NOVEMBER 2005

Notice to Members

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Reported for November

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

Notice to Members

NOVEMBER 2005

SUGGESTED ROUTING

Executive Representatives
Legal & Compliance
Operations
Registered Representative
Registration
Senior Management

KEY TOPICS

IARD℠
Maintenance Fees
Renewals
Registration
Web CRD®

ACTION REQUIRED

Broker-Dealer and Investment Adviser Renewals

Broker-Dealer, Investment Adviser Firm, Agent and Investment Adviser Representative Renewals for 2006; **Payment Deadline: December 14, 2005**

Executive Summary

The 2006 NASD Broker-Dealer and Investment Adviser Registration Renewal Program will begin on November 21, 2005, when online Preliminary Renewal Statements are made available to all firms on Web CRD/IARD. This annual program simplifies the registration renewal process for more than 27,000 broker-dealer (BD) and investment adviser (IA) firms, and over 700,000 registered representatives and investment adviser representatives with the payment of one amount to NASD by the published deadline. Beginning this year, other regulators may also choose to renew branch registrations via Web CRD/IARD. On **November 1, 2005,** firms may start submitting post-dated Forms ADV-W via IARD. Beginning **November 7, 2005,** firms may start submitting post-dated Forms U5, BDW and BR Closing/Withdrawal via Web CRD/IARD. Post-dated filings that are submitted by 11 p.m. Eastern Time (ET), November 18, 2005, will not appear on the firm's Preliminary Renewal Statement.

Renewal statements will include the following fees: NASD Web CRD System Processing Fees, NASD Branch Office Fees, as well as New York Stock Exchange (NYSE), American Stock Exchange (Amex), Chicago Board Options Exchange (CBOE), International Securities Exchange (ISE), Pacific Exchange (PCX) and Philadelphia Stock Exchange (PHLX) Maintenance Fees. The statement will also include State Agent, State Broker-Dealer, and, if applicable, State Investment Adviser Firm and Investment Adviser Representative Renewal Fees and Broker-Dealer and/or Investment Adviser Branch Renewal Fees.

Members should read this *Notice to Members,* any instructions posted on the NASD Web site at *www.nasd.com/renewals,* especially the 2006 Renewal Program Bulletin, the Investment Adviser Web site, (if applicable), *www.iard.com/renewals.asp* for the IARD Renewals Bulletin, and any mailed information to ensure continued eligibility to do business as of January 1, 2006. Any renewal processing changes, subsequent to the publishing of this *Notice,* will be provided to you in a *Special Notice.*

Questions/Further Information

Questions concerning this Noticemay be directed to the Gateway Call Center at (301) 869-6699.

Preliminary Renewal Statements

Beginning November 21, 2005, Preliminary Renewal Statements will be available for viewing and printing on Web CRD. The statements will include the following fees: Web CRD System Processing Fees; NASD Branch Office Fees; NYSE, Amex, CBOE, ISE, PCX and PHLX Maintenance Fees; State Agent Renewal Fees; State Broker-Dealer Renewal Fees; and, if applicable, Investment Adviser Firm and Representative Renewal Fees, and Broker-Dealer and/or Investment Adviser Branch Renewal Fees. NASD must **receive** full payment of the November Preliminary Renewal Statement **no later than December 14, 2005.**

If payment is **not** received by the **December 14, 2005,** payment due date, the firm will be assessed a *Renewal Payment Late Fee.* This late fee will be included as part of the firm's Final Renewal Statement and will be calculated as follows: 10 percent of a member firm's cumulative final renewal assessment or $100, whichever is greater, with a cap of $5,000. Please see *Notice to Members (NTM) 02-48* for details. Firms also risk failing to renew if fees are not received on time.

Fees

A fee of $30 will be assessed for each person who renews his/her registration with any regulator through Web CRD. Firms can access a listing of agents for whom their firm will be assessed by requesting the Renewals-Firm Renewal Roster.

For 2006 renewals, the North American Securities Administrators Association (NASAA) is waiving the annual RA Renewal System Processing Fee of $45 that is normally assessed for every investment adviser representative who renews through the IARD Program. Additionally, for 2006 renewals, NASAA is waiving the IARD Firm System Fee of $100 that is normally assessed for every state-registered investment adviser firm that renews through the IARD Program.

The NASD Branch Office Assessment Fee of $75 per branch, based on the number of active NASD branches as of December 31, 2005, will be assessed.

NASD Personnel Assessment Fees are not assessed through the NASD Annual Renewal Program. NASD will mail all NASD member firms a separate billing for this fee during the first quarter of 2006. Firms can access a listing of agents for whom the firm will be assessed the Personnel Assessment Fee by requesting the Renewals-Firm Renewal Roster.

Renewal Fees for NYSE, Amex, CBOE, PCX, ISE, PHLX and state registrations are also assessed in the Preliminary Renewal Statement on Web CRD. NYSE, Amex, CBOE, PCX, ISE and PHLX Maintenance Fees and State Renewal Fees collected by NASD for firms that are registered with those exchanges and jurisdictions, as well as NASD Renewal Fees, are based on the number of NASD, NYSE, Amex, CBOE, PCX, ISE and PHLX and state-registered personnel employed by the member firm.

Beginning this year, Branch Office Renewal Fees will also be collected for those regulators who choose to renew branches registered with them via Web CRD/IARD.

Some participating states may require steps beyond the payment of Renewal Fees to NASD to complete the broker-dealer or investment adviser renewal process. Firms should contact each jurisdiction directly for further information on state renewal requirements. A Regulator Directory can be found at *www.nasaa.org/nasaa/abtnasaa/find_regulator.asp.*

For detailed information regarding investment adviser renewals, you may also visit the Investment Adviser Web site, *www.iard.com.* A matrix that includes a list of Investment Adviser Renewal Fees for states that participate in the 2006 IARD Investment Adviser Renewal Program is posted at *www.iard.com/pdf/rep_fee_sch.pdf.*

Renewal Payment

Firms have four (4) payment methods available to pay 2006 Renewal Fees:

1. Web CRD/IARD E-Pay
2. Check
3. Wire transfer, or
4. Request a transfer of the entire amount from the firm's Daily to Renewal Account.

   Note: The entire amount of the payment must be available.

Web E-Pay Instructions:

The E-Payment application is accessible from both the Preliminary and Final Renewal Statements and the NASD *(www.nasd.com/crd)* or IARD *(www.iard.com)* Web sites and allows firms to make an ACH payment from a designated bank account to their Web CRD/IARD Renewal Account. Please note that in order for funds to be posted to your firm's Renewal Account by **December 14, 2005,** payment must be submitted electronically, no later than **8:30 p.m. ET on December 12, 2005.**

Check Instructions:

The check should be drawn on the member firm's account, with the firm's CRD number included on the front of the check, along with the word "Renewals" in the memo line.

Firms should mail their renewal payment, **along with a print-out of the first page of their online renewal statement** directly to:

U.S. Mail

NASD, CRD-IARD

P.O. Box 777-W8705

Philadelphia, PA 19175-8705

(Note: This box will not accept courier or overnight deliveries)

or

Express/Overnight Delivery

NASD, CRD-IARD

W8705

701 Market Street 199-3490

Philadelphia, PA 19106

Telephone: (301) 869-6699

Member firms should use the **blue, pre-addressed renewal payment envelope** that they are scheduled to receive the third week of November, or should use the **full address,** as noted above, to ensure prompt processing.

Please note: The addresses for renewal payments are **different** than the addresses for funding your firm's CRD or IARD Daily Account.

To ensure prompt processing of your renewal payment check:

- Include a printout of the first page of your Preliminary Renewal Statement with payment.
- Do not include any other forms or fee submissions.
- Write your firm's CRD number and the word "Renewals" on the check memo line.
- Be sure to send your payment either in the blue pre-addressed renewal payment envelope that will be mailed to you or write the address on the envelope exactly as noted above.

Wire Payment Instructions:

Firms may wire full payment of the Preliminary Renewal Statement by requesting their bank to initiate the wire transfer to: **"Mellon Financial, Philadelphia, PA."** Firms should provide their bank with the following information:

Transfer funds to:	**Mellon Financial, Philadelphia, PA**
ABA Number:	**031 000 037**
Beneficiary:	**NASD**
NASD Regulation Account Number:	**8-234-353**
Reference Number:	**Firm CRD number and the word "Renewals"**

To ensure prompt processing of a renewal payment by wire transfer:

- Remember to inform the bank that the funds are to be credited to the **NASD bank account.**
- Provide the Firm's CRD number and the word "Renewals" as reference only.
- Record the confirmation number of the wire transfer provided by the bank.

Transfer of Funds Instructions:

Firms may also call the NASD Gateway Call Center at (301) 869-6699 and request that a transfer of the **full** renewal balance be transferred from the firm's Daily Account to its Renewal Account.

Note: The firm must have the available funds in order for the transfer to be processed.

Members are advised that failure to return full payment of their Preliminary Renewal Statement to NASD by the December 14, 2005 deadline could cause a member to become ineligible to do business in the jurisdictions effective January 1, 2006.

Renewal Reports

Beginning November 21, 2005, the Renewal Reports are available to request, print and/or download via Web CRD. There will be three reports available for reconciliation with the Preliminary Renewal Statement. All three reports will also be available as downloads:

- **Firm Renewal Report:** applicable to broker-dealer and investment adviser firms. This report lists individuals included in the 2006 Renewal Program processing and includes billing codes (if they have been supplied by the firm).
- **Branches Renewal Report:** applicable to broker-dealer and investment adviser firms. This report lists each branch registered with NASD, and with any other regulators who choose to renew branches registered with them through Web CRD/IARD and for which the firm is being assessed a fee. Firms should use this report to reconcile their records for renewal purposes.
- **Approved AG Reg without NASD Approval Report:** applicable to NASD members. This report contains all individuals who are not registered with NASD but are registered with one or more jurisdictions. The report should be used throughout the year, including during the Renewal Program, as an aid for firms to reconcile personnel registrations. Firms should request this report as soon as possible to determine if any NASD registrations need to be requested or jurisdictions terminated prior to renewal processing for the Preliminary Renewal Statement available on November 21. Note, any post-dated termination filings submitted by 11 p.m. ET on November 18, 2005, will not appear on the firm's Preliminary Renewal Statement.

Filing Form U5

Firms may begin submitting post-dated U5 filings on November 7, 2005. If Forms U5 (either full or partial) are filed electronically via Web CRD by 11 p.m. ET, November 18, 2005, for agents/investment adviser representatives (RAs) terminating in one or more jurisdiction affiliations, those individuals' Renewal Fees will not be included on the Preliminary Renewal Statement.

The deadline for electronic filing of Form U5 for firms that want to terminate an agent affiliation before year-end 2005 is 6:00 p.m. ET on December 21, 2005. Firms may file both partial and full Forms U5 with a post-dated **termination date of December 31, 2005.** (This is the only date that can be used for a post-dated Form U5.) The deadline for submission of all EFT (electronic file transfer) filings is 2:00 p.m. ET, December 21, 2005.

Post-Dated Form Filings

This functionality allows firms to file a termination form, with a termination date of December 31, 2005. If a Form U5, BDW, BR Closing/Withdrawal or ADV-W indicates a termination date of December 31, 2005, an agent, broker-dealer and/or investment adviser (firm) and investment adviser representative (RA) may continue doing business in the jurisdiction until the end of the calendar year without being assessed 2006 Renewal Fees. **December 31, 2005,** is the only date that can be used for a post-dated form filing.

Firms can begin electronically filing post-dated ADV-W forms via IARD on November 1, 2005. Firms can begin electronically filing post-dated Forms U5, BDW and BR Closing/Withdrawal via Web CRD on November 7, 2005. Firms that submit post-dated termination filings by 11 p.m. ET on November 18, 2005, **will not** be assessed Renewal Fees for the terminated registrations on their Preliminary Renewal Statement. Firms that submit post-dated termination filings on, or after, November 21, 2005, will not be assessed Renewal Fees for the terminated jurisdictions on the Final Renewal Statement in January 2006. Those firms should see a credit balance on their Final Renewal Statement if the firm has not requested additional registrations during that time period to offset the credit balance.

Firms should query individual, branch and/or firm registrations after a termination filing has been submitted to ensure that electronic Forms U5, BDW, BR Closing/Withdrawal and ADV-W are filed by the renewal filing deadline date of 6:00 p.m. ET on December 21, 2005.

Firms should exercise care when submitting post-dated Forms U5, BDW, BR Closing/Withdrawal and ADV-W. NASD will systematically process these forms as they are submitted and **cannot** withdraw a post-dated termination once submitted and processed. A firm that files a post-dated termination in error will have to file a new Form U4, BD Amendment or ADV when Web CRD/IARD resume filing processing on January 3, 2006. New registration fees would be assessed as a result.

Filing Form BDW

The CRD Phase II Program allows firms requesting broker-dealer termination (either full or partial) to electronically file their Forms BDW via Web CRD. Firms that file either a full or partial Form BDW by 11 p.m. ET, November 18, 2005, will avoid the assessment of the applicable Renewal Fees on their Preliminary Renewal Statement, provided that the regulator is a CRD Phase II participant. Currently, there are only four regulators that participate in Web CRD renewals for agent fees, but **do not** participate in CRD Phase II:

- American Stock Exchange
- New York Stock Exchange
- Pacific Exchange
- Philadelphia Stock Exchange

Firms requesting termination with any of the above-listed regulators must submit a paper Form BDW directly to the regulator, as well as submit one electronically to Web CRD.

The deadline for electronic filing of Forms BDW for firms that want to terminate an affiliation before year-end 2005 is 6:00 p.m. ET, December 21, 2005. This same date applies to the filing of Forms BDW with regulators that are not Phase II participants. For information regarding the post-dating of Forms BDW with the termination date of December 31, 2005, see the section titled, "Post-Dated Form Filings."

Filing Forms ADV to Cancel Notice Filings or Forms ADV-W to Terminate Registrations

Firms that file either a Form ADV Amendment, unmarking a state (generating the status of "Removal Requested at End of Year") or a full or partial Form ADV-W by 11 p.m. ET, November 18, 2005, will avoid the assessment of the applicable Renewal Fees on their Preliminary Renewal Statement.

The deadline for electronic filing of Form ADV Amendments or Forms ADV-W for firms that want to cancel a notice filing or terminate a state registration before year-end 2005 is 6:00 p.m. ET, December 21, 2005. For information regarding post-dating Form ADV-W with the termination date of December 31, 2005, for state registrations, see the section below.

Removing Open Registrations

Throughout the year, firms have access to the "Approved AG Reg without NASD Approval" Report via Web CRD. This report identifies agents whose NASD registrations are either terminated or have been changed to a "purged" status due to the existence of a deficient condition (i.e., exams or fingerprints) but still maintain an approved registration with a state. Member firms should use this report to terminate obsolete state registrations through the submission of Forms U5, or reinstate the NASD licenses through the filing of a Form U4 Amendment. This report should aid firms in the reconciliation of personnel registrations prior to year's end and should be requested as

soon as possible. Requesting this report will enable firms to identify individuals who can be terminated by November 18, 2005, to avoid being charged for those individuals on their Preliminary Renewal Statement. The Approved AG Reg without NASD Approval Report will also advise a firm if there are no agents at the firm within this category.

Final Renewal Statements

Beginning January 3, 2006, NASD will make available Final Renewal Statements via Web CRD and IARD. These statements will reflect the final status of broker-dealer, registered representative (AG), investment adviser firm and investment adviser representative (RA) registrations and/or notice filings as of December 31, 2005. Any adjustments in fees owed as a result of registration terminations, approvals, notice filings or transitions subsequent to the processing/posting of the Preliminary Renewal Statement will be made in the Final Renewal Statement on Web CRD and IARD.

- If a firm has more agents, branch offices or jurisdictions registered and/or notice filed on Web CRD and IARD at year-end than it did when the Preliminary Renewal Statement was generated, additional Renewal Fees will be assessed.
- If a firm has fewer agents, branch offices or jurisdictions registered and/or notices filed at year-end than it did when the Preliminary Renewal Statement was generated, a credit/refund will be issued. Please note that as of January 3, 2006, overpayments will be systemically transferred to firms' Daily Accounts. Firms that have a credit (sufficient) balance in their Daily Account may request a refund by faxing or mailing a written request signed by the designated signatory to the Registration Management-Research Unit at (240) 386-4849. The request should include a printout of the firm's credit balance as reflected on Web CRD.

On or after January 3, 2006, NASD member firms and "joint" firms should access the Web CRD Reports function for the Firm Renewal Report, which will list all renewed personnel with the NASD, NYSE, Amex, CBOE, PCX, ISE, PHLX and each jurisdiction. Agents and RAs whose registrations are "approved" in any of these jurisdictions during November and December will be included in this roster. Registrations that are "pending approval" or are "deficient" at year's end will not be included in the Renewal Program. Firms will also be able to request the Branches Renewal Report that lists all branches for which they have been assessed Renewal Fees. Versions of these reports will also be available for download.

Firms have until **February 3, 2006,** to report any discrepancies on the renewal reports. This is also the deadline for **receipt of final payment.** Specific information and instructions concerning the Final Renewal Statements and Renewal Reports will appear in the January 2006 *Notices to Members.* Firms may also refer to the 2006 Renewal Program Bulletin, available at *www.nasd.com/renewals.*

Special Notice to Members

NOVEMBER 2005

SUGGESTED ROUTING

Legal & Compliance
Operations
Registration
Senior Management

KEY TOPICS

District Elections

INFORMATIONAL

District Elections

NASD Announces Election Results for District Committees and District Nominating Committees

Executive Summary

Through this *Notice*, NASD announces the election results for the District Committees and the District Nominating Committees. The candidates nominated to the District Committees have been duly elected in all districts with the exception of District 7, which will have a contested election to determine the members of its District Committee. The candidates nominated to the District Nominating Committees have been duly elected in all districts. The newly elected District Committee members will serve until January 2009,[1] and the newly elected District Nominating Committee members will serve until January 2007.

In District 7, an additional candidate has satisfied the requirements of Article VIII of the NASD Regulation By-Laws to contest the District Committee election. The outcome of this contested election will be announced in a *Notice* issued in January 2006.

The members of the incoming District Committees and the District Nominating Committees are included in Attachment A.

Questions/Further Information

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

Endnote

1 Some District Committee members were elected to fill existing vacancies and therefore may serve less than a three-year term, as indicated on Attachment A.

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ATTACHMENT A

District Committees and District Nominating Committees – 2006 Incoming Members

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

District 1 Committee Incoming Members

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 Incoming Members

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

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

District 2 Committee Incoming Members

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 Incoming Members

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

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

District 3 Committee Incoming Members

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 Incoming Members

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.	Albquerque, NM
C. Fredrick Roed	McAdams Wright Ragen, Inc.	Bellevue, WA

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

District 4 Committee Incoming Members

Steven F. McWhorter	Securities America, Inc.	Omaha, NE
Arthur S. Montgomery[1]	Walnut Street Securities, Inc.	St. Louis, MO
Brian D. Murphy	Woodbury Financial Services, Inc.	Woodbury, MN
Andrew C. Small	Scottrade, Inc.	St. Louis, MO

District 4 Nominating Committee Incoming Members

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

1 Mr. Montgomery has been elected to serve the remaining year of the term of Richard M. Hurwitz, who resigned from the District Committee.

District 5

Warren A. Butler, Jr., Regional Director

1100 Poydras Street, Energy Centre, Suite 850, New Orleans, LA 70163-0802[2]

(504) 522-6527

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

District 5 Committee Incoming Members

Curtis F. Bradbury, Jr.	Stephens Inc.	Little Rock, AR
William A. Geary	Morgan Keegan & Company, Inc.	Jackson, MS
Jefferson G. Parker	Howard Weil Incorporated	New Orleans, LA

District 5 Nominating Committee Incoming Members

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

2 Please be advised that due to Hurricane Katrina, NASD's District 5 Office in New Orleans is temporarily closed. NASD has established a temporary office at 1125 Highway 43 North, Suites C & D, Picayune, Mississippi 39466. The phone number at this location is (601) 799-4894.

District 6

Virginia F. M. Jans, District Director

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

(972) 701-8554

Texas

District 6 Committee Incoming Members

Alan K. Goldfarb	Oakbrook Financial Group, LLC	Dallas, TX
Brent T. Johnson[3]	Multi-Financial Securities Corporation	Houston, TX
John Christopher Melton	Coastal Securities, L.P.	Houston, TX
Ralph E. Poppell	Stanford Group Company	Houston, TX

District 6 Nominating Committee Incoming Members

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

3 Mr. Johnson has been elected to serve the remaining year of the term of Darryl W. Traweek, who resigned from the District Committee.

District 7

Daniel J. Stefak, 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

District 7 Committee Incoming Members

To Be Announced

District 7 Nominating Committee Incoming Members

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

District 8

Carlotta A. Romano, Regional Director

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

(312) 899-4400

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

District 8 Committee Incoming Members

Stephen F. Anderson	Waterstone Financial Group	Itasca, IL
Eric A. Bederman	Bernardi Securities, Inc.	Chicago, IL
Mari Buechner[4]	Coordinated Capital Securities Inc.	Madison, WI
Barbara A. Turner	The O.N. Equity Sales Company	Cincinnati, OH

District 8 Nominating Committee Incoming Members

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

4 Ms. Buechner has been elected to serve the remaining year of the term of Lora Rosenbaum, who resigned from the District Committee.

District 9

Gary K. Liebowitz, Regional 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

District 9 Committee Incoming Members

Michael T. Corrao[5]	Knight Equity Markets LP	Jersey City, NJ
Wayne F. Holly[6]	Sage Rutty & Co., Inc.	Rochester, NY
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 Incoming Members

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

5 Mr. Corrao has been elected to serve the remaining two years of the term of Dorothy G. Sanders, who resigned from the District Committee.

6 Mr. Holly has been elected to serve the remaining year of the term of Barry M. Cash, who resigned from the District Committee.

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)

District 10 Committee Incoming Members

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 Incoming Members

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

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

District 11 Committee Incoming Members

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 Incoming Members

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

NOVEMBER 2005

SUGGESTED ROUTING

Legal & Compliance

Operations

Registered Representatives

Senior Management

Trading

KEY TOPICS

IM-3013 (Annual Compliance and Supervision Certification)

Supervision

Supervisory Control Procedures

Rule 3012 (Supervisory Control System)

Rule 3013 (Annual Certification of Compliance and Supervisory Processes)

GUIDANCE

Supervisory Controls and Annual CEO Certification

Amendments Regarding Deadlines for Submission of Initial Annual Report under Rule 3012 and Execution of the Initial Annual Certification under Rule 3013 and IM-3013

Executive Summary

NASD has filed for immediate effectiveness amendments to NASD Rule 3012 (Supervisory Control System) and Rule 3013 (Annual Certification of Compliance and Supervisory Processes) to extend until April 1, 2006, the date by which members must submit their initial annual report required by Rule 3012 and execute their first annual certification pursuant to Rule 3013 and IM-3013.[1] The rule change became immediately effective on its **October 14, 2005** filing date.

The text of the amendments is set forth in Attachment A.

Questions/Further Information

Questions concerning this *Notice* may be directed to Patricia Albrecht, Assistant General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8026.

Background

Since the approval of new Rules 3012 and 3013, NASD has received a number of inquiries from members regarding whether the reports required by Rule 3012 and IM-3013 may be combined. Although NASD has previously advised members that they may combine the two reports as long as all of the required elements of the respective reports are addressed and clearly identified, members have indicated that the initial compliance deadline of December 1, 2005 for Rule

3013 makes that option impracticable. This is because the Rule 3013 report must be prepared in advance of the certification-*i.e.*, before December 1, 2005-while the initial Rule 3012 report is not required to be submitted until January 31, 2006.

In addition, members of both NASD and the New York Stock Exchange (NYSE) ("dual members") have inquired whether they can combine the reports required by Rule 3012 and IM-3013 with the Annual Report required by NYSE Rule 342.30, which is due by April 1 of each year. As support for their request, dual members have noted that the NYSE Rule 342.30 Annual Report mandates similar, though not identical, requirements to the Rule 3012 report. Dual members have also noted that IM-3013 specifically provides that the IM-3013 report may be combined with any other compliance or other similar report required by another self-regulatory organization.

Discussion

In response to these inquiries, NASD has amended Rule 3012 and Rule 3013 to allow members to submit the initial annual report required by Rule 3012 and to execute the initial annual certification required by Rule 3013 and IM-3013 by no later than April 1, 2006. As a result, members will be able, if they so choose, to combine the Rule 3012 report with the report required by IM-3013. In addition, dual members will be able to combine either or both of these respective reports with the NYSE Rule 342.30 Annual Report. Accordingly, members will be able to avoid any undue duplication of resources when complying with these reporting requirements.

Members should be aware, however, that due to Rule 3012's January 31, 2005 effective date, any member choosing to rely on any date after January 31, 2005 through April 1, 2006 as the submission deadline for its initial Rule 3012 report will have to encompass the period from January 31, 2005 up to that submission date (or a reasonable period of time immediately preceding the submission date). Members should also be aware that the report required by IM-3013 that evidences the member's processes must be prepared and submitted to the member's board of directors and audit committee in advance of, but reasonably close in time to, the certification. The certification may be executed anytime up until April 1, 2006 and annually thereafter by the same date the member chooses for its initial certification.

Endnote

1. Exchange Act Release No. 52727 (Nov. 3, 2005) (SR-NASD-2005-121).

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ATTACHMENT A

New rule text is underlined; deleted rule text is bracketed.

3012. Supervisory Control System

(a) General Requirements

(1) Each member shall designate and specifically identify to NASD one or more principals who shall establish, maintain, and enforce a system of supervisory control policies and procedures that (A) test and verify that the member's supervisory procedures are reasonably designed with respect to the activities of the member and its registered representatives and associated persons, to achieve compliance with applicable securities laws and regulations, and with applicable NASD rules and (B) create additional or amend supervisory procedures where the need is identified by such testing and verification. The designated principal or principals must submit to the member's senior management no less than annually, a report[1] detailing each member's system of supervisory controls, the summary of the test results and significant identified exceptions, and any additional or amended supervisory procedures created in response to the test results.

(2) No change.

(b) Dual Member No change.

* * * * *

1. Rule 3012 became effective on January 31, 2005, which would require a member's first Rule 3012 report to be submitted by no later than January 31, 2006 and at least annually thereafter; however, a member may elect to submit its first Rule 3012 report by no later than April 1, 2006. Importantly, a member's first Rule 3012 report must encompass the period from January 31, 2005 (the effective date of Rule 3012) up to the submission date (or a reasonable period of time immediately preceding the submission date). Each ensuing Rule 3012 report may not be for a period greater than 12 months from the date of the preceding Rule 3012 report (but may be for a shorter time period if a member elects to prepare a report more frequently than annually).

Rule 3013. Annual Certification of Compliance and Supervisory Processes

(a) Designation of Chief Compliance Officer No change.

(b) Annual Certification

Each member shall have its chief executive officer (or equivalent officer) certify annually,[1] as set forth in IM-3013, that the member has in place processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable NASD rules, MSRB rules and federal securities laws and regulations, and that the chief executive officer has conducted one or more meetings with the chief compliance officer in the preceding 12 months to discuss such processes.

1. Rule 3013 and IM-3013 became effective on December 1, 2004, which would require a member's first certification to be executed by December 1, 2005 and annually thereafter; however, a member may elect to execute its first certification by no later than April 1, 2006 and annually thereafter.

Special Notice to Members

NOVEMBER 8, 2005

SUGGESTED ROUTING

Executive Representatives

Senior Management

KEY TOPICS

NASD Board of Governors

INFORMATIONAL

Nominees for NASD Board of Governors

Executive Summary

The Annual Meeting of NASD members will be held on February 3, 2006.

The formal notice of the meeting, including the precise time and location, will be mailed on or about December 29, 2005. The individuals nominated by the NASD National Nominating Committee (NNC) for election to the NASD Board of Governors (NASD Board) are identified in this *Special Notice*. Pursuant to Article VII, Section 10, of the NASD By-Laws, a person who has not been so nominated for election to the NASD Board may be included on the ballot for the election of governors if:

(a) within 45 days after the date of this *Special Notice*, such person presents to the Secretary of NASD petitions in support of such nomination duly executed by at least three percent of NASD members. As of the date of this *Special Notice*, NASD has 5,166 voting members; therefore, the applicable three percent threshold is 155 members. No member may endorse more than one such nominee. If, however, a candidate's name appears on a petition in support of a slate of more than one nominees, the slate must be endorsed by 10 percent of NASD's voting members. The applicable 10 percent threshold is 516 members; and

(b) the Secretary certifies that such petitions have been duly executed by the executive representatives of the requisite number of NASD members, and the person being nominated satisfies the classification of the governorship to be filled based on the information provided by the person as is reasonably necessary for the Secretary to make the certification.

Pursuant to Article VII, Section 4 of the NASD By-Laws, the NASD Board must consist of no fewer than 15 and no more than 25 governors. The number of governors within this range is set by the NASD Board. The By-Laws also require that the number of non-industry governors exceed the number of industry governors on the NASD Board.

On November 1, 2005, the Executive Committee of the NASD Board approved a reduction in the size of the Board from 19 to 18 governors by eliminating one non-industry seat. It was determined that when the terms of the current Board members who are not eligible for re-election expire in February 2006, the Board would remain balanced, in accordance with the By-Laws, with one fewer non-industry seat. In February 2006, the Board will consist of 18 governors and be properly balanced with two management, seven industry, two non-industry and seven public members.

On February 3, 2006, members will elect four governors. Assuming the Legg Mason/ Citigroup transaction referenced in footnote 2 (page 7) closes, the four persons to be elected will need to satisfy the By-Law definitions of public, non-industry representative of an issuer of investment company shares or an affiliate of such an issuer, industry, and industry representative of a regional retail or independent financial planning member firm. This is necessary for the Board to maintain compliance with the compositional requirements of the By-Laws.

Persons submitting petitions must provide information sufficient for the Corporate Secretary to determine their status with respect to the categories described above.

Questions/Further Information

Questions regarding this *Special Notice* may be directed to:

Barbara Z. Sweeney
Senior Vice President and Corporate Secretary
NASD
1735 K Street, NW
Washington, DC 20006-1500
(202) 728-8062

or

T. Grant Callery
Executive Vice President and General Counsel
NASD
1735 K Street, NW
Washington, DC 20006-1500
(202) 728-8285

NASD Board of Governors Nominees

The following four persons (see attached profiles) have been nominated by the NNC to serve on the NASD Board for a term of three years or until their successors are duly elected or qualified. Terms of office run from February 3, 2006 to January 2009.

Terms of Office 2006-2009

INDUSTRY

David A. DeMuro	Managing Director, Director of Global Compliance and Regulation, Lehman Brothers, Inc. (representative of a national retail firm)
John S. Simmers	Chief Executive Officer, ING Advisors Network (representative of an independent financial planning member firm)

NON-INDUSTRY

John J. Brennan	Chairman and CEO, The Vanguard Group (representative of an issuer of investment company shares)

PUBLIC

Josh S. Weston	Chairman and CEO (retired), Automatic Data Processing, Inc.

NASD Profiles of Board Nominees for Industry Governor

INDUSTRY

David A. DeMuro served as Chair of the National Adjudicatory Council in 2001 and 2002. He is Managing Director, Director of Global Compliance and Regulation at Lehman Brothers. Mr. DeMuro joined Lehman Brothers in 1984. Prior to that, he held various positions with the Securities and Exchange Commission in Detroit, Chicago, Los Angeles and Washington, D.C. Mr. DeMuro is a current member of the NASD Membership Committee and the NASD Licensing and Registration Council. He is a member of the Executive Committee of the Securities Industry Association's Compliance and Legal Division and served as Chairman of the Securities Industry/ Regulatory Council on Continuing Education. He currently serves on the NYSE's content committee for the Continuing Education Regulatory Element supervisor's program. He is also a member of the Compliance Advisory panels of the NYSE and CBOE, and of the Board of Trustees of the Securities Industry Institute, a joint venture of the Securities Industry Association and the Wharton School of the University of Pennsylvania. He is on the advisory board of The Journal of Investment Compliance, a publication of Institutional Investor, Inc. Mr. DeMuro is also a member of the Board of Trustees of the Theta Xi Fraternity Foundation. He holds a B.A. from the University of Michigan and a J.D. from the University of Notre Dame.

John S. Simmers John S. Simmers is Chief Executive Officer of ING Advisors Network. In 1983, he co-founded Financial Network Investment Corporation, a leading independent broker-dealer firm, where he served as Chief Operating Officer and as a member of its Board of Directors. Mr. Simmers also served as Chief Operating Officer for a national independent broker-dealer firm and in a management capacity for NASD. He is a former President and Director of the California Association of Independent Broker Dealers (CAIBD); a former member of the Investment Advisor and Independent Firm Committees for the Securities Industry Association (SIA); and served on a number of committees for the Financial Planning Association (FPA). For NASD, he was vice co-chairman of the District 2 South Business Conduct Committee as well as a member of numerous regional and national committees. Currently, Mr. Simmers serves on the Board of Directors for the Financial Services Institute (FSI). He is a graduate of the Ohio State University.

NASD Profile of Board Nominee for Non-Industry Governor

NON-INDUSTRY

John J. Brennan is Chairman and Chief Executive Officer, and a member of the Board of Directors of each of the mutual funds in the Vanguard Group. Mr. Brennan joined Vanguard in July 1982. He was elected President in 1989, Chief Executive Officer in 1996 and Chairman of the Board in 1998. Prior to his career at Vanguard, Mr. Brennan had been employed at S.C. Johnson & Son in Racine, Wisconsin and the New York Bank of Savings. Mr. Brennan is the past Chairman of the Investment Company Institute and is a Trustee of the United Way of America. He graduated from Dartmouth College in 1976 with an AB degree, and received an MBA from the Harvard Business School in 1980.

NASD Profile of Board Nominee for Public Governor

PUBLIC

Josh Weston is the former Chairman and CEO of Automatic Data Processing, Inc. (ADP) and currently is Honorary Chairman of ADP. Mr. Weston has been with ADP in various management positions since 1970. Prior to this, he worked at J. Crew's predecessor. Mr. Weston currently serves on the Boards of Russ Berrie & Co., Inc., Gentiva Health Services, and J. Crew. He is also active on numerous pro bono and Advisory Boards. Mr. Weston is a graduate of the City College of New York and the University of New Zealand, where he received a Master's Degree in economics while on a Fulbright Scholarship. He holds five Honorary Doctorate degrees.

Governors with Terms Expiring in January 2006

INDUSTRY

David A. DeMuro	Managing Director, Director of Global Compliance and Regulation, Lehman Brothers, Inc. (representative of a national retail firm)
M. LaRae Bakerink*	Chief Executive Officer, WBB Securities, LLC
Brian T. Shea[1]	Chief Operating Officer, Pershing LLC

NON-INDUSTRY

John J. Brennan	Chairman and CEO, The Vanguard Group (representative of an issuer of investment company shares)
Eugene M. Isenberg*	Chairman and CEO, Nabors Industries, Inc.

PUBLIC

Kenneth M. Duberstein*	Chairman and CEO, The Duberstein Group, Inc.

** Not eligible for re-election*

1. The Chair of the National Adjudicatory Council serves a one-year term on the NASD Board.

Governors with Terms Expiring in January 2007

INDUSTRY

William C. Alsover, Jr.*	Chairman, Centennial Securities Company, Inc. (representative of an NASD member having not more than 150 registered persons)

PUBLIC

Charles A. Bowsher	Former Comptroller General of the United States
Joel Seligman	President, University of Rochester
Sharon P. Smith*	Dean, College of Business Administration, Fordham University

** Not eligible for re-election*

Governors with Terms Expiring in January 2008

INDUSTRY

John W. Bachmann*	Senior Partner, Edward D. Jones & Company
Richard F. Brueckner*	Chief Executive Officer, Pershing LLC (representative of a firm that provides clearing services to other NASD members)
Raymond A. Mason*	Chairman and CEO, Legg Mason, Inc. (representative of a regional retail firm)[2]

NON-INDUSTRY

William Heyman	Executive Vice President and Chief Investment Officer, The St. Paul Travelers Companies, Inc. (representative of an insurance company)

PUBLIC

James E. Burton*	Chief Executive Officer, World Gold Council
Sir Brian Corby*	Chairman (retired), Prudential Assurance Company
John Rutherfurd, Jr.*	Chairman and CEO (retired), Moody's Corporation

** Not eligible for re-election*

2. Upon completion of the Legg Mason/Citigroup transaction, Mr. Mason will no longer be a representative of a regional retail firm. He will, however, continue to serve as a member of the Board of Governors and retain his classification as an Industry Governor.

Notice to Members

NOVEMBER 2005

SUGGESTED ROUTING

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

KEY TOPICS

Credit Default Swaps
Debt Securities
Operations
Options
Rule 6200 Series
TRACE Rules
Transaction Reporting

GUIDANCE

Corporate Debt Securities

Transactions in TRACE-Eligible Securities That Occur in Connection with Options, Credit Default Swaps, Other Swaps or Similar Instruments Must Be Reported to TRACE

Executive Summary

NASD provides interpretive guidance under Rule 6230 on the obligation of members to report to the Trade Reporting and Compliance Engine (TRACE) transactions in TRACE-eligible securities executed in connection with the exercise or settlement of options; the termination or settlement of (or other events triggering a transaction in TRACE-eligible securities) credit default swaps or other types of swaps; or the exercise, termination or settlement of (or other events triggering a transaction in TRACE-eligible securities) similar instruments.

Questions/Further Information

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

Interpretive Guidance

NASD has received inquiries regarding the reporting of transactions in TRACE-eligible securities that occur as a result of the exercise or settlement of options; the termination or settlement of (or other events triggering a transaction in TRACE-eligible securities) credit default swaps (CDSs) or other types of swaps; or the exercise, termination or settlement of (or other events triggering a transaction in TRACE-eligible securities) similar instruments.[1]

A member that is a party to a transaction in a TRACE-eligible security that occurs pursuant to, or in connection with an option, a CDS, another type of swap, or a similar instrument must report the transaction to TRACE under Rule 6230. In addition, when such a transaction in TRACE-eligible securities is executed at a price that does not represent current market pricing, the transaction must be reported to TRACE using the "special price" modifier (or flag), as more fully described below.

Under Rule 6230(d)(4)(A), if "a transaction is not executed at a price that reflects the current market price," the reporting member must select the "special price" modifier.[2] NASD interprets the term current market price as an arm's length price agreed upon by a buyer and seller after considering current pricing factors and information, such as current quotes or indications, current transaction information or a current spread to a benchmark. Even if such price is substantially different from the last price, NASD considers such a price to be a current market price.

The "special price" modifier or flag is appropriately used when a transaction is executed at a price based on arm's length negotiation and done for investment, commercial or trading considerations, but does not reflect current market pricing.[3] In this regard, a transaction in TRACE-eligible securities occurring as a result of an exercise or settlement of an option or similar right generally would be reportable to TRACE with a "special price" flag because, in general, options are structured such that the price of the later occurring transaction in TRACE-eligible securities does not reflect a then current market price for those securities. Similarly, a transaction in TRACE-eligible securities occurring as a result of the termination or settlement of (or other events triggering a transaction in, TRACE-eligible securities) CDSs or other types of swaps generally would be reported with a "special price" flag for the same reason. In these instruments and the other instruments referenced above, the parties to such agreements generally determine the terms of the price and/or the price of the TRACE-eligible securities at arm's length for investment, commercial or trading purposes in a manner that will not reflect current market price as of the day and time that the transaction or transactions will occur.

Endnotes

1 A CDS is an agreement where one party "sells" risk (the risk-protection buyer) and the counterparty "buys" the risk (the risk-protection seller). The risk-protection buyer, who often owns the underlying security (*e.g.*, a debt security issued by a third party), pays a periodic fee to the risk-protection seller during the life of the CDS. In return, the risk-protection seller agrees to pay the risk-protection buyer a set amount in the event that a credit event occurs during the term of the CDS (*e.g.*, a bankruptcy, default or a credit downgrade). A CDS can expire at the end of the pre-established term of the swap, or, in the event of a triggering credit event, when it is settled and then terminates.

For example, broker-dealer X (BD X) is contacted by an institutional client (Client M) to enter into a CDS. Client M has credit exposure to an issuer and wishes to reduce such exposure (*e.g.*, Client M owns a large number of bonds issued by an automobile industry sector company (*e.g.*, ABC Autos), and Client M seeks to transfer some or all of the credit risk related to owning the ABC Autos bonds without actually selling the ABC Autos bonds). BD X enters into a CDS with Client M, under which Client M agrees to pay BD X a periodic fee. In exchange for the periodic fee, BD X agrees that, in the event of a credit event relating to ABC Autos (defined in the swap and including events such as a declaration of bankruptcy or a default), BD X will pay Client M a certain predetermined amount of cash, or will buy from Client M the ABC Autos bonds at par value.

2 A transaction is reported using the special price modifier by setting the "special price" flag to "Y."

3 *See also Notice to Members 02-76* (November 2002), Q&A No. 13.

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Notice to Members

NOVEMBER 2005

SUGGESTED ROUTING

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

KEY TOPICS

OATS
Rules 6950–6957

GUIDANCE

OATS Reporting Requirements

SEC Approves Amendments to the OATS Rules;
Effective Date: May 8, 2006

Executive Summary

On September 28, 2005, the Securities and Exchange Commission (SEC) approved amendments to Rules 6950 through 6957 (OATS Rules) relating to the Order Audit Trail System (OATS).[1] The amendments to the OATS Rules: (1) implement the OATS reporting requirements for manual orders (OATS Phase III); (2) provide that members are required to capture and report the time the order is received by the member from the customer for all orders; (3) expand the order transmittal requirements to include orders routed to a member's trading desk or trading department; (4) exclude certain members from the definition of "Reporting Member" for those orders that meet specified conditions and are recorded and reported to OATS by another member; and (5) permit NASD to grant exemptive relief from the OATS reporting requirements in certain circumstances to members that meet specified criteria.

The OATS Rules, as amended, are set forth in Attachment A of this *Notice*. In this *Notice*, NASD also is publishing information regarding the registration requirements for OATS reporting, as well as questions and answers regarding the application of the amended OATS reporting requirements. The amended OATS reporting requirements and OATS Phase III become effective May 8, 2006. In addition, NASD is publishing revised *OATS Reporting Technical Specifications*, incorporating the amendments described herein. The *OATS Reporting Technical Specifications* can be found on NASD's Web site at Regulatory Systems>OATS>Technical Specifications.

Questions/Further Information

Questions regarding this *Notice* may be directed to the Legal Section, Market Regulation, at (240) 386-5126; or Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8071. For technical questions regarding OATS reporting, please contact the OATS Help Desk at (800) 321-NASD.

Background

On March 6, 1998, the SEC approved the OATS Rules.[2] OATS provides a substantially enhanced body of information regarding orders and transactions that improves NASD's ability to conduct surveillance and investigations of member firms for potential violations of NASD rules and the federal securities laws. OATS is designed, at a minimum, to: (1) provide an accurate, time-sequenced record of orders and transactions, beginning with the receipt of an order at the first point of contact between the broker-dealer and the customer or counterparty and further documenting the life of the order through the process of execution; and (2) provide for market-wide synchronization of clocks used in connection with the recording of market events.

The OATS Rules generally impose obligations on member firms to record in electronic form and report to NASD on a daily basis certain information with respect to orders originated or received by NASD members relating to securities listed on NASDAQ. OATS captures this order information reported by NASD members and integrates it with quote and transaction information to create a time-sequenced record of orders and transactions. This information is critical to NASD staff in conducting surveillance and investigations of member firms for violations of federal securities laws and NASD rules.

The OATS requirements were implemented in three phases. All members were required to synchronize their computer system clocks and all mechanical clocks that record times for regulatory purposes by August 7, 1998, and July 1, 1999, respectively. In addition, in Phase I, electronic orders received at the trading department of a market maker and those received by electronic communication networks (ECNs) were required to be reported to OATS as of March 1, 1999. In Phase II, additional information relating to market maker and ECN electronic orders and all other electronic orders were required to be reported to OATS starting on August 1, 1999. As described in more detail below, the OATS Rules will apply to all manual orders (Phase III) as of May 8, 2006.[3]

Since the implementation of OATS, NASD staff has reviewed OATS activities with the goal of identifying ways in which to improve OATS and enhance its effectiveness as a regulatory tool. In this regard, NASD staff identified several changes to OATS that it believed would enhance NASD's automated surveillance for compliance with trading and market making rules such as Interpretive Material (IM) 2110-2, (commonly referred to as the "Manning Rule"), the SEC's Order Handling Rules and a member firm's best execution obligations. NASD proposed these changes in SR-NASD-00-23, which the SEC recently approved.

Specifically, on September 28, 2005, the SEC approved amendments to the OATS Rules to: (1) implement the OATS reporting requirements for manual orders (OATS Phase III); (2) provide that members are required to capture and report the time orders are received by the member from the customer for all orders; (3) expand the order transmittal requirements to include orders routed to a member's trading desk or trading department; (4) exclude certain members from the definition of "Reporting Member" for those orders that meet specified conditions and are recorded and reported to OATS by another member; and (5) permit NASD to grant exemptive relief from the OATS reporting requirements in certain circumstances to members that meet specified criteria.[4]

Implementation of OATS Phase III for Manual Orders

During Phase II, the OATS Rules apply only to orders in NASDAQ-listed securities that are captured in an electronic order routing or execution system. Upon implementation of Phase III, pursuant to Rule 6957(c), the OATS Rules will apply to all orders for NASDAQ securities received or originated by an OATS Reporting Member. This includes orders received via telephone, email or any other method. Accordingly, OATS reporting requirements will now apply equally to electronic orders and manual orders upon implementation of Phase III with two exceptions: (1) members will not be required to pass a routed order identifier for manually transmitted orders; and (2) members will be required to report the type of account[5] for which the order is submitted only to the extent that information is available. NASD anticipates, however, that this account type information should be readily available for most OATS reportable orders.

Definition of Time of Receipt

Rule 6954 requires certain identifying information be recorded at various critical points during the life of an order, thereby assisting NASD in carrying out its regulatory responsibilities. In particular, Rule 6954(b)(16) requires that members record and report the date and time the order is originated or received by a Reporting Member ("time of receipt"). During OATS Phase II, which only applies to electronic orders, the time of receipt for an electronic order has been interpreted as the time an order is captured by a firm's electronic order handling or execution system. Upon the implementation of Phase III, the time of receipt for all orders, whether electronic or manual, will be the time the order is received by the member from the customer. As such, depending on the specific facts and circumstances, the time an order is captured in a member's electronic order handling or execution system may not be the time of receipt for OATS purposes.

Expansion of Order Transmittal Requirements

In addition to the time that an order is received by the customer, it also is critical to NASD automated surveillance systems that OATS capture the time that an order is received by the trading desk or department.[6] Given that orders may be routed to multiple locations within a firm prior to reaching the trading desk, the amendments require firms to capture the various receipt times (customer receipt time, trading desk receipt time, etc.) by expanding the OATS order transmittal requirements that apply to intra-firm routes to include orders routed to the trading department.[7] Specifically, if an order is not received immediately at the trading desk or department, members are required to capture information relating to the transfer of that order to the trading department under the order transmittal requirements of Rule 6954(c). The amended OATS Rules also require that members provide information on the nature of the department to which an order was transmitted, the number of shares to which the transmission applies, and any special handling requests. As with other technical requirements relating to OATS, NASD has specified in the *OATS Reporting Technical Specifications* how firms should report this information.

Exclusion from the Definition of "Reporting Member"

Certain members engage in non-discretionary order routing processes whereby, immediately after receipt of a customer order, the member routes the order, by electronic or other means, to another member ("receiving Reporting Member") for further routing or execution at the receiving Reporting Member's discretion. Currently, the OATS Rules generally require both the member with which the order originated and the receiving Reporting Member to create and report new order reports and possibly route reports.[8] Because this may result in the receipt of duplicative information by OATS, the OATS Rules have been amended to require, in such instances, that only the receiving Reporting Member report OATS data. Accordingly, pursuant to Rule 6951(n), a member would not be required to report OATS data regarding an order, if the following conditions are met:

(1) The member engages in a non-discretionary order routing process, pursuant to which it immediately routes, by electronic or other means, all of its orders to a single receiving Reporting Member;[9]

(2) The member does not direct or maintain control over subsequent routing or execution by the receiving Reporting Member;

(3) The receiving Reporting Member records and reports all information required under Rules 6954 and 6955 with respect to the order; and

(4) The member has a written agreement with the receiving Reporting Member specifying the respective functions and responsibilities of each party to effect full compliance with the requirements of Rules 6954 and 6955.

In addition to eliminating the reporting of duplicative information to OATS, the amended rule will reduce the regulatory burdens on members, particularly smaller members, that route all their orders to another receiving Reporting Member by means of a non-discretionary order routing process, for execution or further routing purposes.[10]

Exemptive Relief from the OATS Reporting Requirements

New paragraph (d) of Rule 6955 and amended Rule 9610(a) permit NASD to grant exemptive relief to certain members from the reporting requirements of the OATS Rules under the procedures set forth in the Rule 9600 Series. Specifically, members that meet the following criteria would be eligible to request an exemption to the OATS reporting requirements for manual orders:

(1) The member and current control affiliates and associated persons of the member have not been subject within the last five years to any final disciplinary action, and within the last 10 years to any disciplinary action involving fraud;

(2) The member has annual revenues of less than $2 million;

(3) The member does not conduct any market making activities in NASDAQ equity securities;

(4) The member does not execute principal transactions with its customers (with limited exceptions for error corrections); and

(5) The member does not conduct clearing or carrying activities for other firms.

Any exemptive relief granted would expire no later than two years from the date the member receives the exemptive relief. At or prior to the expiration of a grant of exemptive relief, members meeting the specified criteria may request a subsequent exemption. In addition, NASD's exemptive authority will be in effect for five years from May 8, 2006.

The exemptive authority will provide NASD the ability to grant relief to members meeting the specified criteria in situations where, for example, reporting of such information would be unduly burdensome for the member or where temporary relief from the rules (in the form of additional time to achieve compliance) would permit the member to avoid unnecessary expense or hardship.

Members should note that this exemption is available only for manual orders and only relieves the member of its obligation to transmit to OATS all information required to be recorded under Rule 6954. Members that are granted an exemption still must record all information as required under Rule 6954 and be prepared to submit that information to NASD on an as-requested basis.

Implementation of the Amendments to the OATS Rules

In recognition of the technological burdens that may be imposed on members as a result of the new requirements, the implementation date for the amendments to the OATS Rules is six months from the date of this *Notice*, which coincides with the publication of the revised *OATS Reporting Technical Specifications* relating to SR-NASD-00-23. The revised *OATS Reporting Technical Specifications* can be found on NASD's Web site at Regulatory Systems>OATS>Technical Specifications. In addition, NASD will ensure that adequate time for testing is incorporated into the implementation schedule and will make the testing environment available as of March 27, 2006.

Registration for OATS Reporting

Members that have not previously been subject to the OATS Rules that now meet the definition of an OATS Reporting Member, and do not otherwise qualify for, and receive, an exemption from the OATS Rules, must register for OATS by completing a Subscriber Initiation and Registration Form (SIRF) and obtaining an OATS user ID and password. Firms may obtain a SIRF, along with detailed instructions for completing and submitting the form, on NASD's OATS Web site. Information on how to obtain the appropriate user IDs and passwords is also available on NASD's OATS Web site. Members must complete and submit a SIRF, as well as request a user ID and password by no later than April 24, 2006. Members that fail to complete and return a SIRF, as well as obtain a user ID and password by April 24, 2006, will be unable to report OATS data to NASD beginning May 8, 2006.

If a member qualifies for the exclusion from the definition of a Reporting Member under Rule 6951(n), that member must ensure that a valid written agreement, as required under Rule 6951(n)(4), is in place with the receiving Reporting Member by May 8, 2006. NASD will be monitoring firms' use of this exclusion closely and may periodically request a copy of written agreements as part of its routine OATS surveillance activities.

If a member chooses to request an exemption from the OATS Rules pursuant to Rule 6955(d), a written request must be submitted to NASD's Market Regulation Department by no later than February 1, 2006 to ensure that the request can be processed by May 8, 2006. NASD will make every effort to expeditiously review each request so that exemptions will be in place beginning May 8, 2006. NASD notes that members meeting the requirements for an exemption from the OATS Rules must formally request and obtain approval from NASD before the exemption becomes effective. Firms meeting the requirements for exemption, but that do not formally request such exemption, are not automatically exempted and will be in violation of the OATS Rules if they do not begin reporting OATS data on May 8, 2006.

Questions and Answers

To help members implement the amendments to the OATS Rules and OATS Phase III, NASD staff is publishing the following questions and answers relating to the OATS Rules.

Q1. What types of orders in NASDAQ equity securities have to be reported to OATS under the new requirements?

A. All orders, including manual orders, in NASDAQ equity securities must be reported to OATS as of May 8, 2006, including, without limitation, orders received telephonically, orders received via email, orders received via the Internet, orders received at branch offices and orders received via Instant Messenger.

Q2. Upon implementation of the new requirements, will all of the OATS reporting requirements for manual orders be the same as for electronic orders?

A. Yes, subject to two exceptions. First, although Routed Order Identifiers have been required for orders routed electronically to other members since March 1, 1999 and for orders routed electronically to ECNs since February 14, 2005, Routed Order Identifiers will not be required to be captured or passed for manually transmitted orders. Second, the account-type code (*e.g.,* proprietary, retail, wholesale) is required for manual orders only if available.

Q3. Are convertible securities and preferred securities subject to the OATS reporting requirements?

A. Yes. The OATS Rules apply to orders in all NASDAQ equity securities. There is no exclusion in the OATS Rules for convertible securities or preferred securities.

Q4. My firm uses a third-party Internet service provider to capture orders. These orders sometimes are captured after trading hours and submitted in batch the next trading day. Further, the order receipt data is not transmitted by the third-party Internet service provider as part of the order data. Do I still have the responsibility to report order receipt time to OATS?

A. Yes. As with any requirement under the OATS Rules, the decision by a member to use a third-party provider does not change the member's obligation under the rules. As such, the member is required to capture order receipt time on all orders. The batching or other transmittal practices of a third-party provider would not change this requirement.

Q5. My firm receives an order via the Internet then reviews and releases the order to the routing system. What is the order receipt time?

A. The firm is required to capture order receipt time on all orders. The time of receipt is the time the order is received by the member from the customer. The review or other release practices of a firm would not change this requirement.

Q6. Customers type orders directly into my system and my firm does not take any calls. Does the order-received timestamp remain the time it is captured in my system?

A. In Phase II, the time of receipt for an electronic order is the time an order is captured by a firm's electronic order routing or execution system. In Phase III, the time of receipt, for both electronic and manual orders, is the time the order is received from the customer. If the firm's order-received timestamp captures the time the order is received from the customer, then no changes are required. If, however, the order-received timestamp captures the time the order is captured by the firm's order routing or execution system and such time differs from the customer order receipt time, then the firm will be required to record and report the order receipt time from the customer.

Q7. If my firm receives an order from its customer and immediately routes the order to the trading desk, is a Desk Report required?

A. If the time of receipt from the customer and time of transmittal to the trading desk occurs within the same second, no separate Desk Report will be required. A New Order Report is sufficient. However, if the time of receipt from the customer and the time of transmittal to the trading desk is greater than one second, a New Order Report and a Desk Report would be required.

Q8. How does the term "trading desk" or "trading department" apply, particularly for firms that do not have a trading desk?

A. NASD previously has issued guidance that the term "trading department" is intended to refer to the function within the firm that is responsible for executing orders in NASDAQ equity securities. This function includes a trading system where orders are executed automatically without trader intervention; or the trading department where orders are executed with the assistance of traders.[11]

Q9. My firm sends 100 percent of its orders to our clearing firm and, therefore, I believe we meet the requirements of the exclusion to the definition of a Reporting Member. What do we need to have in our agreement with the clearing firm? Does this change how our clearing firm reports to OATS?

A. A member can qualify for an exclusion from the definition of Reporting Member if it meets the conditions set forth in Rule 6951(n). Your firm must ensure that it meets and continues to meet each of the conditions necessary for the exclusion. All written documents evidencing the agreement between your firm and the clearing firm must be maintained by each party to the agreement. The receiving Reporting Member responsible for OATS reporting will be required to identify the sending member in each New Order Report and include a code indicating the sending member is a member that qualifies for exclusion from the definition of OATS Reporting Member under Rule 6951(n). This code indicating the exclusion should be included in the Member Type Code Field on the New Order, Combined Order/Route and Combined Order/Execution Reports.

Q10. My firm meets only one of the conditions to the exclusion from the definition of Reporting Member set forth in Rule 6951(n). Am I subject to the OATS reporting requirements for manual orders?

A. Yes. Your firm must meet and continue to meet all of the conditions necessary for the exclusion, not just one. As such, to the extent a member does not meet any or all of the conditions for the exclusion, the member would then be deemed a Reporting Member.

Q11. My firm uses our clearing firm's system and sends 100 percent of our orders to the clearing firm. However, we maintain the capability to route orders to other destinations. Does my firm still have the responsibility to report to OATS?

A. Pursuant to Rule 6951(n), one of the conditions for a firm not to be considered a "Reporting Member" for purposes of OATS is that the firm engage in a non-discretionary order routing process pursuant to which it immediately routes, by electronic or other means, all of its orders to a single receiving Reporting Member. As such, 100 percent of the firm's orders must be routed to the same reporting member. If the member accepts and routes an order to another venue, or executes an order internally, that member would no longer meet the exclusion to the definition of Reporting Member and would be required to report OATS data for all of its orders, including those sent to its clearing firm on a non-discretionary basis.

Q12. My firm is a correspondent of a clearing firm to which I send 100 percent of our orders. On occasion, my firm receives a directed order from a customer with instructions to send to a venue other than our clearing firm. Although I enter the order into my clearing firm's system, neither our firm nor our clearing firm has discretion over the order. Would my firm have an OATS reporting responsibility for these orders?

A. Yes. One of the primary reasons for including an exclusion to the definition of Reporting Member under Rule 6951(n) is to reduce duplicative reporting. If your firm routes orders to multiple venues, as in this example, away from your clearing firm, NASD no longer is assured it will receive all information regarding your orders required by the OATS Rules from a single Reporting Member. Consequently, to ensure NASD has a complete audit trail, once even a single order is directed away from your clearing firm, either based on your own discretion or at the instruction of a customer, your firm no longer qualifies for the exclusion to Reporting Member under Rule 6951(n) and must begin reporting to OATS.

Q13. What does it mean that a member does not direct or maintain control over subsequent routing or execution by the receiving Reporting Member in the context of the exclusion to Reporting Member under Rule 6951(n)?

A. To qualify for the exclusion under Rule 6951(n), all orders must be routed to the receiving Reporting Member on a non-discretionary basis. If the receiving Reporting Member provides the ability for the member to direct an order to a venue other than the receiving Reporting Member for execution and the member directs any orders away from the receiving Reporting Member, the member would not qualify for the exclusion. If the member relies on the receiving Reporting Member, or a system provided by the receiving Reporting Member, to determine where the order is routed for execution, the member will not be viewed as directing or maintaining control over subsequent routing or execution by the receiving Reporting Member for purposes of Rule 6951(n).

Q14. How does my firm apply for an exemption to the OATS Rules pursuant to Rule 6955(d)?

A. NASD Rule 9600 Series details the procedures for submitting an exemption request to NASD. Specifically, the Rule 9600 Series requires that exemption requests include the member's name and address, the name of a person associated with the member who will serve as the primary contact for the application, the rule from which the member is seeking an exemption, and a detailed statement of the grounds for granting the exemption. Further, if the member does not want the application or the decision on the application to be publicly available in whole or in part, the member must include a detailed statement, including supporting facts, showing good cause for treating the application or decision as confidential in whole or in part.

Detailed exemption request procedures, including a list of all required supporting documentation, will be published shortly on NASD's OATS Web site. To ensure that exemption requests can be processed prior to the May 8, 2006 implementation date, exemption requests must be submitted to NASD no later than February 1, 2006.

Q15. If granted an exemption pursuant to Rule 6955(d), will I be exempt from all OATS requirements?

A. No. Exemptions will be granted only for members' order transmission requirements under Rule 6955 related to manual orders. Even if an exemption is granted, members will still be required to record and maintain OATS data as required under Rule 6954.

Q16. My firm meets all of the exemption criteria set forth in Rule 6955(d), but we do execute a principal transaction once every six months. Can I still apply for an exemption?

A. No. One criterion for the exemptive relief is that the member does not execute principal transactions with its customers, other than limited exceptions for error corrections. As such, a member that executes a principal transaction with its customer, even if infrequently, will not be eligible for exemptive relief.

Q17. Does an exemption expire immediately if one of the criteria for exemption is no longer true?

A. Yes. Members are required to continuously meet each of the criteria set forth in Rule 6955(d) to qualify for the exemption. As such, to the extent that a member no longer meets all of the threshold exemption criteria, the member would not be eligible for exemptive relief and, thus, would be required to immediately report to OATS.

Endnotes

1 *See* Securities Exchange Act Release No. 52521 (September 28, 2005), 70 FR 57909 (October 4, 2005) (File No. SR-NASD-00-23).

2 *See* Securities Exchange Act Release No. 39729 (March 6, 1998), 63 FR 12559 (March 13, 1998).

3 *See* Rule 6957(c).

4 *See supra* note 1.

5 The account type code reflects whether the order was received for the account of an investor, received from another broker-dealer, originated by the member for a proprietary account, or received for the account of an employee.

6 For purposes of the OATS Rules, the term "trading department" refers to the function within the firm that is responsible for executing orders in NASDAQ equity securities. For an ECN, for example, this may be interpreted as either the trading system (where orders are executed automatically without trader intervention) or the trading department (where orders are executed with the assistance of traders). See Letter from NASD Regulation to Charles R. Hood, dated July 30, 1998.

7 *See* amendments to Rule 6954(c). In furtherance of this provision, the *OATS Reporting Technical Specifications* require that this information be reported to OATS via a "Desk Report" or by populating desk information on the New Order, Combined Order/Route or Combined Order/Execution Reports.

8 OATS Frequently Asked Questions C29 provides that in instances where a member uses another member firm's electronic order routing or execution system to route orders for execution by that same member firm, the originating member would not be required to report OATS data until Phase III.

9 If any delay results in the routing of an order due to systems problems or other reasons, the member with which the order originated would be required to report OATS data.

10 This exclusion does not change a member's requirement to capture and retain the time an order was received from a customer under SEC Rule 17a-3(a)(6).

11 *See* Letter from NASD Regulation to Charles R. Hood, dated July 30, 1998.

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ATTACHMENT A

New language is underlined; deletions are in brackets.

6951. Definitions

For purposes of Rules 6950 through 6957:

(a) through (m) No Change.

(n) "Reporting Member" shall mean a member that receives or originates an order and has an obligation to record and report information under Rules 6954 and 6955. A member shall not be considered a Reporting Member in connection with an order, if the following conditions are met:

(1) the member engages in a non-discretionary order routing process, pursuant to which it immediately routes, by electronic or other means, all of its orders to a single receiving Reporting Member;

(2) the member does not direct and does not maintain control over subsequent routing or execution by the receiving Reporting Member;

(3) the receiving Reporting Member records and reports all information required under Rules 6954 and 6955 with respect to the order; and

(4) the member has a written agreement with the receiving Reporting Member specifying the respective functions and responsibilities of each party to effect full compliance with the requirements of Rules 6954 and 6955.

* * * * *

6954. Recording of Order Information

(a) No Change.

(b) **Order Origination and Receipt**

Unless otherwise indicated, the following order information must be recorded under this Rule when an order is received or originated. For purposes of this Rule, the order origination or receipt time is the time the order is received from the customer.

(1) through (18) No Change.

(c) Order Transmittal

Order information required to be recorded under this Rule when an order is transmitted includes the following.

(1) When a Reporting Member transmits an order to a[nother] department within the member, [other than to the trading department,] the Reporting Member shall record:

(A) through (C) No Change.

(D) an identification of the department and nature of the department to which the order was transmitted, [and]

(E) the date and time the order was received by that department,

(F) the number of shares to which the transmission applies, and

(G) any special handling requests.[;]

(2) through (6) No Change.

(d) No Change.

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6955. Order Data Transmission Requirements

(a) through (c) No Change.

(d) Exemptions

(1) Pursuant to the Rule 9600 Series, the staff, for good cause shown after taking into consideration all relevant factors, may exempt, subject to specified terms and conditions, a member from the order data transmission requirements of this Rule for manual orders, if such exemption is consistent with the protection of investors and the public interest, and the member meets the following criteria:

(A) the member and current control affiliates and associated persons of the member have not been subject within the last five years to any final disciplinary action, and within the last ten years to any disciplinary action involving fraud;

(B) the member has annual revenues of less than $2 million;

(C) the member does not conduct any market making activities in Nasdaq Stock Market equity securities;

(D) the member does not execute principal transactions with its customers (with limited exception for principal transactions executed pursuant to error corrections); and

(E) the member does not conduct clearing or carrying activities for other firms.

(2) An exemption provided pursuant to this paragraph (d) shall not exceed a period of two years. At or prior to the expiration of a grant of exemptive relief under this paragraph (d), a member meeting the criteria set forth in paragraph (d)(1) may request, pursuant to the Rule 9600 Series, a subsequent exemption, which will be considered at the time of the request, consistent with the protection of investors and the public interest.

(3) This paragraph shall be in effect until May 8, 2011.

* * * * *

6957. Effective Date

The requirements of the Order Audit Trail System shall be effective in accordance with the following schedule:

(a) and (b) No Change.

(c) Manual Orders

The requirements of the Order Audit Trail System shall be effective six months after publication of the revised *OATS Reporting Technical Specifications* relating to[120 days after SEC approval of] SR-NASD-00-23, for all manual orders, provided that firms shall be required to report information item (18) specified in Rule 6954(b) only to the extent such item is available to them[and shall not be required to record and report information items (4) and (5) specified in Rule 6954(b) and information item (1) specified in Rule 6954(c)].

(d) No Change.

* * * * *

9600. Procedures For Exemptions

9610. Application

(a) Where to File

A member seeking an exemption from Rule 1021, 1022, 1070, 2210, 2320, 2340, 2520, 2710, 2720, 2810, 2850, 2851, 2860, Interpretive Material 2860-1, 3010(b)(2), 3020, 3210, 3230, 3350, 6955, 8211, 8212, 8213, 11870, or 11900, Interpretive Material 2110-1, or Municipal Securities Rulemaking Board Rule G-37 shall file a written application with the appropriate department or staff of NASD and provide a copy of the application to the Office of General Counsel of NASD.

(b) and (c) No Change.

Notice to Members

NOVEMBER 2005

SUGGESTED ROUTING

Continuing Education

Legal & Compliance

Registration

Senior Management

KEY TOPICS

Continuing Education – Regulatory Element Fees

Qualification Examination Fees

Rule 1120 (Continuing Education Requirements)

Schedule A to NASD By-Laws

GUIDANCE

Continuing Education Regulatory Element and Qualification Examination Fees

Amendments to Section 4 of Schedule A to the NASD By-Laws Governing Continuing Education Regulatory Element and Qualification Examination Fees;

Implementation Date: January 1, 2006

Executive Summary

NASD has filed for immediate effectiveness amendments to Section 4 of Schedule A to the NASD By-Laws to increase the Continuing Education Regulatory Element session fee and certain qualification examination fees.[1] These rule changes will become operative on January 1, 2006.

As of January 1, 2006, the session fee for the Regulatory Element of Continuing Education will increase from $60 to $75. This fee increase applies to all three Regulatory Element programs: the S201 for Supervisors, the S106 for Series 6 representatives and the S101 General Program for all other registrations. Firms that participate in in-firm delivery of the Regulatory Element will continue to receive a $3 credit to their Central Registration Depository (CRD®) account for the in-firm deliveries they make.

Also, as of January 1, 2006, the fees assessed for persons taking various qualification examinations will increase, as described below. The affected examinations include the Series 6 (Investment Company Products/Variable Contracts Representative), Series 7 (General Securities Representative), Series 10 (General Securities Sales Supervisor – General Module), Series 22 (Direct Participation Programs Representative), Series 24 (General Securities Principal), Series 27 (Financial and Operations Principal), Series 55 (Limited Representative-Equity Trader), Series 62 (Corporate Securities Limited Representative and Series 72 (Government Securities Representative).

Attachment A contains the text of the amendments.

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Questions/Further Information

Questions regarding this *Notice to Members* may be directed to Joe McDonald, Associate Director, NASD Testing and Continuing Education (T&CE), at (240) 386-5065; Elaine Warren, Lead Analyst, T&CE, at (240) 386-4679; or Amaka Omenka, Continuing Education Coordinator, T&CE, at (240) 386-4140.

Background and Discussion

Regulatory Element of Continuing Education

The Regulatory Element, a computer-based education program that helps ensure that registered persons are kept up-to-date on regulatory, compliance and sales practice matters in the industry, is a component of the Securities Industry Continuing Education Program (Program) under NASD Rule 1120. Member firms currently pay $60 each time one of their registered persons participates in the Regulatory Element.

The Securities Industry/Regulatory Council on Continuing Education (Council)[2] was organized in 1995 to facilitate cooperative industry/regulatory coordination of the administration and future development of the program in keeping with applicable industry regulations and changing industry needs. It is the Council's responsibility to maintain the program on a revenue-neutral basis while maintaining adequate reserves. In its 2005 annual financial review, the Council determined that program reserves would not remain adequate unless the fee for a Regulatory Element session were raised to $75. At its September 2005 meeting, the Council unanimously supported a recommendation to increase the Regulatory Element session fee from $60 to $75, effective January 1, 2006.

Qualifications Examinations

Any person associated with a member firm who is engaged in the securities business of the firm must register with NASD. As part of the registration process, securities professionals must pass a qualification examination to demonstrate competence in each area in which they intend to work. Some of these examinations are sponsored (*i.e.,* developed) by NASD, and others are sponsored by other self-regulatory organizations (SROs) such as the New York Stock Exchange, Inc. (NYSE), the Municipal Securities Rulemaking Board (MSRB) or the North American Securities Administrators Association (NASAA). NASD administers these qualification examinations via computer through the PROCTOR® system at test centers operated by vendors under contract with NASD. NASD charges an examination fee to candidates for NASD-sponsored examinations. For those examinations sponsored by an NASD client and administered/delivered by NASD, NASD charges a delivery fee that comprises either a part or all of the fee for these examinations.

Each year, NASD staff conducts a comprehensive review of the licensing examination fee structure, which includes an analysis of the costs of developing, administering and delivering examinations. Staff's review in 2005 showed that certain operational costs are rising. In particular, these costs consist of: (1) the cost of providing the extensive network of test delivery centers; and (2) technology costs required to maintain the current PROCTOR® system and to redesign the PROCTOR® system. As a result of these cost increases, as of January 1, 2006, there will be an increase in examination fees for certain NASD-sponsored examinations and other examinations that are delivered by NASD and that may be required by NASD for its members[3] as follows:

Series 6	Investment Company Products/Variable Contracts Representative	From $70 to $75
Series 7	General Securities Representative	From $225 to $250
Series 10	General Securities Sales Supervisor – General Module	From $95 to $100
Series 22	Direct Participation Programs Representative	From $70 to $75
Series 24	General Securities Principal	From $85 to $95
Series 27	Financial and Operations Principal	From $85 to $95
Series 55	Limited Representative-Equity Trader	From $80 to $85
Series 62	Corporate Securities Limited Representative	From $70 to $75
Series 72	Government Securities Representative	From $80 to $85

The new fees will be charged for persons who register for one of these examinations beginning January 1, 2006. The individual then has 120 days to take the examination.

Endnotes

1 *See* SR-NASD-2005-132 (Regulatory Element Continuing Education session fees) and SR-NASD-2005-133 (Qualification Examination fees). Under Section 19(b) of the Securities Exchange Act of 1934, the Securities and Exchange Commission (SEC) has the authority to summarily abrogate this type of rule change within 60 days of filing.

2 The Council currently consists of 20 individuals, 14 of whom are securities industry professionals associated with NASD member firms and six of whom represent self-regulatory organizations (SROs) (the American Stock Exchange LLC; the Chicago Board Options Exchange, Inc; the Municipal Securities Rulemaking Board; NASD, the New York Stock Exchange, Inc; and the Philadelphia Stock Exchange, Inc.).

3 NASD also administers and delivers examinations sponsored by NASAA that, while not required by NASD rules, are taken by persons associated with NASD members to obtain certain licenses. NASD notes that the fee for the NASAA-Series 66 (Uniform Combined State Law) also will increase from $110 to $113, effective January 1, 2006; such fee increase is not part of the rule changes discussed in this *Notice to Members,* however, since the Series 66 is not required by NASD rules.

ATTACHMENT A

New language is underlined; deletions are in brackets.

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SCHEDULE A TO NASD BY-LAWS

* * * * *

Section 4—Fees

(a) and (b) No change

(c) The following fees shall be assessed to each individual who registers to take an examination as described below as of January 1, 200[5]6. These fees are in addition to the registration fee described in paragraph (b).

Series 4	Registered Options Principal	$80
Series 6	Investment Company Products/ Variable Contracts Representative	[$70]$75
Series 7	General Securities Representative	[$225]$250
Series 9	General Securities Sales Supervisor - Options Module	$60
Series 10	General Securities Sales Supervisor - General Module	[$95]$100
Series 11	Assistant Representative- Order Processing	$60
Series 17	Limited Registered Representative	$65
Series 22	Direct Participation Programs Representative	[$70]$75
Series 23	General Securities Principal Sales Supervisor Module	$75
Series 24	General Securities Principal	[$85]$95

Series 26	Investment Company Products/ Variable Contracts Principal	$75
Series 27	Financial and Operations Principal	[$85]$95
Series 28	Introducing Broker/Dealer Financial and Operations Principal	$75
Series 37	Canada Module of S7 (Options Required)	$150
Series 38	Canada Module of S7 (No Options Required)	$150
Series 39	Direct Participation Programs Principal	$75
Series 42	Registered Options Representative	$60
Series 55	Limited Representative- Equity Trader	[$80]$85
Series 62	Corporate Securities Limited Representative	[$70]$75
Series 72	Government Securities Representative	[$80]$85
Series 82	Limited Representative – Private Securities Offering	$75
Series 86	Research Analyst - Analysis	$150
Series 87	Research Analyst - Regulatory	$105

(1) through (3) No change

(d) through (j) No change

(k) There shall be a session fee of [$60.00] $75.00 assessed as to each individual who is required to complete the Regulatory Element of the Continuing Education Requirements pursuant to Rule 1120.

(l) No change.

* * * * *

Disciplinary and Other NASD Actions

REPORTED FOR NOVEMBER

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 October 2005.

Firm Expelled, Individuals Sanctioned

Park Capital Securities, LLC (CRD #104206, New York, New York), Anthony John Orlando, Jr. (CRD #2497838, Registered Principal, New York, New York) and Philip Anthony Orlando (CRD #2839212, Registered Principal, New York, New York) submitted Offers of Settlement in which the firm was expelled from NASD membership. Philip Orlando and Anthony Orlando were each 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 fraudulent scheme to profit from the sale of $3.5 million in securities of a company to public customers though manipulation and the use of high-pressure sales practices, baseless price projections, unauthorized trades and misrepresentations, and omissions of material facts. The findings also stated that the respondents participated in an unregistered distribution of securities by selling shares of the securities without a valid registration statement in effect and without an exemption. **(NASD Case #CMS040165)**

Firms Fined, Individuals Sanctioned

Alpine Securities Corporation (CRD #14952, Salt Lake City, Utah) and Virgil Mark Peterson (CRD #1094640, Registered Principal, Alpine, Utah) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined $22,500, and required to revise its written supervisory procedures to achieve compliance with the applicable securities laws and regulations, and NASD rules concerning books and records, anti-money laundering (AML) and discretionary trading authority. Peterson was fined $25,000, suspended from association with any NASD member in any capacity for 30 business days and suspended from association with any NASD member in any principal or supervisory capacity for 60 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they failed to properly identify and verify public customers, pursuant to the firm's written AML procedures. The findings stated that the firm and Peterson executed orders placed by a purported representative of the customers, without receiving prior written authorization from the customers, and inaccurately marked order tickets of a stock as "unsolicited" instead of "solicited." The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations, and NASD rules concerning books and records, AML and

discretionary trading authority. NASD found that the firm's supervisory system failed to include written supervisory procedures providing for identification of the person(s) responsible for supervision with respect to applicable rules, a statement of the supervisory step(s) to be taken by the identified person(s), a statement as to how such person(s) should take such step(s), and a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented. NASD further found that the firm failed to provide for adequate and reasonable supervision of Peterson. In addition, the findings stated that the respondents failed to enforce the firm's written supervisory procedures relating to making and keeping current books and records, exercising discretionary power in customers' accounts without the customers providing prior written authorization to a stated individual, and complying with AML laws.

Peterson's suspensions began September 19, 2005. His suspension in any capacity concluded on October 28, 2005, and his suspension in any principal or supervisory capacity will conclude December 12, 2005. **(NASD Case #20050001590-01)**

Capital Securities of America, Inc. (CRD #36405, Hartville, Ohio) and Brian Eugene Mohney (CRD #2890043, Registered Principal, Wadsworth, Ohio) submitted an Offer of Settlement in which the firm and Mohney were censured and fined $10,000, jointly and severally. The firm was fined an additional $15,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm failed to establish, maintain and enforce adequate written supervisory procedures designed to achieve compliance with applicable securities laws and regulations, and applicable NASD rules regarding the AML compliance program. The findings stated that the firm, acting through Mohney, failed to reasonably supervise an employee by failing to take adequate steps to prevent the employee from engaging in unsuitable trading in the account of a public customer. **(NASD Case #C8A050048)**

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

This action has been appealed to the United States Court of Appeals for the Ninth Circuit and all sanctions are not in effect pending consideration of the appeal. **(NASD Case #C3B020015)**

Firms and Individuals Fined

Kuhns Brothers Securities Corporation (CRD #47331, Lime Rock, Connecticut) and John Douglas Kuhns (CRD #851444, Registered Principal, Lime Rock, Connecticut) submitted a Letter of Acceptance, Waiver and Consent in which the firm and Kuhns were censured and fined $15,000 jointly and severally. Without admitting or denying the allegations, the firm and Kuhns consented to the described sanctions and to the entry of findings that the firm, acting through Kuhns, violated the membership rules by initiating a 50 percent transfer of its ownership to another person without giving prior notice, and without NASD approval. The findings also stated that the firm, acting through Kuhns, failed to comply with their claimed exemption under Section 15(c) of the Exchange Act in that during various periods of time, the firm acted as the placement agent for a private offering and held customer funds in a firm bank account. NASD found that the firm, acting through Kuhns, used the instrumentalities of interstate commerce to conduct a securities business while failing to maintain its minimum required net capital. NASD also found that the firm, acting through Kuhns, failed to make, maintain and preserve required customer information records and/or subscription agreement documents for offering investors. **(NASD Case #E112004010401)**

Northwestern Mutual Investment Services, LLC (CRD #2881, Milwaukee, Wisconsin) and Diane Barbara Horn (CRD #1974921, Registered Principal, Milwaukee, Wisconsin) were each censured and fined. Horn was fined $15,000, and the firm was fined $110,000. The sanctions were based on the findings that the respondents violated Rule 3070 by failing to timely report customer complaints to NASD

as statistical and summary information. The findings also stated that the firm failed to properly train its registered representatives and other personnel with respect to the handling of customer complaints, and that the firm failed to adequately maintain and enforce supervisory procedures. The findings further stated that the firm failed to timely report customer settlements, and failed to timely amend a former registered representative's Uniform Termination Notice for Securities Industry Registration (Form U5). **(NASD Case #C8A030071)**

Firms Fined

ABN Amro Incorporated (CRD #15776, Chicago, Illinois) 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 submit Reportable Order Events (ROEs) to NASD's Order Audit Trail System℠ (OATS℠). NASD also found that the firm failed to enforce its written supervisory procedures, which provided for a daily review of the OATS Web site to ensure the timely, accurate and complete submission of OATS information to NASD. The findings further stated that the firm transmitted reports that contained inaccurate, incomplete or improperly formatted data to OATS. In addition, the findings stated that the firm failed to enforce its written supervisory procedures, which specified that the middle office manager would log any issues in a case log and contact NASD to obtain an OATS case number. **(NASD Case #20042000195-01)**

Avalon Research Group, Inc. (CRD #39815, Boca Raton, Florida) 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 issued research reports that failed to adequately disclose the valuation method used to determine price targets, and failed to adequately disclose the risks that may have impeded achievement of the price targets. NASD also found that the firm issued research reports that did not contain disclosures on the front page of each report, and did not prominently display the reference to the pages on which the disclosures were located, and thus failed to present the required disclosures in a clear, comprehensive and prominent manner. **(NASD Case #E072004009801)**

Baird, Patrick & Co., Inc. (CRD #1149, New York, 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 failed, within 90 seconds after execution, to transmit through the Automated Confirmation Transaction Service℠ (ACT℠) last sale reports of transactions in Over-the-Counter (OTC) equity securities, and failed to designate last sale reports as late through ACT. **(NASD Case #20042000141-01)**

Bosc, Inc. (CRD #17530, Tulsa, Oklahoma) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined $15,000 and required to revise its written supervisory procedures with respect to Trade Reporting and Compliance Engine (TRACE) trade reporting. 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 TRACE-eligible securities to TRACE within 75 minutes after execution. The findings also stated that the firm's supervisory system did not provide supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations, and NASD rules concerning TRACE trade reporting. **(NASD Case #2004200015601)**

Cantone Research, Inc. (CRD #26314, Tinton Falls, New Jersey) 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 issued research reports that failed to disclose a distribution of ratings current as of the end of the most recent calendar quarter. NASD found that that the firm issued research reports that failed to contain a statement by the research analyst certifying that the views expressed in the research report accurately reflect such research analyst's personal views about the subject securities and issuers. The findings stated that the firm was late reporting municipal transactions and that municipal transactions executed by the firm were reported without a yield. NASD also found that the firm failed to adopt and implement written supervisory procedures reasonably designed to ensure compliance with the provisions of MSRB Rule G-14. **(NASD Case #E9B2004002202)**

Capital Analysts, Incorporated (CRD #5478, Radnor, Pennsylvania) 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 report municipal securities transactions and erroneously reported municipal securities transactions. The findings also stated that the firm failed to accurately report transactions in TRACE-eligible securities and erroneously reported other transactions to TRACE. The findings further stated that the firm failed to establish, maintain and enforce written supervisory procedures that were reasonably designed to achieve compliance with its trade reporting obligations. **(NASD Case #E9A2004003301)**

C.E. Unterberg, Towbin, LLC (CRD #24790, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined $83,000, ordered to pay $9, plus interest, in restitution to public customers, and required to retain an outside consultant to make recommendations regarding the firm's supervisory system that the firm would then adopt. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to correctly submit either clearing or non-clearing trade reports in "riskless" transactions. NASD found that the firm failed to report last sale transactions in NASDAQ National Market (NNM) securities through ACT. The findings stated 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.

The findings also stated that the firm, acting as principal for its own account, failed to provide written notification disclosing to its customer that it was a market maker in the security. NASD found that the firm failed to provide written notification to its customers that transactions were executed at an average price, and neglected to report the firm's correct capacity in transactions. NASD found that the firm made a report available on covered orders in national market system securities that it received for execution that included incorrect and incomplete information as to the classification of orders as "covered" or "not covered." The findings also stated that the firm made available a report on its routing of non-directed orders in covered securities that contained incorrect information about the identity of the venues to which the largest number of total non-directed orders was routed for execution, and the percentage of total non-directed orders routed to those respective venues.

In addition, the findings stated that the firm failed to provide annual written notice to its customers informing them that the routing destination of customer orders is available upon request. NASD determined that the firm failed to make and preserve in an accessible place copies of confirmations of purchases and sales of securities, copies of account statements sent to customers, and memoranda of brokerage orders. Furthermore, NASD found that the firm failed to show, or correctly show, the order receipt time, the order execution time, and/or the time of order cancellation on the memorandum of brokerage orders. Moreover, the findings 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 the registrations of persons with NASD, the SEC Limit Order Display Rule, the Limit Order Protection Interpretation, SEC rules 11AC1-5 and 11AC1-6, the duty of best execution, competing markets and market centers trading securities, anti-competitive behavior, NASD's Three Quote Rule, NASD rule IM-2110-5, NASD's affirmative determination rule, NASD's Bid Test Rule, the prohibition concerning locked and/or crossed markets, the SEC's and NASD's firm quote rules, the rules applicable to OATS, "Chinese Walls," disclosure of order execution and routing information, trade reporting, and recordkeeping rules. The findings stated that the firm failed to execute market orders fully and promptly so that the resultant price to its customers was as favorable as possible under prevailing market conditions. The findings also stated that the firm executed short-sale transactions and failed to report these transactions to ACT with a short sale-modifier. NASD also found that the firm transmitted reports that contained inaccurate, incomplete or improperly formatted data to OATS. **(NASD Case #20042000039-01)**

Correspondent Services Corporation (CRD #25927, 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 timely report ROEs to OATS. The findings further stated that the firm did not correct or replace OATS reports with respect to equity securities traded on The Nasdaq Stock Market, Inc. that were submitted by the firm but rejected by OATS (for not being in the electronic form prescribed by NASD) and were repairable. NASD found 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. **(NASD Case #2005000019101)**

Deutsche Bank Securities Inc. (CRD #2525, New York, 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 effected securities for the firm's proprietary accounts and failed to make an affirmative determination that the firm could borrow the securities or otherwise provide for their delivery by the settlement date. The findings stated that a third party, reporting on the firm's behalf pursuant to an Attachment II agreement, failed to report the correct symbol, indicating whether the firm executed transactions in eligible securities in a principal or agency capacity, to the NASDAQ Market Center. The findings also stated that the firm failed to provide its customers with written notification disclosing its correct capacity in transactions and that transactions were executed at an average price. **(NASD Case #20050002625-01)**

Deutsche Bank Securities Inc. (CRD #2525, New York, 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 the firm failed to report to TRACE transactions in TRACE-eligible securities executed on a business day during TRACE system hours within 30 minutes of execution time. The findings stated that the firm failed to enforce its written supervisory procedures, which specified that the desk supervisors or a designee would review all corporate bond transaction reports to ensure that they were reported within 30 minutes of execution time. The findings also stated that the firm failed to enforce its procedures requiring that the supervisors or a designee log such reviews as evidence by sending an email recording the completion of the review and noting any problems, including late reports. **(NASD Case #20050004547-01)**

Essex Radez LLC (CRD #34649, Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined $19,000, and required to revise its written supervisory procedures with respect to complying with applicable securities laws and regulations, and NASD rules concerning ACT 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 last sale reports of transactions in Consolidated Quotation System (CQS) securities through ACT. The findings stated that the firm failed to accept or decline ACT transactions in eligible securities within 20 minutes after execution. 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 ACT reporting. **(NASD Case #2004200027101)**

First Winston Securities, Inc. (CRD #21538, Winston-Salem, North Carolina) 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, by not reporting transactions to TRACE, it failed to participate in the TRACE trade reporting. The findings also stated that the firm failed to establish and maintain a supervisory system and written supervisory procedures that were reasonably designed to achieve compliance with the applicable securities laws and regulations, and NASD rules with respect to reporting corporate bond transactions to the TRACE trade reporting system. (**NASD Case #E072004010901)**

Freedom Investments, Inc. (CRD #37674, Edison, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined $17,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to timely report ROEs to OATS. The findings also stated that the firm did not correct or replace OATS reports with respect to equity securities traded on NASDAQ that were submitted by the firm but rejected by OATS for not being in the electronic form prescribed by NASD. NASD found that the firm failed to enforce its written supervisory procedures, which specified that rejected ROEs would be repaired and resubmitted to OATS. **(NASD Case #2005000226-01)**

Jefferies & Company, Inc. (CRD #2347, Los Angeles, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined $12,500 and required to revise it's written supervisory procedures with respect to publishing quotations in non-NASDAQ securities. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it published quotations for OTC equity securities, or, directly or indirectly, submitted such quotations for publication, in a quotation medium, the pink sheets, and did not have the documentation required by SEC Rule 15c2-11(a) in its records. The findings also stated that the firm failed to file the required form with NASD at least three business days before its quotations were published or displayed in a quotation medium. NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations, and NASD rules concerning publishing quotations in non-NASDAQ securities. **(NASD Case #2004200018701)**

Jefferies & Company, Inc. (CRD #2347, Los Angeles, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined $125,000, and required to revise its written supervisory procedures with respect to applicable securities laws and regulations, and NASD rules concerning frontrunning and trade reporting—riskless principal capacity, SEC Rules 11Ac1-5 and 11Ac1-6, customer crosses, the Three Quote Rule, trade reporting—long/short, the Bid Test Rule and the One Percent Rule. 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 was at a price that would have improved the firm's bid or offer in each such security; or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each such security, and the size of the order represented more than a de minimis change in relation to the size associated with firm's bid or offer in each such security. NASD also found that the firm failed to preserve the memorandum of brokerage orders. The findings also stated that the firm failed to accept or decline in ACT transactions in eligible securities within 20 minutes after execution, incorrectly designated as ".PRP" through ACT last-sale reports of transactions, and incorrectly reported and/or media reported

riskless principal transactions in NNM and OTC Equity securities. NASD found that the firm failed to report to ACT the correct symbol indicating whether the firm executed transactions in eligible securities in a principal, riskless principal or agency capacity; the correct unit price for transactions in eligible securities; and whether certain transactions in eligible securities were a buy, sell, sell short, sell short exempt or cross.

In addition, the findings stated that the firm failed to notify its customers in writing of its correct capacity in certain transactions, and that certain transactions were executed at an average price. NASD also found that the firm acted as principal for its own account in certain transactions and failed to notify its customers in writing of the correct reported trade price. Moreover, NASD found that the firm failed, within 90 seconds after execution, to transmit last-sale reports of transactions in OTC equity securities through ACT and failed, within 90 seconds after execution, to transmit certain other last sale reports of transactions in OTC equity securities through ACT and to designate such last-sale reports as late. In addition, the findings stated that the firm executed short-sale orders in certain securities and failed to make an affirmative determination prior to executing such transactions. NASD determined that the firm incorrectly designated last-sale reports of transactions in OTC equity securities as ".SLD" through ACT within 90 seconds of execution.

The findings also stated that the firm failed to submit a cancel report, an execution report, and a new order report to OATS after receiving a modification to the terms of an order. NASD found that the firm failed to record proprietary short sales as short on its trading ledger, and failed to show the correct time of execution on the memorandum of brokerage orders. The findings also determined that the firm made a report in national market system securities available that contained incorrect information as to the number of covered orders and the total number of shares. NASD also found that the firm's supervisory system did not provide supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations, and NASD rules concerning frontrunning and trade reporting—riskless principal capacity, SEC Rules 11Ac1-5 and 11Ac1-6, customer crosses, the Three Quote Rule, trade reporting—long/short, the Bid Test Rule and the One Percent Rule. **(NASD Case #20042000017-02)**

KNBT Securities, Inc. (CRD #115372, Bethlehem, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined $40,000 and required to revise its written supervisory procedures with respect to the applicable securities laws and regulations, and NASD rules concerning trade reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it leased its ACT WebLink access to a third party that was not registered with NASD. The findings also stated that the third party reported transactions to ACT on behalf of a firm as internal cross trades, with the firm incorrectly identified as both the executing firm and the contra firm in all of the transactions. The findings further stated that the firm's supervisory system was not reasonably designed to achieve compliance with respect to applicable securities laws and regulations, and NASD rules concerning trade reporting. The findings also stated that the firm failed, within 90 seconds after execution, to transmit last-sale reports of transactions through ACT and incorrectly designated last sale reports of transactions in NASDAQ securities as ".SLD" through ACT. **(NASD Case #2005000076201)**

Maloney Securities Co., Inc. (CRD #38535, Manchester, Missouri) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined $21,000 and required to revise its written supervisory procedures with respect to applicable securities laws and regulations, and NASD rules concerning TRACE. 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 of transactions of TRACE-eligible securities to TRACE. The findings also stated that the firm failed to report transactions of TRACE-eligible securities executed on a business day to TRACE during TRACE system hours within 45 minutes of execution time. NASD further found that that the firm's supervisory system did not provide supervision reasonably designed to achieve compliance with applicable securities laws and regulations, and NASD rules concerning TRACE. **(NASD Case #2005000188101)**

Merrill Lynch Professional Clearing Corp. (CRD #16139, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined $23,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to timely report ROEs to OATS. The findings also stated that the firm did not correct or replace OATS reports with respect to equity securities traded on NASDAQ that the firm submitted, but were rejected by OATS for not being 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 with respect to the applicable securities laws and regulations, and NASD rules concerning compliance with OATS rules. **(NASD Case #20042000057-01)**

Meyers Associates, L.P. (CRD #34171, New York, New York) submitted an Offer of Settlement in which the firm was censured, fined $25,000 and required to revise its written supervisory procedures to notify all counsel representing the firm in arbitration proceedings of the firm's policy to comply with discovery requirements as set out in the Code of

Arbitration, and to comply with all orders of arbitration panels relating to discovery obligations. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to comply with its discovery obligations by failing to produce, in a timely manner, documents in its possession or control that were requested by the claimant. The findings also stated that the firm failed to comply with orders issued by an arbitration panel requiring the firm to produce documents in its possession or control, or to submit an affidavit from its CEO providing specific information related to the production of documents. **(NASD Case # CE2050003)**

optionsXpress, Inc. (CRD #103849, Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined $14,000, and required to revise its written supervisory procedures regarding compliance with applicable securities laws and regulations, and NASD rules concerning repair of rejected ROEs and OATS business clock synchronization. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it did not correct or replace OATS reports with respect to equity securities traded on NASDAQ that the firm submitted, but were rejected by OATS for not being in the electronic form prescribed by NASD. The findings also stated that the firm misreported execution reports to OATS and submitted reports to OATS where the time stamps on the new order report were more than three seconds later than the respective time stamps on the related subsequent reports. NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations, and NASD rules concerning the repair of rejected ROEs and OATS business clock synchronization. **(NASD Case #2004200013201)**

Penson Financial Services, Inc. (CRD #25866, Dallas, Texas) submitted an Offer of Settlement in which the firm was censured and fined $50,000, of which $7,500 is jointly and severally with an employee. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it, acting through an employee, failed to maintain an adequately funded reserve account. The findings also stated that the firm violated Rule 3011(b) in that the firm failed to timely file annual reports of foreign bank and financial accounts with the U.S. Department of the Treasury for each of its foreign accounts. **(NASD Case #C0620050007/E062002007507)**

Pershing Trading Company, L.P. N/K/A Pershing Advisor Solutions LLC (CRD #36671, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined $15,000 and required to review the systems used by the firm to comply with the limit order display rule. 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 was at a price that would have improved the firm's bid or offer in each such security, or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each security, and the size of the order represented more that a de minimis change in relation to the size associated with the firm's bid or offer in each such security. **(NASD Case #20050000972-01)**

RDSC, LLC (CRD #7519, Cincinnati, Ohio) 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 prepare and maintain an adequate written AML compliance program. **(NASD Case #E8A2004024001)**

Ryan Beck & Co. (CRD# 3248, Florham Park, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined $15,000 and ordered to pay $528.22, plus interest, in restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy or sell in such market so that the resultant price to its customer was as favorable as possible under prevailing market conditions. NASD also found that the firm transmitted reports that contained inaccurate, incomplete or improperly formatted data to OATS. **(NASD Case #2004200012101)**

Sanders Morris Harris Inc. (CRD #20580, Houston, Texas) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined $10,000 and required to revise its written supervisory procedures regarding compliance with applicable securities laws and regulations, and NASD rules concerning the Display Rule. 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 was at a price that would have improved the firm's bid or offer in each security or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each 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 also found 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 the Display Rule. **(NASD Case #20042000096-01)**

Securian Financial Services, Inc. (CRD #15296, St. Paul, Minnesota) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined $165,127. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it accepted approximately $550,423 in directed brokerage commissions from mutual fund families as partial payment for participation in the firm's Strategic Partnership Program. The findings further stated that these strategic partners received a number of benefits in return for these payments, including preferential marketing and distribution access. **(NASD Case #E0420040104-01)**

Springboard Securities, Inc. (CRD #104458, Newport Beach, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined $10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it permitted its parent company's president to act in the capacity of a general securities principal without the benefit of registration as a principal. While not registered as a principal, the parent company's president actively engaged in the general management of the firm and supervision of persons associated with the firm. **(NASD Case #E0220040276-01)**

Suntrust Investment Services, Inc. (CRD #17499, Atlanta, Georgia) 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 compliance with applicable securities laws and regulations, and NASD rules concerning TRACE reporting. 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 TRACE-eligible securities executed on a business day to TRACE during TRACE system hours within 45 minutes of execution time. The findings further stated that the firm failed to report transactions in TRACE-eligible securities executed on a business day prior to TRACE system hours to TRACE within 45 minutes after the TRACE system opened the same business day. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations, and NASD rules concerning TRACE reporting. **(NASD Case #20042000229-01)**

Symetra Investment Services, Inc. (CRD #19061, Bellevue, Washington) 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 report the correct time of trade execution for certain transactions to TRACE. The findings further stated that the firm failed to report transactions in TRACE-eligible securities executed on a business day prior to TRACE system hours to TRACE within 45 minutes after the system opened the same business day. **(NASD Case #20042000227-01)**

Timber Hill LLC (CRD #33319, Greenwich, Connecticut) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined $35,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it submitted incorrect short interest position reports to NASD. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations, and NASD rules concerning short interest reporting. **(NASD Case #20042000011-01)**

Trinix Securities LLC (CRD #103360, Encinitas, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined $10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it transmitted reports that contained inaccurate, incomplete or improperly formatted data to OATS. **(NASD Case #20050000207-01)**

The (Wilson) Williams Financial Group (CRD #22704, Dallas, Texas) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined $10,000 and required to revise its written supervisory procedures regarding the applicable securities laws and regulations, and NASD rules concerning TRACE reporting. 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 time of trade execution for transactions in TRACE-eligible securities to TRACE. The findings also stated that the firm failed to report transactions in TRACE-eligible securities executed on a business day during TRACE system hours to TRACE within 45 minutes of execution time. The findings also stated 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 TRACE reporting. **(NASD Case #20050001884-01)**

Individuals Barred or Suspended

Steven Michael Acosta (CRD #2598083, Registered Representative, Pasadena, 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. Without admitting or denying the allegations, Acosta consented to the described

sanction and to the entry of findings that he failed to amend his Uniform Application for Securities Industry Registration and Transfer (Form U4) to disclose a material fact.

Acosta's suspension began November 7, 2005, and will conclude at close of business February 6, 2006. **(NASD Case #E0220040693-01)**

Jerry Don Bailey (CRD #1756858, Registered Representative, Flower Mound, Texas) 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, Bailey consented to the described sanction and to the entry of findings that he made unsuitable variable annuity and/or variable universal life insurance recommendations to public customers. The findings stated that Bailey failed to obtain financial information from any of the customers before making investment recommendations, and had several customers sign a disclosure and alter blank documents. The findings also stated that he made misrepresentations and omitted material facts in connection with his unsuitable investment recommendations. **(NASD Case #E062003037501)**

Robert Glenn Bard (CRD #2447501, Registered Principal, Warfordsburg, 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, Bard consented to the described sanction and to the entry of findings that he signed public customers' names on client agreements/new account forms, discretionary power forms, variable annuity purchase applications and related documents, and third-party management agreements without the authority to sign the names. NASD found that Bard also obtained signature guarantees for some of the signatures, notwithstanding that some of the signatures were fake. The findings also stated that Bard effected transactions in customers' accounts based on oral or written discretionary power the customers had granted him but failed to obtain his member firm's acceptance of the discretionary power. The findings further stated that Bard effected a purchase of a variable annuity on behalf of a customer and guaranteed a minimum investment return, both orally and in writing. **(CRD #E9A2004043301)**

Arthur Joseph Booze (CRD #2570386, Registered Representative, Chicago, Illinois) submitted an Offer of Settlement in which he was fined $5,000 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Booze consented to the described sanctions and to the entry of findings that he altered a mutual fund product switch form and failed to provide a copy of the switch letter with the true and accurate sales charge to the public customer. The findings stated that Booze recommended securities transactions in the accounts of customers without having a reasonable basis for believing that the transactions were suitable for the customers based on the customers' financial statuses, investment objectives and without discussing the possibility of purchasing similar mutual funds within the existing fund family.

Booze's suspension began October 17, 2005, and will conclude October 16, 2006. **(NASD Case #C8A050029/E8A2003032203)**

Dante Falco Calicchio (CRD #2812117, Registered Representative, Boca Raton, Florida), Charles Philippe Celestin (CRD #4276880, Registered Principal, Coral Springs, Florida) and Marc Steven Kimmel (CRD #2805550, Registered Representative, Los Angeles, California) were barred from association with any NASD member in any capacity. The sanctions were based on findings that the respondents, by the use of means or instrumentalities of interstate commerce or of the mails, intentionally and recklessly affected transactions, and induced the purchase and the sale of securities by means of deceptive, manipulative and other fraudulent devices or contrivances. The findings also stated that Calicchio and Kimmel failed to timely amend their Forms U4 to disclose a material fact. **(NASD Case #CMS040094)**

Anthony Scott Campbell (CRD #2859670, Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Campbell consented to the described sanction and to the entry of findings that he received $6,000 from a public customer to be invested in two separate accounts, deposited the funds into his personal checking account and converted $3,000 of the funds for his own use and benefit. The findings also stated that Campbell failed to respond to NASD requests for information. **(NASD Case #2005000085901)**

Alan Steven Cohen (CRD #2237526, Registered Principal, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cohen consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. **(NASD Case #ELI2004039601)**

Frank DiBenedetto (CRD #2264232, 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, DiBenedetto consented to the described sanction and to the entry of findings that he knowingly prepared and submitted a

falsified life insurance application to his member firm, knowing that the signature of the purported insured was forged. **(NASD Case #E1020032079-01)**

Myron S. Frierson (CRD #4130928, Registered Representative, Teaneck, 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, Frierson consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. **(NASD Case #2005001318601)**

Francisco Galvan (CRD #1164780, Registered Principal, Stockton, California) 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, Galvan consented to the described sanction and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firm. The findings also stated that Galvan recommended securities transactions to a public customer without having a reasonable basis for believing the recommendations were suitable for the customer based on the customer's financial situation and needs. The findings further stated that Galvan failed to respond to NASD requests for documents and information. **(NASD Case #C01040017)**

Joseph Eugene Hamlet (CRD #1679675, Registered Representative, Long Beach, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined $5,000 and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, Hamlet consented to the described sanctions and to the entry of findings that he settled verbal customer complaints without informing or obtaining authorization from his member firm.

Hamlet's suspension began November 7, 2005, and will conclude at the close of business February 6, 2006. **(NASD Case #2005000738701)**

James Brendan Hanley (CRD #1438024, Registered Representative, Malden, Massachusetts) was fined $42,500, suspended from association with any NASD member in any capacity for 17 months and ordered to pay $7,364.48, plus interest. Without admitting or denying the allegations, Hanley consented to the described sanctions and to the entry of findings that, while exercising effective control over public customer accounts, he engaged in excessive trading. The findings stated that Hanley exercised discretion in customer accounts without written authorization from the customers.

Hanley's suspension began September 6, 2005, and will conclude at close of business February 5, 2007. **(NASD Case #C11050013)**

Richard Thomas Hayden (CRD #2580503, Registered Representative, Miami Lakes, Florida) submitted a Letter of Acceptance, Waiver and Consent in which he was fined $20,000 and suspended from association with any NASD member in any capacity for three months. In addition, Hayden was ordered to pay restitution of $121 plus interest to public customers. Hayden must pay his fine before he reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Hayden consented to the described sanctions and to the entry of findings that he knowingly and intentionally entered priced limit orders to buy or sell a small number of shares of a NASDAQ security into an Electronic Communications Network (ECN) at prices that he knew would improve the National Best Bid or Offer (NBBO) in that security. The findings stated that, after entering orders into the ECN that improved the NBBO, Hayden knowingly and intentionally entered larger orders to sell (buy) shares of the security in his trading account because he knew and intended that these orders would be routed to Small Order Execution System (SOES) market makers that were programmed to buy or sell, and then bought and sold the security on an automated basis at prices equal to the NBBO. The findings also stated that, immediately after he received the SOES executions of the orders, Hayden intentionally and knowingly cancelled the priced limit order that he had entered to improve the NBBO, thereby obtaining a financial benefit. NASD found that he caused to be published or circulated limit orders at prices that affected the NBBO and became quotations for the security, without believing that those quotations represented bona fide bids or offers for the security.

Hayden's suspension began October 17, 2005, and will conclude at the close of business on January 16, 2006. **(NASD Case #20042000018-01)**

Jace Rodney Hermanson (CRD #4630946, Registered Representative, Scottsdale, Arizona) submitted a Letter of Acceptance, Waiver and Consent in which he was fined $6,582.54 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Hermanson reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Hermanson consented to the described sanctions and to the entry of findings that he engaged in business activity outside the scope of his member firm and failed to provide his member firm with prompt written notice.

Hermanson's suspension began November 7, 2005, and will conclude at close of business February 6, 2006. **(NASD Case #E3A2004034801)**

Martin Ray Hershner (CRD #2860663, Registered Representative, Lexington, Ohio) was barred from

association with any NASD member in any capacity. The sanction was based on findings that Hershner caused redemption of $54,906.72 from public customers' mutual funds and committed conversion by cashing these funds for his own use or benefit without the knowledge or consent of the customers. The findings also stated that Hershner failed to respond to an NASD request for documents and information. **(NASD Case #C8A050020)**

Judah Indig (CRD #722871, Registered Representative, Far Rockaway, 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 ten business days. Without admitting or denying the allegations, Indig consented to the described sanctions and to the entry of findings that he placed trades on margin in public customers' joint account without disclosing that they were using margin to make certain purchases to the customers.

Indig's suspension began November 7, 2005, and will conclude at the close of business November 18, 2005. **(NASD case #ELI2004018802)**

Vatsana Inthalansy (CRD #4009666, Registered Representative, Naples, Florida) submitted a Letter of Acceptance, Waiver and Consent in which she was fined $5,000 and suspended from association with any NASD member in any capacity for 10 business days. The fine must be paid before Inthalansy reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Inthalansy consented to the described sanctions and to the entry of findings that she reimbursed a public customer for an early mutual fund liquidation fee.

Inthalansy's suspension began October 17, 2005, and concluded at the close of business October 28, 2005. **(NASD Case #2005001268601)**

Nariman Jalayer (CRD #3270025, Registered Principal, Pt Jefferson, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $7,500 and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Jalayer consented to the described sanctions and to the entry of findings that he opened an account at his member firm in the name of a public customer without the customer's prior knowledge. NASD also found that Jalayer effected transactions in customer accounts without the customers' prior knowledge, authorization or consent.

Jalayer's suspension began October 17, 2005, and concluded at the close of business November 4, 2005. **(NASD Case #E1020031861-01)**

William Edward Jasko (CRD #2103111, Registered Representative, Saddle River, New Jersey) 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, Jasko consented to the described sanction and to the entry of findings that he recommended and affected excessive securities transactions in the accounts of public customers without having a reasonable basis for believing that the recommendations were suitable for the customers based on their other security holdings, financial situations, investment objectives and needs. **(NASD Case #C9B040112/E9B2003017004)**

Joseph Lee Karcagi (CRD #264316, Registered Principal, Punta Gorda, Florida) was barred from association with any NASD member in any capacity. The sanctions were based on the findings that Karcagi failed to appear in response to an NASD request for an on-the-record interview. **(NASD Case #C07050028)**

Mark Augustine Kollar (CRD #2183640, Registered Principal, Northbrook, 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 30 days. Without admitting or denying the allegations, Kollar consented to the described sanctions and to the entry of findings that he accepted $54,449 in compensation from an insurance company unaffiliated with his member firm for the sale of an annuity and an insurance policy to a public customer without providing notice to his member firm.

Kollar's suspension began October 17, 2005, and will conclude at the close of business November 15, 2005. **(NASD Case #E072004033901)**

Andrew Sean Korotzer (CRD #4259307, Registered Representative, Moorpark, 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, Korotzer consented to the described sanction and to the entry of findings that he submitted applications to his member firm for fictitious transactions in insurance products for which he received commissions without the customers' knowledge, consent or authorization. **(NASD Case #E0220040288-01)**

Kenneth Krygowski (CRD #4534650, Registered Representative, West Chester, 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, Krygowski consented to the described sanction and to the entry of findings that he willfully failed to disclose material information on his Form U4. **(NASD Case #E9A2004053701)**

Thomas Garcia Lara, Jr. (CRD #3213779, Registered Representative, El Paso, Texas) 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, Lara consented to the described sanction and to the entry of findings that he prepared and submitted requests for reimbursement to his member firm for business travel expenses totaling $26,268 that he did not incur, and accepted the reimbursement payment knowing that he had not incurred the expenses for which he was being reimbursed. **(NASD Case #E3A20040328-03)**

Richard Leaf Levardsen (CRD #4611656, Registered Representative, Patchoque, 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 six weeks. Without admitting or denying the allegations, Levardsen consented to the described sanctions and to the entry of findings that he took the NASD Series 7 examination, received a failing score of 45 percent, then altered the proctor's report to reflect that he received a failing score of 65 percent. He then presented the altered proctor's report to his firm's managers, thereby misrepresenting that he had received a higher score than the one he actually received.

Levardsen's suspension began November 7, 2005, and will conclude at the close of business December 16, 2005. **(NASD Case #E102004117601)**

Joan Levigne (CRD #3176451, Registered Representative, St. Clair Shores, Michigan) submitted a Letter of Acceptance, Waiver and Consent in which she was fined $7,500 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Levigne reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Levigne consented to the described sanctions and to the entry of findings that she altered a public customer's signed annuity request form without the knowledge or permission of the customer.

Levigne's suspension began October 17, 2005, and will conclude at the close of business April 16, 2006. **(NASD Case #E8A2004107801)**

Irving Bruce Mangurten (CRD #3159260, Registered Representative, Buffalo Grove, 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 six months. The fine must be paid before Mangurten reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Mangurten consented to the described sanction and to the entry of findings that he failed to timely amend his form U4 to disclose a material fact.

Margurten's suspension will begin November 21, 2005, and will conclude on May 20, 2006. **(NASD Case #E8A2004073101)**

George Margossian (CRD #4566805, Associated Person, Woodland Hills, 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, Margossian consented to the described sanction and to the entry of findings that, while acting as treasurer of a business networking organization, he forged the signature of the organization's president on a company check, cashed the check and misappropriated $700 of the organization's funds. **(NASD Case #20050007348-01)**

Derek Robert McCown (CRD #2449538, Registered Representative, Richmond, Virginia) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, McCown consented to the described sanction and to the entry of findings that he forged, or caused to be forged, a public customer's signature authorizing $170,000 to be electronically transferred from the customer's account to a bank account he controlled, then used the funds for his own benefit. The findings also stated that McCown failed to respond to NASD requests for information. **(NASD Case #2005001582101)**

Markham Edward Murphy (CRD #4367355, Registered Representative, Plantation, Florida) submitted a Letter of Acceptance, Waiver and Consent in which he was fined $20,000 and suspended from association with any NASD member in any capacity for three months. In addition, Murphy was ordered to pay restitution of $348.48 plus interest to public customers. Murphy must pay his fine before he reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Murphy consented to the described sanctions and to the entry of findings that he knowingly and intentionally entered priced limit orders to buy or sell a small number of shares of a NASDAQ security into an Electronic Communications Network (ECN) at prices that he knew would improve the National Best Bid or Offer (NBBO) in that security. The findings stated that, after entering orders into the ECN that improved the NBBO, Murphy knowingly and intentionally entered larger orders to sell (buy) shares of the security in his trading account because he knew and intended that these orders would be routed to Small Order Execution System (SOES) market makers that were programmed to buy or sell, and then bought and sold, the security on an automated basis at prices equal to the NBBO.

The findings also stated that, immediately after he received the SOES executions of the orders, Murphy intentionally and knowingly cancelled the priced limit order that he had entered to improve the NBBO, thereby obtaining a financial benefit. NASD found that he caused to be published or circulated limit orders at prices that affected the NBBO and became quotations for the security, without believing that those quotations represented bona fide bids or offers for the security.

Murphy's suspension began October 17, 2005, and will conclude at the close of business on January 16, 2006. **(NASD Case #2004200018-02)**

Douglas Donovan Pfaff (CRD #1315669, Registered Principal, Mt. Horeb, Wisconsin) 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, Pfaff consented to the described sanction and to the entry of findings that he forged the signatures of public customers on life insurance policy loan agreements and policy loan checks without their knowledge or consent. The findings stated that Pfaff was able to obtain $74,739.08 in loans against the value of the life insurance policies and used those funds for his own use and benefit. NASD found that Pfaff falsified a client summary statement requested by a public customer. **(NASD Case #2005000532601)**

Derward Kyle Richardson (CRD #4037870, Registered Representative, Grand Prairie, Texas) 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 30 business days. The fine must be paid before Richardson reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Richardson consented to the described sanctions and to the entry of findings that he effected transactions in public customers' accounts through the use of discretionary power without prior written authorization from the customers, and without his member firm's written acceptance of the accounts as discretionary. The findings also stated that Richardson did not have reasonable grounds for believing that his recommendations and the resulting transactions, all of which involved high-risk technology stocks, were suitable for the customers based on their financial situations and needs.

Richardson's suspension began October 17, 2005, and will conclude at the close of business November 28, 2005. **(NASD Case #E062004034501)**

Stephen Craig Richmond (CRD #3240261, Registered Representative, Wellington, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Richmond engaged in private securities transactions without providing prior written notice to his member firm. The findings stated that Richmond failed to respond to NASD requests for information. **(NASD Case #C05050012)**

David Michael Rondeau (CRD #1904325, Registered Representative, Rochester, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Rondeau consented to the described sanction and to the entry of findings that he effected numerous securities transactions in the accounts of public customers without their prior knowledge, authorization or consent. **(NASD Case #E9B2004058501)**

Scott Howard Ross (CRD #2399201, Registered Representative, Setauket, 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, Ross consented to the described sanctions and to the entry of findings that he, acting on behalf of his firm, effected, or caused to be effected, transactions in the joint account of public customers without their prior knowledge, authorization or consent. The findings also stated that Ross failed to respond to NASD requests to appear for an on-the-record interview. **(NASD Case #ELI20040220-02)**

John B. Schaedel (CRD #2833004, Registered Representative, Kissimmee, Florida) and Anthony Truman (CRD #2560848, Registered Representative, Orlando, Florida) submitted a Letter of Acceptance, Waiver and Consent in which Schaedel was fined $110,000, suspended from association with any NASD member in any capacity for one year, and required to requalify as a general securities representative (Series 7) by exam before reassociation with any NASD member. Truman was suspended from association with any NASD member in any capacity for one year and required to requalify as a general securities representative by exam before reassociation with any NASD member. In light of the financial status of Truman, no monetary sanction has been imposed. Without admitting or denying the allegations, Schaedel and Truman consented to the described sanctions and to the entry of findings that they facilitated their clients' efforts to market time mutual funds in violation of valid restrictions imposed by the mutual funds and in violation of NASD rules. The findings stated that nearly all of their clients market timed mutual funds and their customers opened accounts for common beneficial owners and engaged in deceptive activities to avoid fund restrictions. The findings also stated that although Schaedel and Truman were aware that certain mutual funds discouraged or restricted frequent trading, they immediately began executing market-timing transactions for their customers. NASD found that, as a result of these deceptive practices, the customers executed

roundtrips that violated fund restrictions or limitations, thus earning substantial illicit profits.

Schaedel's suspension began November 7, 2005, and will conclude at the close of business November 6, 2006. Truman's suspension began October 17, 2005, and will conclude at the close of business October 16, 2006. **(NASD Case #EAF0301040002)**

Cheryl Roppa Schwarzwaelder (CRD #1637834, Registered Representative, Sewickley Heights, Pennsylvania) 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, Schwarzwaelder consented to the described sanction and to the entry of findings that she caused inaccurate expense reports for client development to be submitted to her member firm. **(NASD Case #E9A2003050201)**

Daniel Adam Sherwood (CRD #2412533, Registered Principal, Weston, Florida) submitted a Letter of Acceptance, Waiver and Consent in which he was fined $20,000 and suspended from association with any NASD member in any capacity for three months. In addition, Sherwood was ordered to pay restitution of $136.50 plus interest to public customers. Sherwood must pay his fine before he reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Sherwood consented to the described sanctions and to the entry of findings that he knowingly and intentionally entered priced limit orders to buy or sell a small number of shares of a NASDAQ security into an Electronic Communications Network (ECN) at prices that he knew would improve the National Best Bid or Offer (NBBO) in that security. The findings stated that, after entering orders into the ECN that improved the NBBO, Sherwood knowingly and intentionally entered larger orders to sell (buy) shares of the security in his trading account because he knew and intended that these orders would be routed to Small Order Execution System (SOES) market makers that were programmed to buy or sell, and then bought and sold, the security on an automated basis at prices equal to the NBBO. The findings also stated that, immediately after he received the SOES executions of the orders, Sherwood intentionally and knowingly cancelled the priced limit order that he had entered to improve the NBBO, thereby obtaining a financial benefit. NASD found that he caused to be published or circulated limit orders at prices that affected the NBBO and became quotations for the security, without believing that those quotations represented bona fide bids or offers for the security.

Sherwood's suspension began October 17, 2005, and will conclude at the close of business on January 16, 2006. **(NASD Case #2004200018-05)**

Michael A. Sherwood (CRD #4141255, Registered Principal, Miami Beach, Florida) submitted a Letter of Acceptance, Waiver and Consent in which he was fined $20,000 and suspended from association with any NASD member in any capacity for three months. In addition, Sherwood was ordered to pay restitution of $136.50 plus interest to public customers. Sherwood must pay his fine before he reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Sherwood consented to the described sanctions and to the entry of findings that he knowingly and intentionally entered priced limit orders to buy or sell a small number of shares of a NASDAQ security into an Electronic Communications Network (ECN) at prices that he knew would improve the National Best Bid or Offer (NBBO) in that security. The findings stated that, after entering orders into the ECN that improved the NBBO, Sherwood knowingly and intentionally entered larger orders to sell (buy) shares of the security in his trading account because he knew and intended that these orders would be routed to Small Order Execution System (SOES) market makers that were programmed to buy or sell, and then bought and sold, the security on an automated basis at prices equal to the NBBO. The findings also stated that, immediately after he received the SOES executions of the orders, Sherwood intentionally and knowingly cancelled the priced limit order that he had entered to improve the NBBO, thereby obtaining a financial benefit. NASD found that he caused to be published or circulated limit orders at prices that affected the NBBO and became quotations for the security, without believing that those quotations represented bona fide bids or offers for the security.

Sherwood's suspension began October 17, 2005, and will conclude at the close of business on January 16, 2006. **(NASD Case #2004200018-03)**

Jerritt Clark Simmers (CRD #4590866, Registered Representative, Farmingville, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Simmers willfully failed to disclose material facts on his Forms U4. **(NASD Case #C10050033)**

Gregory Joseph Smith (CRD #1342428, Registered Representative, Cape Coral, Florida) submitted a Letter of Acceptance, Waiver and Consent in which he was suspended from association with any NASD member in any capacity for 90 days. In light of the financial status of Smith, no monetary sanction has been imposed. Without admitting or denying the allegations, Smith consented to the described sanction and to the entry of findings that he willfully failed to disclose a material fact on his Form U4.

Smith's suspension began November 7, 2005, and will conclude February 4, 2006. **(NASD Case #E022002092201)**

Mansell R. Spedding (CRD #1102031, Registered Principal, Cathedral City, California) submitted a Letter of Acceptance, Waiver and Consent in which he was fined $10,000 and suspended from association with any NASD member in any capacity for 20 business days. Without admitting or denying the allegations, Spedding consented to the described sanctions and to the entry of findings that he recommended variable annuity transactions to public customers without having a reasonable basis for believing that the recommendations were suitable for the customers based on their objectives, financial situations and needs.

Spedding's suspension began November 7, 2005, and will conclude at close of business December 5, 2005. **(NASD Case #E0220030907-01)**

Ryan Christopher Stewart (CRD #3195756, Registered Representative, Chesapeake, Virginia) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Stewart consented to the described sanction and to the entry of findings that he sought and accepted a $5,000 loan from a public customer without obtaining prior written approval from his member firm to borrow the funds. NASD found that Stewart failed to respond to NASD requests for information. **(NASD Case #2005001807801)**

Robert Trevlin Stewart, Jr. (CRD #1611243, Registered Principal, Richmond, Virginia) was barred from association with any NASD member in any capacity. The sanction was based on findings that Stewart received a $165,000 check from a public customer for investment purposes that he deposited into a bank account he controlled, then withdrew $28,838.14, thereby using the funds for his own use and benefit without the customer's knowledge, authorization or consent. The findings also stated that Stewart failed to respond to an NASD request for information. **(NASD Case #C3B050006)**

James Arthur Swanke (CRD #2228901, Registered Representative, Apple Valley, Minnesota) submitted an Offer of Settlement in which he was fined $15,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Swanke reassociates with any NASD member following the suspension or requests relief from any statutory disqualification. Without admitting or denying the allegations, Swanke consented to the described sanctions and to the entry of findings that he made material misstatements of facts in connection with his offer and sales of callable certificates of deposit.

Swanke's suspension will begin November 21, 2005, and will conclude on May 20, 2006. **(NASD Case #E052000056306 (formerly C0620050026))**

John Richard Tamburrino (CRD #1896150, Registered Principal, Manalapan, 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, Tamburrino consented to the described sanction and to the entry of findings that he failed to appear for an NASD on-the-record interview. **(NASD Case #20050000284-01)**

Daniel Duane Volnek (CRD #2444536, Registered Representative, Lincoln, Nebraska) 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, Volnek consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. **(NASD Case #E0420040397-01)**

Mitchell Aaron Weisberg (CRD #1882341, Registered Representative, Deerfield Beach, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Weisberg effected, or caused to be effected, securities transactions in the accounts of a public customer without the customer's prior knowledge or authorization. The findings also stated that Weisberg failed to respond to NASD requests for information. **(NASD Case #C07050020)**

Charles Lee Williams (CRD #4767254, Registered Representative, Colorado Springs, Colorado) was barred from association with any NASD member in any capacity. The sanction was based on findings that Williams included false and misleading information on his Form U4 to avoid disclosure of material facts. The findings also stated that Williams failed to respond to NASD requests for information. **(NASD Case #C3A050011)**

Individuals Fined

Susanne Smith Pruitt (CRD #1347974, Registered Principal, Seattle, Washington) submitted a Letter of Acceptance, Waiver and Consent in which she was censured and fined $20,000, of which $5,000 is jointly and severally with her member firm. The fine must be paid before Pruitt reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Pruitt consented to the described sanctions and to the entry of findings that she failed to preserve memoranda brokerage orders and any other instruction given or received for the purchase or sale of securities, whether executed or unexecuted. The findings also stated that Pruitt, acting on behalf of her member firm, failed to preserve any of the firm's internal or external email communications, and failed to print and review the firm's

email as required by the firm's written supervisory procedures. The findings also stated that Pruitt, acting on behalf of her member firm, failed to implement her firm's written supervisory procedures for review of email correspondence. **(NASD Case #E3B2003029701)**

Decisions Issued

The following decisions have been issued by the Office of Hearing Officers (OHO) and have been appealed to or called for review by the NAC as of September 30, 2005. The findings and sanctions imposed in the decisions may be increased, decreased, modified or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notice to Members*.

Jimmie Lee Griffith (CRD #2321620, Registered Representative, Richmond, California) was fined $10,000 and suspended from association with any NASD member in any capacity for three months. The sanctions were based on findings that Griffith effected securities transactions in the accounts of public customers without their authorization.

This decision has been appealed to the NAC, and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C01040025)**

Malvinder Sonny Matharu (CRD #2650655, Registered Representative, Redondo Beach, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that Matharu refused to provide testimony to NASD.

This decision has been appealed to the NAC, and the sanction is not in effect pending consideration of the appeal. **(NASD Case #C02050006)**

John M. Meyers (CRD #2580153, Registered Principal, Coram, New York) and Brian Craig Klein (CRD #2723977, Registered Representative, Farmingdale, New York) Meyers was fined $45,000, suspended from association with any NASD member in any capacity for 18 months and required to requalify in all capacities by exam. Klein was fined $40,000, suspended from association with any NASD member in any capacity for one year and required to requalify in all capacities by exam. The sanctions were based on findings that Meyers and Craig failed to disclose that their compensation for selling shares of a particular stock they recommended would, or might, include sales credits over and above their disclosed compensation. The findings stated that the respondents' failure to disclose the sales credits to customers was material and wreckless. The sanction also were based on findings that, in connection with the respondents' recommendations to customers, they made material and misleading predictions about the future price of a stock in order to induce customers to purchase it.

This decision has been appealed to the NAC, and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C3A040023)**

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.

Patrick Alexander Anthony (CRD #2080102, Registered Principal, Los Angeles, California) was named as a respondent in an NASD complaint alleging that he used his member firm to defraud public customers. The complaint alleges that he raised $80,000 from the customers whom he solicited to invest in a purportedly new company, and told the investors that they would receive monthly interest distributions at a 12 percent annualized return, and that their principal would be returned within a specific period of time. The complaint alleges that Anthony issued an offering circular to the customers describing the newly created company as a corporation that "specializes in the design, development and marketing of investment banking projects," and stated that the offering proceeds would be used for the design and development of the company's "convertible preferred stock offering." The complaint also alleges that the company immediately defaulted on its obligations, never engaged in any business operations and never conducted any preferred stock offering. Instead, Anthony transferred over half of the proceeds to his financially troubled broker-dealer firm and used much of the remaining offering proceeds for his own use and benefit. **(NASD Case #E0720031136-02).**

Robert Eugene Elkins (CRD #2618105, Registered Representative, Redford, Michigan) was named as a respondent in an NASD complaint alleging that he effected transactions in the account of a public customer without the knowledge or consent of the customer, and in the absence of written or oral authorization for Elkins to exercise discretion in the customer's account. **(NASD Case #E8A2003080701)**

Philip Benjamin Melnick (CRD #2930299, Registered Representative, Staten Island, New York) was named in an NASD complaint alleging that, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, he employed a device, scheme or artifice to defraud; or made an untrue statement of material fact or omitted a material fact in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in an act, practice or course of business that operated or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security. **(NASD Case #20042000038-01)**

Elliot Nadel (CRD #812711, Registered Principal, Whitestone, New York) was named as a respondent in NASD complaint alleging that he transferred $46,760.08 from a public customer's account to an account he managed and controlled without the customer's knowledge, authorization or consent. The complaint also alleges that Nadel failed to respond to NASD requests for information. **(NASD Case #ELI2004039602)**

Russell Palermo (CRD #4392276, Registered Representative, Huntley, Illinois) was named as a respondent in an NASD complaint alleging that instead of using funds he received from public customers for investment purposes, he used them for his own personal benefit without their knowledge or consent. The complaint also alleges that he failed to timely respond to NASD requests for information. **(NASD Case #2005000118401)**

Emanuele Anthony Scarso (CRD #2080536, Registered Representative, Brooklyn, New York) was named as a respondent in a NASD complaint alleging that he effected securities transactions in the account of public customers without their knowledge or consent, and in the absence of written or oral authorization for Scarso to exercise discretion. **(NASD Case #E062003035102)**

William Anthony Shriner (CRD #3212618, Registered Representative, Brownsburg, Indiana) was named as a respondent in an NASD complaint alleging that he converted funds from a public customer's securities account, without the consent or knowledge of the customer for his own use and benefit. The complaint also alleged that he failed to respond to NASD requests for information. **(NASD Case #E8A2004073701)**

Firms Suspended Pursuant to NASD Rule 9553 for Failure to Pay Arbitration Fees

Sort Securities, LLC
New York, New York
(October 19, 2005)

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

Mark Joseph Deves
St. Louis, Missouri
(October 19, 2005)

Anthony Rahama Whitter
Mt. Vernon, New York
(October 19, 2005)

Individual Barred Pursuant to NASD Rule 9552(h)

Matthew D Reitz
Lodi, California
(September 21, 2005)

Individuals Suspended Pursuant to NASD Rule 9552(d)

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

Kimberly Gallops Anthony
Vestavia Hills, Alabama
(September 20, 2005)

Sandeep Bardia
Maspeth, New York
(September 12, 2005)

Samuel G. Cohen
Brooklyn, New York
(September 16, 2005)

Justin Andre Inniss
Brooklyn, New York
(October 4, 2005)

Roger Glen Wilson
Irving, Texas
(September 13, 2005)

Samuel Lackland Talbot
North Jacksonville, Florida
(October 5, 2005)

Firms Suspended Pursuant to NASD Rule Series 9554 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.)

Tiche Capital Strategies, L.L.C.
Pittsburgh, Pennsylvania
(June 20, 2005 to October 12, 2005)

Individuals Suspended Pursuant to NASD Rule Series 9554 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.)

John Vincent Ballard
Germantown, Tennessee
(September 26, 2005)

Richard Samuel Bonesteel
Sylvania, Ohio
(September 28, 2005)

Burnis Torrell Brown
Chicago, Illinois
(October 24, 2005)

John Right Crawford
Oak Island, North Carolina
(October 3, 2005)

William Stephen Foster
Norman, Oklahoma
(September 22, 2005)

Sunny Michael Ikwue
Queens Village, New York
(July 18, 2005 to October 20, 2005)

William Joseph Julian
Huntington, New York
(October 17, 2005)

Brian Anthony Kath
Henderson, Nevada
(October 24, 2005)

Bruce Willie Korus
Olympia, Washington
(October 24, 2005)

Jason Alexander Lawson
Flushing, New York
(October 18, 2005)

Van Hung Le
Arlington, Virginia
(October 24, 2005)

Craig Leszczak
Hewlett, New York
(October 13, 2005)

Michael Mourounas
Brooklyn, New York
(September 28, 2005)

Robert Gary Nelson
Brooklyn, New York
(September 28, 2005)

David Scott O'Block
Knoxville, Tennessee
(October 3, 2005 to October 5, 2005)

Michael Park
College Point, New York
(September 27, 2005)

Edward Francis Pellegrini
Richardson, Texas
(September 27, 2005)

Victor Michael Rodriguez
Levittown, New York
(September 28, 2005)

Robert Erwin Tschan II
Henderson, Nevada
(October 24, 2005)

Scott Howard Weissman
Miami, Florida
(September 27, 2005)

Errol Vaughn Wilson
Brooklyn, New York
(September 28, 2005)

NASD Fines Three Firms $6.75 Million, Expels a Fourth Firm for Corporate High Yield Bond Trade Violations

Firms Also Ordered to Pay Customers Restitution Exceeding $1.1 Million

NASD has fined three firms—and expelled a fourth—for violations relating to trading in corporate high yield bonds. All four firms were cited for charging excessive markups or markdowns in bond trades, as well as for supervision violations. The four firms will also pay restitution to customers totaling more than $1.1 million.

SG Americas Securities, LLC, of New York, will pay a $3.75 million fine and more than $728,000 in restitution. New York's RBC Capital Markets Corporation was fined $2 million and ordered to pay more than $108,000 in restitution. Its affiliate, RBC Dain Rauscher, Inc., of Minneapolis, was fined $1 million and will make more than $158,000 in restitution payments. DebtTraders, Inc., of New York, was expelled from the industry and ordered to pay nearly $120,000 in restitution. DebtTraders ceased doing business on July 31.

In addition, SG Americas Securities, RBC Capital Markets and RBC Dain Rauscher were ordered to revise their written supervisory procedures for high yield bond sales and purchases within 60 days.

NASD rules require that firms sell all securities, including corporate high yield debt, at fair prices. According to NASD markup policy, markups and markdowns generally should not exceed five percent and, for most debt transactions, that figure should be lower. Numerous SEC and court rulings have upheld those principles.

NASD found that from 2002 through 2003, SG Cowen Securities Corporation's high yield bond desk, which is now part of SG Americas, charged markups and markdowns ranging from 6.7 percent to as much as 40 percent on 13 pairs of trades. During 2003, RBC Capital Markets charged markups that ranged from 5.3 percent to 14.3 percent on five pairs of trades. During 2004, RBC Dain Rauscher charged markups ranging from 5.5 percent to 8 percent on six pairs of trades. In 2003 and 2004, DebtTraders charged markups and markdowns that ranged from 5.3 percent to 25 percent on 12 pairs of trades.

NASD's findings also include books and records violations by three of the firms—SG Americas, RBC Dain Rauscher and DebtTraders—and the failure by DebtTraders to correctly report bond transaction information to NASD's Trade Reporting and Compliance Engine (TRACE). Since July 2002, firms have been required to report price and volume data on all corporate bond transactions to TRACE, initially within 75 minutes, today within 15 minutes. NASD publicly disseminates that transaction data immediately, on virtually 100 percent of over-the-counter activity—approximately 22,000 transactions every day, representing approximately $18 billion in volume every day. TRACE's transaction information is available free of charge at *www.nasdbondinfo.com* and at *www.investinginbonds.com.*

"TRACE data not only brings much-needed transparency to the corporate bond market for investors and dealers alike, it enhances NASD's surveillance of the over-the-counter bond market, giving regulators the ability to identify transactions where customers have been charged excessive markups and markdowns," said Stephen Luparello, NASD's Executive Vice President for Market Regulation. "The nearly $7.9 million in fines and restitution ordered in these cases illustrates the value of TRACE, both to effective regulatory enforcement and to investor protection."

NASD also found that supervision at all four firms was deficient. Although the firms had written supervisory procedures in place, in each case the supervisory systems were not adequate—they were not designed so that the firms could comply with the legal requirements and guidelines set forth in NASD's markup policy. Additionally, NASD found that DebtTrader's written supervisory procedures regarding books and records were also deficient.

In concluding these settlements, the firms neither admitted nor denied the charges, but consented to the entry of NASD's findings.

NASD Fines Ameriprise Financial Services, Inc. $500,000 for Supervisory Violations in 529 College Savings Plan Sales

The Former American Express Financial Advisors Also Ordered to Pay Approximately $750,000 to Compensate Customers

NASD has ordered Ameriprise Financial Services, Inc. of Minneapolis—formerly American Express Financial Advisors—to pay a fine of $500,000 for failing to adequately supervise the firm's sales of 529 plans. NASD also ordered the firm to pay approximately $750,000 to compensate more than 500 customer accounts disadvantaged by those supervisory failures. The conduct at issue occurred when the firm was known as American Express Financial Advisors.

This enforcement action is the first to result from NASD's recent fact-finding sweep examining sales of the popular college savings plans.

529 college savings plans are tax-advantaged investment programs designed to help parents and others pay for qualified higher education costs. The plans offer families the opportunity to obtain growth and distribution of earnings that are free from federal taxes. Each of the 50 states and the District of Columbia currently offers at least one 529 plan—more than 80 plans are available in all. Federal tax advantages apply to all 529 college savings plans, while 26 states and the District of Columbia currently offer varying tax incentives as well—meaning that state tax treatment can be an important consideration for investors in deciding which plan to select. 529 plans are subject to regulation by the Municipal Securities Rulemaking Board, whose rules are enforced by NASD.

"529 college savings plans play an increasingly important role in enabling families to save for college. NASD has long been concerned that investors understand the differences between the many different 529 plans that are being offered today and choose a plan that is right for them," said NASD Vice Chairman Mary L. Schapiro. "These are complex investments, and individual investors need to consider a number of factors when choosing a 529 Plan—including its performance, investment choices, fees and expenses and its tax implications."

NASD's investigation showed that from May 2001 through the end of 2004, Ameriprise sold over $1.1 billion of 529 plans to more than 138,000 customer accounts, at a time when the firm's supervision of 529 sales was inadequate. NASD found that the firm's procedures during this period were not reasonably designed to achieve compliance with suitability obligations in the sale of 529 plans. In fact, from May 2001 until October 2003, when the firm sold over $625 million of 529 plans, most of the firm's procedures for sale of 529 plans were simply general compliance requirements relating to the sale of all products offered by Ameriprise. Although Ameriprise did adopt certain procedures in October 2003 relating specifically to the sale of 529 plans, NASD found that those procedures were not adequate to address the firm's suitability obligations.

During the period May 2001 through October 2003, approximately half of the states offered state tax benefits to residents who purchased an in-state plan. During the same period, however, NASD found that Ameriprise offered and sold only one 529 plan—a plan sponsored by the state of Wisconsin. Approximately 32 percent of its sales—over $200 million—were to customers who lived in one of the tax-advantaged 529 plan jurisdictions. Investors in five of those states (New Mexico, South Carolina, Illinois, Colorado and West Virginia) could have received unlimited state income tax deductions for investments in their home state's 529 plans. Yet, through the end of 2004, Ameriprise sold over $55 million in the Wisconsin 529 plan to customers residing in those five states. As a result, those Ameriprise customers purchasing the Wisconsin plan who lived in one of the tax-advantaged states did not receive state income tax benefits available to purchasers of 529 plans.

These 529 plan sales occurred at a time when Ameriprise did not have adequate procedures in place to take state income tax benefits into account when determining the suitability of 529 sales. Among other things, Ameriprise did not have procedures requiring that registered representatives consider the state income tax benefit that might be obtained by purchasing an in-state plan and weigh that benefit against other benefits that might be provided by a recommended out-of-state plan, such as investment performance, investment choices, fees and expenses, or other factors. Even when the firm revised its 529 procedures, as it did in October of 2003, they contained no procedures or guidance to assist their brokers in making a suitability determination.

In addition to fining Ameriprise $500,000, NASD ordered the firm to pay approximately $750,000 to compensate more than 500 accounts where customers purchased a 529 plan sponsored by a state other than the customer's state of residence and experienced substantial lost tax benefits.

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

Green Street Advisors Fined $150,000 for Issuing Research Reports Prepared by Unregistered Research Analysts

Analysts Issued Over 120 Reports Before Taking and Passing the Qualifying Exams

NASD has fined Green Street Advisors, a Los Angeles-based broker-dealer, $150,000 for failing to register its eight research analysts under NASD rules that took effect last year. The rules established a special examination series and registration classification for analysts and followed a series of enforcement actions relating to conflicts of interest involving research analysts.

"NASD's analyst registration requirements are designed to protect investors by ensuring that research analysts are properly qualified and fully understand their regulatory obligations," said Barry Goldsmith, NASD Executive Vice President and Head of Enforcement. "It is particularly disturbing that this firm was aware of the problem, failed to observe the new rules' deadlines, and yet continued to issue reports without properly registering their analysts."

As of March 30, 2004, NASD rules require research analysts to be registered with NASD after passing new research analyst examinations. In an effort to avoid business disruptions, persons who were already functioning as research analysts were granted a one-year grace period for meeting the new registration requirements—provided their firm applied for the new research analyst registration by May 31, 2004, 60 days following the effective date of the new requirement.

NASD found that Green Street failed to apply for the research analyst designation for its analysts by the May 31 deadline. Consequently, the one-year grace period for passing the research analyst qualification examinations was not available to Green Street's analysts. On or about June 18, 2004, after Green Street discovered that it had failed to apply for new registration for its eight analysts, the firm sought an extension from NASD of the filing deadline. That request was denied.

Nevertheless, during the period from June 1, 2004 to November 5, 2004—the date by which all of Green Street's analysts were properly qualified and registered—Green Street's analysts continued to prepare and publish research reports. NASD found that Green Street issued 123 reports and/or updates of the reports, 104 of which were issued after the firm received notice that NASD had denied its request for a filing deadline extension.

In May, in its first enforcement action arising from the new analyst registration rules, NASD sanctioned SunTrust Capital Markets, Inc. $100,000 for similar rule violations.

In settling this matter, Green Street neither admitted nor denied the charges, but consented to the entry of NASD's findings.

NASD Fines Instinet and INET ATS $1,475,000 for Inaccurate Execution Quality Reports, Inadequate Supervision and Other Violations

NASD has ordered Instinet, LLC and INET ATS, Inc. (formerly known as The Island ECN, Inc.) to pay $1.475 million for rule violations relating to publication of inaccurate reports on order execution quality, backing away from the firm's posted quotes, failure to report orders, improper "last sale" or trade reporting, supervision and other areas. Although the firms used automated systems to generate their reports on execution quality, they failed to reasonably supervise the accuracy of the data generated and reported.

The execution reports, published monthly, provide data that must be made public under Securities and Exchange Commission (SEC) rules. INET's and Instinet's flawed reports compromised the ability of the investing public and other market participants to accurately assess execution quality and compare venues for execution. The inaccurate reports published by the firms involved as much as 30 percent of Nasdaq executions.

Of the $1.475 million in sanctions imposed on Instinet and INET, $700,000 is for publication of inaccurate reports on order execution quality in violation of SEC Rule 11Ac1-5 and related supervisory violations, and $775,000 is for wide-ranging market violations, including failure to honor posted quotes and inaccurately reporting millions of orders and trades.

NASD found that from the time SEC Rule 11Ac1-5 took effect in June 2001 through August 2004, Instinet and Island (later INET), published execution reports that contained numerous errors. These errors included the misclassification of shares, miscounting of cancelled shares, improper exclusion of orders, improper calculations based on erroneous times, improper categorizing of orders, inaccurate order execution information, incorrect calculation of spreads and other incorrect calculations. The effect of the erroneous reports varied. In certain instances, the reporting errors resulted in execution quality statistics being reported in a worse light than was actually the case.

NASD's investigation showed that these errors resulted from the entities' heavy reliance on automated systems to comply with the publication requirements of SEC Rule 11Ac1-5 without adequately testing those systems, their failure to adequately respond to the repeated findings of errors in the published reports, and their failure to implement adequate supervisory systems.

"A firm's duty to supervise automated systems is every bit as important as its duty to supervise employees," said NASD Vice Chairman Mary L. Schapiro. "When critical tasks are automated, firms must verify that the automation functions as intended. These firms' failure to meet that responsibility seriously compromised market participants' access to reliable information crucial for making informed trading decisions."

NASD found that supervision at Instinet, Island and INET was deficient. For years, the firms failed to designate a registered principal to supervise for compliance with SEC Rule 11Ac1-5, and the firms failed to allocate sufficient resources to supervision. Despite notification by NASD and others of errors in the firms' published reports, the firms did not undertake supervisory reviews.

NASD also found that Instinet submitted over 193 million inaccurate reports to the Order Audit Trail System ("OATS") from April 2002 through September 2002. Additionally, Instinet failed to report millions of orders to NASD's

Alternative Display Facility (ADF) and also inaccurately reported millions of transactions to ADF. NASD found that INET engaged in OATS, ACT reporting, trade reporting and trading halt violations. The reporting violations adversely impacted NASD's ability to conduct effective market surveillance, since regulators rely on the integrity of the information. Both INET and Instinet failed to implement effective supervisory systems and written supervisory procedures designed to detect and prevent these violations.

As part of the settlement, INET and Instinet agreed to obtain an independent regulatory auditor to conduct a comprehensive audit of their compliance with SEC Rule 11Ac1-5 during 2006. INET and Instinet were also ordered to revise their written supervisory procedures within 45 days.

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

Separately, the SEC settled with Instinet and INET for $700,000 for the violations of SEC Rule 11Ac1-5 as part of a parallel investigation.