship with Tranex, the substantial compensation its brokers received for referring customers to Tranex and the role Hantz Financial brokers played in the mortgage process. Hantz Financial suggested to both its customers and its mortgage regulators that the Hantz Financial brokers did not receive

referral fees for directing mortgage loans to Tranex. In fact, Hantz Financial paid its brokers 25 percent of the net yield spread that Tranex earned on each loan that they referred. Hantz Financial did not disclose these conflicts of interest to its customers. NASD therefore found that Hantz Financial's misrepresentations and omissions concerning its mortgage activity violated NASD rules.

In settling this matter, Hantz Financial and John Hantz neither admitted nor denied the charges, but consented to the entry of NASD's findings.