

DECEMBER 2005

Notice to Members

Notices

- 05-80** SEC Approves Amendments to IM-8310-2 Regarding the Publication of Decisions Issued by the National Adjudicatory Council (NAC) Pursuant to NASD Rule 1015; **Effective Date: January 12, 2006**
- 05-81** 2006 Trade Date–Settlement Date Schedule
- 05-82** SEC Approves Amendments to Arbitration Fees Applicable to Certain Statutory Employment Discrimination Claims; **Effective Date: January 17, 2006**
- 05-83** NASD Notice of Meeting and Proxy
- 05-84** NASD Announces Election Results for the District Committee for District 7
- 05-85** SEC Approves a Proposed Rule Change to Revise the Mediation Rules of the NASD Code of Arbitration Procedure; **Effective January 30, 2006**

For Your Information

Disciplinary and Other NASD Actions



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Notice to Members

DECEMBER 2005

SUGGESTED ROUTING

Legal & Compliance
Senior Management

KEY TOPICS

IM-8310-2
Publication of NAC Membership
Decisions
Rule 1014
Rule 1017
Rule 1015

GUIDANCE

Publication of National Adjudicatory Council Membership Decisions Pursuant to NASD Rule 1015

SEC Approves Amendments to IM-8310-2 Regarding
the Publication of Decisions Issued by the National
Adjudicatory Council (NAC) Pursuant to NASD Rule 1015;
Effective Date: January 12, 2006

Executive Summary

On October 28, 2005, the Securities and Exchange Commission (SEC) approved amendments to IM-8310-2 to authorize the NAC to release to the public information with respect to any decision issued by the NAC pursuant to NASD Rule 1015.¹ The new rule text is contained in Attachment A and is effective on January 12, 2006. NASD will publish only those NAC decisions issued pursuant to Rule 1015 in which the appeal has been filed on or after January 12, 2006.

Questions/Further Information

Questions concerning this *Notice* may be directed to Shirley H. Weiss, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8844.

Background

NASD Rule 1015 is part of the NASD Rule 1010 Series governing membership proceedings. These proceedings involve both the review of new member applications (NASD Rule 1014) and continuing membership applications seeking approval of a change in ownership, control or business operations (NASD Rule 1017).

Under Rule 1014, NASD's Department of Member Regulation (Department) determines whether an applicant meets all of the requisite standards for admission to NASD and serves the applicant with a written decision. Under Rule 1017, the Department considers applications for approval of change in ownership, control or business operations and renders a decision.

Under Rule 1015, an aggrieved applicant may file a written request for NAC review of the Department's decision issued under Rule 1014 or Rule 1017. Unlike disciplinary appeals conducted pursuant to the Rule 9300 Series, membership appeal hearings before the NAC are trial-level proceedings that usually involve the submission of new exhibits and testimony, and are not limited to 30-minute appellate argument. The NAC may affirm, modify or reverse the Department's decision or remand the membership proceeding with instructions. The NAC's decision summarizes the evidence, explains its evaluation of the evidence and explains the basis for the decision. The NAC's decisions under Rule 1015 are subject to discretionary review by the NASD Board, which may affirm, modify, reverse or remand the NAC's proposed decision.

Discussion

The amendment to IM-8310-2 authorizes NASD to release to the public information with respect to any decision issued by the NAC pursuant to Rule 1015, including decisions pertaining to new membership applications (Rule 1014) or continuing membership applications (Rule 1017). NASD will release the decisions issued by the NAC pursuant to Rule 1015 in the form issued by the NAC. NASD will publish only those NAC decisions issued pursuant to Rule 1015 in which the appeal has been filed on or after January 12, 2006.

In structuring its decisions, the NAC may choose the level of detail with which it writes in support of its decision. For example, the NAC's decisions will not routinely name shareholders of a closely held broker-dealer that is being sold insofar as the decision serves to evaluate the qualifications of the proposed buyers. Such drafting decisions would be made to accommodate the interests of persons who are not themselves under consideration or review as part of the membership application process.

NASD believes that making these decisions available to the public will benefit applicants—both potential NASD members and members that are considering a change in ownership, control or business operations—as well as public investors and the NAC itself. Access to these decisions will assist applicants in understanding the standards that must be met under Rule 1014 or 1017, as appropriate, and the manner in which such standards are applied, especially with respect to applicants that have been denied membership. Potential new NASD members and their investors will have the opportunity to review the rationale supporting the NAC’s decision-making, including NAC denials of membership. They will be better informed about the membership process and standards, and may be deterred from pursuing meritless appeals. In addition, publishing the NAC’s decisions will benefit the NAC members who serve on the subcommittees that conduct these hearings because their decisions could cite to and build upon earlier NAC precedents. NASD also believes that public investors will benefit from the availability of information about any limitations placed on members, where such limitations result from proceedings before the NAC.

Endnote

- 1 Exchange Act Rel. No. 52692 (Oct. 28, 2005), 70 FR 66876 (Nov.3, 2005) (SR-NASD-2005-064).

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ATTACHMENT A

New text is underlined.

* * * * *

IM-8310-2. Release of Disciplinary and Other Information Through the Public Disclosure Program

(a) through (l) No change.

(m) NASD shall release to the public, in the form issued by the National Adjudicatory Council, information with respect to any decision issued by the National Adjudicatory Council pursuant to Rule 1015. In its discretion, the National Adjudicatory Council may have redacted certain information from such decisions prior to their issuance.

* * * * *

Notice to Members

DECEMBER 2005

SUGGESTED ROUTING

Internal Audit
Legal and Compliance
Municipal/Government Securities
Operations
Trading and Market Making

KEY TOPICS

Holiday Trade Date–Settlement
Date Schedule

INFORMATIONAL

Trade Date–Settlement Date

2006 Trade Date–Settlement Date Schedule

Martin Luther King, Jr., Day:

Trade Date–Settlement Date Schedule

The NASDAQ Stock Market® and the securities exchanges will be closed on Monday, January 16, 2006, in observance of Martin Luther King, Jr., Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

| Trade Date | Settlement Date | Reg. T Date* |
|------------|-----------------|--------------|
| Jan. 10 | Jan. 13 | Jan. 18 |
| 11 | 17 | 19 |
| 12 | 18 | 20 |
| 13 | 19 | 23 |
| 16 | Markets Closed | — |
| 17 | 20 | 24 |

Presidents' Day:

Trade Date–Settlement Date Schedule

The NASDAQ Stock Market and the securities exchanges will be closed on Monday, February 20, 2006, in observance of Presidents' Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

| Trade Date | Settlement Date | Reg. T Date* |
|------------|-----------------|--------------|
| Feb. 14 | Feb. 17 | Feb. 22 |
| 15 | 21 | 23 |
| 16 | 22 | 24 |
| 17 | 23 | 27 |
| 20 | Markets Closed | — |
| 21 | 24 | Feb. 28 |

Good Friday:

Trade Date–Settlement Date Schedule

The NASDAQ Stock Market and the securities exchanges will be closed on Good Friday, April 14, 2006. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

| Trade Date | Settlement Date | Reg. T Date* |
|------------|-----------------|--------------|
| April 10 | April 13 | April 18 |
| 11 | 17 | 19 |
| 12 | 18 | 20 |
| 13 | 19 | 21 |
| 14 | Markets Closed | — |
| 17 | 20 | 24 |

Memorial Day:

Trade Date–Settlement Date Schedule

The NASDAQ Stock Market and the securities exchanges will be closed on Monday, May 29, 2006, in observance of Memorial Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

| Trade Date | Settlement Date | Reg. T Date* |
|------------|-----------------|--------------|
| May 23 | May 26 | May 31 |
| 24 | 30 | June 1 |
| 25 | 31 | June 2 |
| 26 | June 1 | 5 |
| 29 | Markets Closed | — |
| 30 | June 2 | 6 |

Independence Day:

Trade Date–Settlement Date Schedule

The NASDAQ Stock Market and the securities exchanges will be closed on Tuesday, July 4, 2006, in observance of Independence Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

| Trade Date | Settlement Date | Reg. T Date* |
|------------|-----------------|--------------|
| June 28 | July 3 | July 6 |
| 29 | 5 | 7 |
| 30 | 6 | 10 |
| July 3 | 7 | 11 |
| 4 | Markets Closed | — |
| 5 | 10 | 12 |

Labor Day:

Trade Date–Settlement Date Schedule

The NASDAQ Stock Market and the securities exchanges will be closed on Monday, September 4, 2006, in observance of Labor Day. “Regular way” transactions made on the business days noted below will be subject to the following schedule:

| Trade Date | Settlement Date | Reg. T Date* |
|------------|-----------------|--------------|
| Aug. 29 | Sept. 1 | Sept. 6 |
| 30 | 5 | 7 |
| 31 | 6 | 8 |
| Sept. 1 | 7 | 11 |
| 4 | Markets Closed | — |
| 5 | 8 | 12 |

Columbus Day:

Trade Date–Settlement Date Schedule

The schedule of trade dates–settlement dates below reflects the observance by the financial community of Columbus Day, Monday, October 9, 2006. On this day, The NASDAQ Stock Market and the securities exchanges will be open for trading. However, it will not be a settlement date because many of the nation’s banking institutions will be closed.

| Trade Date | Settlement Date | Reg. T Date* |
|------------|-----------------|--------------|
| Oct. 3 | Oct. 6 | Oct. 10 |
| 4 | 10 | 11 |
| 5 | 11 | 12 |
| 6 | 12 | 13 |
| 9 | 12 | 16 |
| 10 | 13 | 17 |

Note: October 9, 2006, is considered a business day for receiving customers’ payments under Regulation T of the Federal Reserve Board. Transactions made on Monday, October 9, will be combined with transactions made on the previous business day, October 6, for settlement on October 12. Securities will not be quoted ex-dividend, and settlements, marks to the market, reclamations, and buy-ins and sell-outs, as provided in the Uniform Practice Code, will not be made and/or exercised on October 9.

Veterans' Day And Thanksgiving Day:

Trade Date–Settlement Date Schedule

Note: November 10, 2006, is considered a business day for receiving customers' payments under Regulation T of the Federal Reserve Board. Transactions made on November 10 will be combined with transactions made on the previous business day, November 9, for settlement on November 15. Securities will not be quoted ex-dividend, and settlements, marks to the market, reclamations, and buy-ins and sell-outs, as provided in the Uniform Practice Code, will not be made and/or exercised on November 10.

The schedule of trade dates–settlement dates below reflects the observance of the financial community of Veterans' Day, Friday, November 10, 2006, and Thanksgiving Day, Thursday, November 23, 2006. On Friday, November 10, The NASDAQ Stock Market and the securities exchanges will be open for trading. However, it will not be a settlement date because many of the nation's banking institutions will be closed in observance of Veterans' Day. All securities markets will be closed on Thursday, November 23, 2006, in observance of Thanksgiving Day.

| Trade Date | Settlement Date | Reg. T Date* |
|------------|-----------------|--------------|
| Nov. 6 | Nov. 9 | Nov. 13 |
| 7 | 13 | 14 |
| 8 | 14 | 15 |
| 9 | 15 | 16 |
| 10 | 15 | 17 |
| 13 | 16 | 20 |
| 17 | 22 | 27 |
| 20 | 24 | 28 |
| 21 | 27 | 29 |
| 22 | 28 | 30 |
| 23 | Markets Closed | — |
| 24 | 29 | Dec. 4 |

Christmas Day and New Year's Day:

Trade Date–Settlement Date Schedule

The NASDAQ Stock Market and the securities exchanges will be closed on Monday, December 25, 2006, in observance of Christmas Day and Monday, January 1, 2007, in observance of New Year's Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

| Trade Date | Settlement Date | Reg. T Date* |
|-------------|-----------------|--------------|
| Dec. 19 | Dec. 22 | Dec. 27 |
| 20 | 26 | 28 |
| 21 | 27 | 29 |
| 22 | 28 | Jan 2, 2007 |
| 25 | Markets Closed | — |
| 26 | 29 | Jan. 3 |
| 27 | Jan. 2 | 4 |
| 28 | 3 | 5 |
| 29 | 4 | 8 |
| Jan 1, 2007 | Market Closed | — |
| 2 | 5 | 9 |

Brokers, dealers and municipal securities dealers should use the foregoing settlement dates for purposes of clearing and settling transactions pursuant to the NASD® Uniform Practice Code and the Municipal Securities Rulemaking Board Rule G-12 on Uniform Practice.

Questions regarding the application of those settlement dates to a particular situation may be directed to the Market Integrity Department at (203) 375-9609.

- * Pursuant to Sections 220.8(b)(1) and (4) of Regulation T of the Federal Reserve Board, a broker-dealer must promptly cancel or otherwise liquidate a customer purchase transaction in a cash account if full payment is not received within five business days of the date of purchase or, pursuant to Section 220.8(d)(1), make application to extend the time period specified. The date by which members must take such action is shown in the column titled "Reg. T Date."

Notice to Members

DECEMBER 2005

SUGGESTED ROUTING

Legal and Compliance

INFORMATIONAL

Statutory Employment Discrimination Arbitration Fees

SEC Approves Amendments to Arbitration Fees
Applicable to Certain Statutory Employment
Discrimination Claims; **Effective Date: January 17, 2006**

KEY TOPICS

Arbitration Fees

Executive Summary

On October 24, 2005, the Securities and Exchange Commission (SEC) approved an amendment to the fee schedule for certain statutory employment discrimination claims.¹ Under the new fee schedule, a current or former associated person who brings a statutory employment discrimination claim that is subject to a predispute arbitration agreement will pay no more than a \$200 filing fee at the time that the claim is filed. The member that is a party to such a statutory employment discrimination arbitration proceeding will pay the remainder of the filing fee, if any, as well as all forum fees.

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

The amendment will become effective on January 17, 2006, and will apply to all claims filed on or after that date.

Questions/Further Information

Questions regarding this *Notice* may be directed to John D. Nachmann, Counsel, NASD Dispute Resolution, at (202) 728-8273 or john.nachmann@nasd.com.

Background and Discussion

The Rule 10210 Series of the NASD Code of Arbitration Procedure (Code) contains special procedural rules applicable to the arbitration of employment discrimination claims. The Rule 10210 Series, however, does not provide a separate fee schedule for employment discrimination claims. Rather, Rule 10205, which details the schedule of fees for industry and clearing controversies, provides that an associated person shall pay the non-refundable filing fee and hearing session deposit in the amount specified for customer claimants in Rule 10332. Consequently, associated persons who bring statutory employment discrimination claims pay the schedule of fees set forth in Rule 10332, which are based on the dollar value of the claim.

Beginning in the 1990s, state and federal courts considered whether employers could require mandatory arbitration of statutory employment discrimination claims and then require the employee to pay all or part of the arbitrators' fees. Specifically, the courts disagreed as to whether requiring claimants with federal statutory claims to pay arbitral forum fees and expenses would prevent them from effectively vindicating their claims.

In order to ensure that those associated persons who are required by their employers to arbitrate statutory employment discrimination claims do not face financial barriers to effectively vindicating such claims, NASD has revised its arbitration fee schedule. Specifically, a current or former associated person who brings a statutory employment discrimination claim that is subject to a predispute arbitration agreement² will pay no more than a \$200 filing fee (which is non-refundable) at the time that the associated person files such a claim.³ The member that is a party to a statutory employment discrimination arbitration proceeding will pay the remainder of the filing fee, if any, as well as all forum fees. The \$200 fee is meant to be comparable to what an employee would pay to file a similar claim in court.

While the filing and forum fees will not be subject to allocation by the arbitrator(s), the panel will have the ability, as it does currently under the Code, to allocate among the parties the various costs associated with arbitration, including costs for the adjournment of hearings (Rule 10319); the production of documents (Rules 10321 and 10322); the appearance of witnesses (Rule 10322); and the recording of proceedings (Rule 10326). In addition, arbitrators will still have the ability to allocate attorneys' fees, in accordance with applicable law, as currently provided for in Rule 10215.

Endnotes

- 1 Securities Exchange Act Release No. 52658 (October 24, 2005), 70 FR 62362 (October 31, 2005) (File No. SR-NASD-2005-046).
- 2 The new rule applies only to disputes that are subject to a predispute arbitration agreement. As provided in Rule 10201(b), a claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute is not required to be arbitrated merely because an associated person signed the Form U4. Such a claim may be arbitrated only if the parties have agreed to arbitrate it, either before or after the dispute arose. The regular fee schedule set forth in Rule 10332 continues to apply to claims that are not subject to a predispute arbitration agreement. Thus, if a member firm does not require its employees to arbitrate employment disputes, but the employee chooses to file a statutory employment discrimination claim in arbitration (and the firm agrees to arbitrate), the employee will be subject to the regular fee schedule.
- 3 As previously mentioned, associated persons who have statutory employment discrimination claims currently pay the filing fees and hearing session deposits provided in Rule 10332 at the time that they file a claim. These charges, which are based on the amount of the claim, range from \$25 to \$600 for filing fees and from \$25 to \$1,200 for hearing session deposits. Under the new fee schedule, the filing fee will continue to be based on the amount of the claim as set forth in Rule 10332, but will be capped at \$200. Thus, for example, an associated person who files a statutory employment discrimination claim requesting damages of \$4,000 will pay a \$50 filing fee, while the filing fee for an associated person with a \$4 million claim will be \$200. Hearing session deposits will no longer be required under the new fee schedule.

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ATTACHMENT A

New text is underlined.

10210. Statutory Employment Discrimination Claims

The Rule 10210 Series shall apply only to disputes that include a claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute. The Rule 10210 Series shall supersede any inconsistent Rules contained in this Code.

* * * * *

10217. Fees

(a) For any claim of statutory employment discrimination submitted to arbitration that is subject to a predispute arbitration agreement, a party who is a current or former associated person shall pay a non-refundable filing fee according to the schedule of fees set forth in Rule 10332, provided that:

(1) In no event shall such a person pay more than \$200 for a filing fee;

(2) A member that is a party to such an arbitration proceeding under this rule shall pay the remainder of all applicable arbitration fees set forth in Rule 10332; and

(3) No party shall be required to remit a hearing session deposit.

(b) The arbitration fees described in paragraph (a)(2) are not subject to allocation in the award. The panel, however, may assess to a party who is a current or former associated person those costs incurred under Rules 10319, 10321, 10322, and 10326.

Special Notice to Members

DECEMBER 30, 2005

SUGGESTED ROUTING

Executive Representatives

KEY TOPICS

Board Elections

INFORMATIONAL

NASD Notice of Meeting and Proxy

Executive Summary

The Annual Meeting of Members of NASD will be held on February 3, 2006 at 10 am in the NASD Visitors Center, 1735 K Street, NW, in Washington, DC. The purpose of the meeting is to conduct the election of Governors to the NASD Board. Members can raise other topics for discussion by properly notifying NASD of these topics.¹ The record date for the Annual Meeting is the close of business on December 29, 2005.

It is important that all members be represented at the Annual Meeting. Members are urged to vote in the election of Board members using one of the methods described below. In order for a proxy to be considered valid, it must be signed by the executive representative of a member firm eligible to vote in the election.

Board of Governors Election

There are four vacancies to be filled at this meeting: two Industry governorships, one of which is required by the NASD By-Laws to be filled by a representative of a regional retail or independent financial planning member firm²; one Non-Industry governorship, which is required by the NASD By-Laws to be filled by a representative of an issuer of investment company shares or an affiliate of such an issuer³; and one Public governorship. Attachment A lists the persons nominated by the NASD National Nominating Committee (NNC) and those persons who, pursuant to Section 10 of Article VII of the NASD By-Laws i) presented the requisite number of petitions in support of their nomination; and ii) have been certified by the Secretary of NASD as satisfying the classification of the governorship to be filled.

The nominees elected will serve for terms specified in Attachment A. Attachment B includes the biographies of the NNC's nominees. Attachment C includes the biographies of the nominees by petition. Attachment D contains the names of the current Board of Governors.

Since this proxy mailing coincides with the year-end holiday season, it is anticipated that a second proxy document will be mailed, followed by telephone reminders during the period between January 6, 2006 and February 2, 2006. This will ensure that sufficient proxies are received to constitute the Annual Meeting quorum requirements of Section 215(c) of Title 8 of the General Corporation Law of the State of Delaware, as well as ensure broad participation in the election by NASD members who are eligible to vote.

Proxy Submission Methods

Members will be able to submit a proxy using either of the following methods:

- ▶ U.S. mail
- ▶ Internet

The enclosed proxy contains detailed instructions on the proxy submission procedures.

Questions/Further Information

Questions regarding this *Notice* may be directed to:

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

ATTACHMENT A

The following persons have been nominated by the National Nominating Committee, or are candidates by virtue of having obtained the requisite number of member signatures (Nominees by Petition), to serve on the NASD Board of Governors 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.

INDUSTRY

For the Industry candidates specified below, members are asked on the proxy to vote for up to two of the candidates listed. In the event that a member casts a vote for more candidates than there are vacancies on the Board, such proxy will not be counted and will be deemed invalid. Please note that at least one of the Industry candidates elected must be a representative of a regional retail or independent financial planning member firm. The candidates eligible for that position are indicated with an asterisk (*).

| NAME | TERM |
|---|-----------|
| National Nominating Committee Nominees | |
| David A. DeMuro Managing Director, Director of Global Compliance and Regulation Lehman Brothers, Inc. | 2006-2009 |
| John S. Simmers* Chief Executive Officer ING Advisors Network | 2006-2009 |
| * Representative of a Regional Retail or Independent Financial Planning Member Firm | |
| Nominees by Petition | |
| Richard L. Goble Founder North American Clearing, Inc. | 2006-2009 |
| Brian J. Kovack* President Kovack Securities, Inc. | 2006-2009 |

* Representative of a Regional Retail or Independent Financial Planning Member Firm

NON-INDUSTRY

For the Non-Industry candidate specified below, members are asked on the proxy to vote for the candidate listed.

| NAME | TERM |
|---|-------------|
| National Nominating Committee Nominee | |
| John J. Brennan Chairman and CEO The Vanguard Group (representative of an issuer of investment company shares) | 2006-2009 |

PUBLIC

For the Public candidates specified below, members are asked on the proxy to vote for one of the candidates listed. In the event that a member casts a vote for more than one candidate (there being only one Public vacancy on the Board), such proxy will not be counted and will be deemed invalid.

| NAME | TERM |
|---|-------------|
| National Nominating Committee Nominee | |
| Josh S. Weston Chairman and CEO (retired) Automatic Data Processing, Inc. | 2006-2009 |
| Nominee by Petition | |
| Tyler F. Dedman Rear Admiral (retired) United States Navy | 2006-2009 |

ATTACHMENT B

Profiles of NASD National Nominating Committee Board Nominees

Nominees for Industry Governor

David A. DeMuro David A. DeMuro served as Chair of the National Adjudicatory Council in 2001 and 2002. He was first elected to the NASD Board of Governors for a term beginning January 2003 as an Industry Governor representing a national retail firm. Mr. DeMuro is Managing Director, Director of Global Compliance and Regulation at Lehman Brothers. He 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 Adviser 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.

Nominee for Non-Industry Governor

John J. Brennan

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.

Nominee for Public Governor

Josh Weston

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.

ATTACHMENT C

Profiles of Board Nominees by Petition

Nominees for Industry Governor

Richard L. Goble

Richard L. Goble is the founder and principal shareholder of North American Clearing, Inc., a clearing firm providing back-office clearing and securities executions to approximately 45 small-to-medium sized broker-dealers. In 1990, he founded, with \$10,000, an Introducing Discount Broker-Dealer, which became a successful online trading firm and an Independent Retail Branch firm.

In 1995, using the money generated from the retail firm, Mr. Goble founded North American Clearing as an equity execution and Correspondent Clearing Firm. North American Clearing is serving broker-dealers in all fifty states and Puerto Rico. From 1992 until the present, Mr. Goble has been leading the way for new and advanced technology for online trading, self-clearing technology for introducing broker-dealers, and accounting software for Independent Retail Branch Offices. Mr. Goble has worked in the securities industry for approximately 20 years.

Mr. Goble is the past President of the Florida Securities Dealers Association and currently sits on the Securities Industry Association Clearing Committee.

Mr. Goble attended The Wharton School in 1999 for the Directors Institute, and in 2000 for the Mergers and Acquisitions Program. He holds a Bachelor of Science Degree from Wright State University.

Brian J. Kovack

Brian J. Kovack is co-Founder and President of Kovack Securities, Inc., a capacity in which he has served since 1998. From 1996 to 1998, Mr. Kovack was a financial planner where he gained expertise in gift, income and estate taxation, and provided advice regarding the tax advantages of limited partnerships, reverse split-dollar and charitable remainder trusts.

Mr. Kovack participated in the NASD Institute-Wharton Certificate Program and earned the Certified Regulatory and Compliance Professional (CRCP) designation in 2004.

He also earned Master of Accounting and Juris Doctor (J.D.) degrees in 2000 from Nova Southeastern University, where he was the founder and first graduate of the joint JD/MACC Program. Mr. Kovack is a Member of the Florida Bar, having been admitted in September 2000.

Mr. Kovack received a Bachelor of Science in Finance from the University of Florida while also playing varsity football earning two Letters, and SEC Academic Honor Roll awards.

Mr. Kovack holds the NASD Series 7, 24, 27, 53, 63 and 65 licenses while also licensed to sell life, health, variable annuities and real estate. He also serves as an NASD Dispute Resolution arbitrator.

Mr. Kovack is a licensed commercial helicopter pilot with the Federal Aviation Administration (FAA) and a licensed 50-ton captain with the United States Coast Guard.

Nominee for Public Governor

Tyler F. Dedman

Tyler F. Dedman is a retired Rear Admiral of the United States Navy. Since 1983, Mr. Dedman has been employed as a licensed insurance investigator and claims adjuster where, in coordination with the Federal Aviation Administration and the National Transportation Safety Board, he investigates aviation accidents and adjusts aviation claims for major aviation insurers. From 1980 to 1982, Mr. Dedman served as Commander, Iberian Atlantic Area where he directed NATO forces. From 1978 to 1980, he served as Superintendent, U.S. Naval Postgraduate School. From 1974 to 1978, Mr. Dedman served as Deputy Chief of Naval Education and Training where he was Deputy to the Commander of all naval training and education. From 1971 to 1974, he served as Assistant VCNO/Director of Naval Administration where he functioned as a Chief of Staff to the Vice Chief of Naval Operations.

Mr. Dedman is past-President of the Association of Naval Aviation, Central Florida. He also served as Chairman of the Editorial Board of the U.S. Naval Institute from 1978 to 1980.

Mr. Dedman completed the Advanced Management Program at the Harvard Business School in 1969 and an MSE from Princeton University in 1957. He also earned a Bachelor of Science in Aero Engineering from the U.S. Naval Postgraduate School and a Bachelor of Science from the U.S. Naval Academy.

ATTACHMENT D

Current Board of Governors

Governors with Terms Expiring in February 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 ⁴ | Chief Operating Officer, Pershing LLC (Chair of the National Adjudicatory Council) |

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

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) |
| Judith R. MacDonald ⁵ | Managing Director, Rothschild, Inc. (Chair of the National Adjudicatory Council) |

PUBLIC

| | |
|--------------------|---|
| Charles A. Bowsher | Former Comptroller General of the United States |
| Joel Seligman | President, University of Rochester |
| Sharon P. Smith* | Visiting Fellow in the ILR School at Cornell 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 ^{6*} | Chairman and CEO, Legg Mason, Inc. |

NON-INDUSTRY

| | |
|-------------------|---|
| William H. Heyman | Vice Chairman 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 Corporation plc |
| John Rutherford, Jr.* | Chairman and CEO (retired), Moody's Corporation |

* Not eligible for re-election

Endnotes

- 1 Pursuant to Sections 1 and 3(b) of Article XXI of the NASD By-Laws, an NASD member may properly bring any other business before the Annual Meeting by giving timely notice in writing to the Secretary of NASD. In addition, the member must be an NASD member at the time of the delivery of such notice, and the other business must be a proper matter for member action. To be timely, a member's notice must be delivered to the Secretary at NASD's principal executive offices (the address is listed above) within 25 days after the date of this notice. The member's notice must offer a brief description of the other business, any material interest of the member in such business, and the reasons for conducting such business at the Annual Meeting.
- 2 Pursuant to Section 4(a) of Article VII of the NASD By-Laws, Governors elected by the members of NASD must include a representative of a regional retail or independent financial planning member firm. The National Nominating Committee has nominated John S. Simmers to serve on the Board as a representative of an independent financial planning member firm. Brian J. Kovack, a nominee by petition, also qualifies to fill this position.
- 3 Pursuant to Section 4(a) of Article VII of the NASD By-Laws, Governors elected by the members of NASD must include a representative of an issuer of investment company shares or an affiliate of such an issuer.
- 4 The Chair of the National Adjudicatory Council serves a one-year term on the NASD Board. Judith R. MacDonald will succeed Mr. Shea.
- 5 See note 4 (above).
- 6 As a result of the completion of the Legg Mason/Citigroup transaction on December 1, 2005, Mr. Mason no longer occupies the position on the NASD serving as a representative of a regional retail or independent financial planning member firm. Mr. Mason retains his classification as an Industry Governor and will continue to serve on the NASD Board in this capacity until the expiration of his term.

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Special Notice to Members

DECEMBER 2005

SUGGESTED ROUTING

Legal & Compliance
Operations
Registration
Senior Management

KEY TOPICS

District Elections

INFORMATIONAL

District Elections

NASD Announces Election Results for the District Committee for District 7

Executive Summary

Through this *Notice*, NASD announces the results of the contested election for membership on the District Committee for District 7. Six candidates were seeking to fill the three open seats on the District Committee for District 7. Three of the candidates were nominated by the District Nominating Committee for District 7. Three additional candidates satisfied the requirements of Article VIII of the By-Laws of NASD Regulation to contest the election.

The Executive Representative of each NASD member eligible to vote in District 7 was asked to vote for up to three of the six candidates listed on the ballot, and to return the ballot postmarked on or before December 5, 2005. The ballots were counted on December 9, 2005 at the District 7 Atlanta Office by an independent Inspector of Elections. It was determined that the three individuals identified in Attachment A received the largest number of votes cast and were therefore declared elected. The newly elected members of the District Committee for District 7 will serve until January 2009.

Questions/Further Information

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

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ATTACHMENT A

District 7

Daniel J. Stefek, District Director

One Securities Centre, Suite 500
3490 Piedmont Rd., NE
Atlanta, GA 30305-9290
(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 Committee for District 7 — Incoming Members

| | | |
|-------------------------|-------------------------------|---------------------|
| John B. Busacca | North American Clearing, Inc. | Longwood, FL |
| Marc A. Ellis | GunnAllen Financial, Inc. | Tampa, FL |
| Ronald J. Kovack | Kovack Securities, Inc. | Fort Lauderdale, FL |

Notice to Members

DECEMBER 2005

SUGGESTED ROUTING

Legal and Compliance

KEY TOPICS

Code of Arbitration Procedure
Mediation

GUIDANCE

NASD Code of Arbitration Procedure Mediation Rules

SEC Approves a Proposed Rule Change to Revise the
Mediation Rules of the NASD Code of Arbitration
Procedure; **Effective January 30, 2006**

Executive Summary

The Securities and Exchange Commission (SEC) has approved a proposed rule change to revise the mediation rules of the NASD Code of Arbitration Procedure (Code) to simplify the language and to reorganize these rules into a separate code for mediations (Mediation Code).¹

The text of the amendment is set forth in Attachment A. The amendment will become effective on January 30, 2006 and will apply to any matters filed in mediation with NASD on or after January 30, 2006.

Questions/Further Information

Questions regarding this *Notice* may be directed to Mignon McLemore, Assistant Chief Counsel, NASD Dispute Resolution, at (202) 728-8151 or mignon.mclemore@nasd.com; or Kenneth Andrichik, Senior Vice President and Director of Mediation and Business Strategies, Dispute Resolution, NASD, at (212) 858-3915 or ken.andrichik@nasd.com.

Background and Discussion

The revision of the mediation rules is part of a comprehensive plan to reorganize and simplify the Code. NASD has proposed to reorganize its dispute resolution rules in a more logical, user-friendly way, including creating two separate Codes for customer and industry arbitrations,² and one for mediations. The proposed rule change establishes a separate Mediation Code by rewriting the mediation rules using plain English, in accordance with the SEC's plain English guidelines.³

NASD did not make any substantive changes to its current rules governing mediations in the proposed rule change. The Mediation Code does, however, contain a new comprehensive definitions rule, which includes definitions of terms used throughout the Mediation Code. NASD believes that this addition to the Mediation Code will provide useful clarification for parties and mediators. There are no substantive changes to the Mediation Code, and the procedures for filing a matter in mediation remain unchanged.

Effective Date Provisions

The amendment described in this Notice will become effective on January 30, 2006. The amendment will apply to any matters filed in mediation with NASD on or after January 30, 2006.

Endnotes

- 1 Exchange Act Release No. 52705 (Oct. 31, 2005) (File No. SR-NASD-2004-013), 70 Federal Register 67525 (Nov. 7, 2005).
- 2 NASD has filed two proposed rule changes with the SEC to revise the Customer and Industry Portions of the Code. See Securities Exchange Act Rel. No. 34-51856 (June 15, 2005); 70 Fed. Reg. 36442 (June 23, 2005) (Customer Code) and Securities Exchange Act Rel. No. 34-51857 (June 15, 2005); 70 Fed. Reg. 36430 (June 23, 2005) (Industry Code).
- 3 NASD intends to renumber the rules in the Mediation Code to be consistent with the Customer Code and Industry Code when they are approved and become effective.

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ATTACHMENT A

New language is underlined; deletions in brackets.

Code of Arbitration Procedure

* * *

[10400 – 10407 Mediation Rules] – (Deleted in their entirety.)

10400. NASD CODE OF MEDIATION PROCEDURE

10401. Definitions

Unless otherwise defined in the Code, terms used in the Code and interpretive material, if defined in the NASD By-Laws, shall have the meaning as defined in the NASD By-Laws.

(a) Board

The term “Board” means the Board of Directors of NASD Dispute Resolution, Inc.

(b) Code

The term “Code” means the NASD Code of Mediation Procedure.

(c) Director

The term “Director” in the Rule 10400 Series refers to the Director of Mediation at NASD Dispute Resolution. Unless the Code or any other NASD rule provides otherwise, the term includes NASD staff to whom the Director of Mediation has delegated authority.

(d) Matter

The term “matter” means a dispute, claim, or controversy.

(e) NAMC

The term “NAMC” means the National Arbitration and Mediation Committee of the Board of Directors of NASD Dispute Resolution, Inc.

(f) NASD

Unless the Code specifies otherwise, the term “NASD” includes NASD, Inc., and NASD Dispute Resolution, Inc.

(g) Reserved.

(h) Reserved.

(i) Submission Agreement

The term “Submission Agreement” means the NASD Mediation Submission Agreement. The NASD Mediation Submission Agreement is a document that parties must sign at the outset of a mediation in which they agree to submit to mediation under the Code.

10402. Applicability of Code

The Code applies to any matter submitted to mediation at NASD.

10403. National Arbitration and Mediation Committee

(a) Pursuant to Part V(C)(1)(b) of the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (“Delegation Plan”), the Board shall appoint a National Arbitration and Mediation Committee (“NAMC”).

(1) The NAMC shall consist of no fewer than ten and no more than 25 members. At least 50 percent of the NAMC shall be Non-Industry members.

(2) The Chairperson of the Board shall name the Chairperson of the NAMC.

(b) Pursuant to the Delegation Plan, the NAMC shall have the authority to recommend rules, regulations, procedures and amendments relating to arbitration, mediation, and other dispute resolution matters to the Board. All matters recommended by the NAMC to the Board must have been approved by a quorum, which shall consist of a majority of the NAMC, including at least 50 percent of the Non-Industry committee members. If at least 50 percent of the Non-Industry committee members are either (i) present at or (ii) have filed a waiver of attendance for a meeting after receiving an agenda prior to such meeting, the requirement that at least 50 percent of the Non-Industry committee members be present to constitute the quorum shall be waived. The NAMC has such other power and authority as is necessary to carry out the purposes of this Code.

(c) The NAMC may meet as frequently as necessary, but must meet at least once a year.

10404. Director of Mediation

The Board shall appoint a Director of Mediation to administer mediations under the Code. The Director will consult with the NAMC on the administration of mediations, as necessary.

The Director may delegate his or her duties when appropriate, unless the Code provides otherwise.

10405. Mediation Under the Code

(a) Mediation under the Code is voluntary, and requires the written agreement of all parties. No party may be compelled to participate in a mediation or to settle a matter by NASD, or by any mediator appointed to mediate a matter pursuant to the Code.

(b) If all parties agree, any matter that is eligible for arbitration under the NASD Code of Arbitration Procedure, or any part of any such matter, or any dispute related to such matter, including procedural issues, may be submitted for mediation under the Code.

(c) A matter is submitted to mediation when the Director receives an executed Submission Agreement from each party.

(d) The Director shall have the sole authority to determine if a matter is eligible to be submitted for mediation.

10406. Effect of Mediation on Arbitration Proceedings

(a) Unless the parties agree otherwise, the submission of a matter for mediation will not stay or otherwise delay the arbitration of a matter pending at NASD. If all parties agree to stay an arbitration in order to mediate the matter, the arbitration will be stayed, notwithstanding any provision to the contrary in this Code or any other NASD rule.

(b) If mediation is conducted through NASD, no adjournment fees will be charged for staying the arbitration in order to mediate.

10407. Mediator Selection

(a) A mediator may be selected:

- By the parties from a list supplied by the Director;
- By the parties from a list or other source of their own choosing; or
- By the Director if the parties do not select a mediator after submitting a matter to mediation.

(b) For any mediator assigned or selected from a list provided by NASD, the parties will be provided with information relating to the mediator's employment, education, and professional background, as well as information on the mediator's experience, training, and credentials as a mediator.

(c) Any mediator selected or assigned to mediate a matter shall comply with the provisions of Rule 10312(a), (b), and (c) of the NASD Code of Arbitration Procedure, unless, with respect to a mediator selected from a source other than a list provided by NASD, the parties elect to waive such disclosure.

(d) No mediator may serve as an arbitrator of any matter pending in NASD arbitration in which he served as a mediator; nor may the mediator represent any party or participant to the mediation in any subsequent NASD arbitration relating to the subject matter of the mediation.

10408. Limitation on Liability

NASD, its employees, and any mediator named to mediate a matter under the Code shall not be liable for any act or omission in connection with a mediation administered under the Code.

10409. Mediation Ground Rules

(a) The following Ground Rules govern the mediation of a matter. The parties to a mediation may agree to amend any or all of the Ground Rules at any time. The Ground Rules are intended to be standards of conduct for the parties and the mediator.

(b) Mediation is voluntary and any party may withdraw from mediation at any time prior to the execution of a written settlement agreement by giving written notice of withdrawal to the mediator, the other parties, and the Director.

(c) The mediator shall act as a neutral, impartial, facilitator of the mediation process and shall not have any authority to determine issues, make decisions or otherwise resolve the matter.

(d) Following the selection of a mediator, the mediator, all parties and their representatives will meet in person or by conference call for all mediation sessions, as determined by the mediator or by mutual agreement of the parties. The mediator shall facilitate, through joint sessions, caucuses and/or other means, discussions between the parties, with the goal of assisting the parties in reaching their own resolution of the matter. The mediator shall determine the procedure for the conduct of the mediation. The parties and their representatives agree to cooperate with the mediator in ensuring that the mediation is conducted expeditiously, to make all reasonable efforts to be available for mediation sessions, and to be represented at all scheduled mediation sessions either in person or through a person with authority to settle the matter.

(e) The mediator may meet with and communicate separately with each party or the party's representative. The mediator shall notify all other parties of any such separate meetings or other communications.

(f) The parties agree to attempt, in good faith, to negotiate a settlement of the matter submitted to mediation. Notwithstanding that a matter is being mediated, the parties may engage in direct settlement discussions and negotiations separate from the mediation process.

(g) Mediation is intended to be private and confidential.

(1) The parties and the mediator agree not to disclose, transmit, introduce, or otherwise use opinions, suggestions, proposals, offers, or admissions obtained or disclosed during the mediation by any party or the mediator as evidence in any action at law, or other proceeding, including a lawsuit or arbitration, unless authorized in writing by all other parties to the mediation or compelled by law, except that the fact that a mediation has occurred shall not be considered confidential.

(2) Notwithstanding the foregoing, the parties agree and acknowledge that the provisions of this paragraph shall not operate to shield from disclosure to NASD or any other regulatory authority, documentary or other information that NASD or other regulatory authority would be entitled to obtain or examine in the exercise of its regulatory responsibilities.

(3) The mediator will not transmit or otherwise disclose confidential information provided by one party to any other party unless authorized to do so by the party providing the confidential information.

10410. Mediation Fees

(a) Filing Fees: Cases Filed Directly in Mediation

Each party to a matter submitted directly to a mediation administered under the Code must pay an administrative fee to NASD in the amounts indicated in the schedule below, unless such fee is specifically waived by the Director.

| <u>Amount in Controversy</u> | <u>Customer and Associated Person Fee</u> | <u>Member Fee</u> |
|------------------------------|---|-------------------|
| <u>\$.01-\$25,000</u> | <u>\$ 50</u> | <u>\$150</u> |
| <u>\$25,000.01-\$100,000</u> | <u>\$150</u> | <u>\$300</u> |
| <u>Over \$100,000</u> | <u>\$300</u> | <u>\$500</u> |

(b) Filing Fees: Cases Initially Filed in Arbitration

When a matter is initially filed in arbitration and subsequently submitted to mediation under the Code, each party must pay an administrative fee to NASD in the amounts indicated in the schedule below, unless such fee is specifically waived by the Director.

| <u>Amount in Controversy</u> | <u>Customer and Associated Person Fee</u> | <u>Member Fee</u> |
|------------------------------|---|-------------------|
| <u>\$.01-\$25,000</u> | <u>\$ 0</u> | <u>\$ 0</u> |
| <u>\$25,000.01-\$100,000</u> | <u>\$100</u> | <u>\$150</u> |
| <u>Over \$100,000</u> | <u>\$250</u> | <u>\$500</u> |

(c) Mediator Fees and Expenses

The parties to a mediation administered under the Code must pay all of the mediator's charges, including the mediator's travel and other expenses. The charges shall be specified in the Submission Agreement and shall be apportioned equally among the parties unless they agree otherwise. Each party shall deposit with NASD its proportional share of the anticipated mediator charges and expenses, as determined by the Director, prior to the first mediation session.

* * *

2005 – 2006 Filing Due Dates

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

2006 FOCUS Due Dates

| Annual Schedule I for 2005 Year End | Due Date |
|--|------------------|
| 2005 FOCUS Schedule I | January 25, 2006 |
| | |
| Annual Schedule I for 2006 Year End | Due Date |
| 2006 FOCUS Schedule I | January 25, 2007 |

2006 Monthly and Fifth* FOCUS II/IIA Filings

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

| | |
|-------------------|--------------------|
| January 31, 2006 | February 24, 2006 |
| February 28, 2006 | March 23, 2006 |
| April 30, 2006 | May 23, 2006 |
| May 31, 2006 | June 23, 2006 |
| July 31, 2006 | August 23, 2006 |
| August 31, 2006 | September 26, 2006 |
| October 31, 2006 | November 24, 2006 |
| November 30, 2006 | December 26, 2006 |

2006 Quarterly FOCUS Part II/IIA Filings

| Quarter Ending | Due Date |
|--------------------|------------------|
| December 31, 2005 | January 26, 2006 |
| March 31, 2006 | April 26, 2006 |
| June 30, 2006 | July 26, 2006 |
| September 30, 2006 | October 24, 2006 |
| December 31, 2006 | January 25, 2007 |

2006 Annual Audit Filings Due Dates

| Period End | Due Date |
|--------------------|--------------------|
| January 31, 2006 | April 3, 2006 |
| February 28, 2006 | May 1, 2006 |
| March 31, 2006 | May 30, 2006 |
| April 30, 2006 | June 29, 2006 |
| May 31, 2006 | July 31, 2006 |
| June 30, 2006 | August 29, 2006 |
| July 31, 2006 | September 29, 2006 |
| August 31, 2006 | October 30, 2006 |
| September 30, 2006 | November 29, 2006 |
| October 31, 2006 | January 2, 2007 |
| November 30, 2006 | January 30, 2007 |
| December 31, 2006 | March 1, 2007 |

2006 3070/Customer Complaints Due Dates

| | |
|-------------------|------------------|
| 4th quarter 2005: | January 17, 2006 |
| 1st quarter 2006: | April 17, 2006 |
| 2nd quarter 2006: | July 17, 2006 |
| 3rd quarter 2006: | October 16, 2006 |
| 4th quarter 2006: | January 16, 2007 |

Market Regulation Department 2006 Short Interest Reporting Deadlines

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

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

** Eastern Standard Time

Disciplinary and Other NASD Actions

REPORTED FOR DECEMBER

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

Firm Expelled, Individual Sanctioned

Dupont Securities Group, Inc. (CRD #42305, New York, New York) and David Wayne Parsons (CRD #2963654, Associated Person, Baldwin, New York). The firm was expelled from NASD membership, and Parsons was barred from association with any NASD member in any capacity. The sanctions were based on findings that the firm and Parsons actively participated in the unlawful sales of unregistered securities to public customers. The findings also stated that Parsons reviewed and approved a fraudulent press release designed to artificially increase the price of a stock. (NASD Case #CAF20040068)

Firm Fined, Individuals Sanctioned

C.E. Unterberg, Towbin, LLC. (CRD # 24790, New York, New York), Andrew Arno (CRD #1021807, Registered Principal, New York, New York) and James Thomas Whipple (CRD #1417979, Registered Principal, Red Bank, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$62,500, of which \$10,000 was jointly and severally with Arno, and \$10,000 was jointly and severally with Whipple. Arno was censured and Whipple was suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm failed to 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 the firm's bid or offer in each such security. The findings stated that the firm transmitted reports that contained inaccurate, incomplete or improperly formatted data to the Order Audit Trail System (OATS). The findings also stated that the firm allowed Whipple to function as a principal in supervising the firm's sales personnel, and function as the firm's head trader, which gave him direct supervisory responsibility for the execution of equity transactions without first registering as a general securities principal, limited principal-general securities sales supervisor and/or as a limited representative-equity trader with NASD. The findings further stated that Arno allowed Whipple to function as a principal without the appropriate registration in that he failed to reasonably and properly supervise Whipple's activities, which would have allowed him to detect and prevent violations of NASD Membership and Registration Rules 1021 and 1031.

Whipple's suspension began November 21, 2005, and concluded at the close of business on December 12, 2005. (NASD Case #2005000137001)

Firms Fined

AFSG Securities Corporation (CRD #18374, Cedar Rapids, Iowa) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$110,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it distributed pieces of institutional sales materials to other broker-dealers, banks and wholesalers relating to variable annuities that omitted material information; included misleading, unwarranted or promissory statements or claims; and/or failed to include data for the most recent calendar quarter and standardized performance disclosures. (NASD Case #EAF0401240001)

Allen & Company LLC (CRD #1042, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$35,000, and required to revise its supervisory procedures with respect to locked and crossed markets, Automated Confirmation Transaction Service (ACT) trade reporting, ACT reporting of short sale indicators and publishing order routing statistics. The firm also agreed to restitution in the amount of \$119 plus interest. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to execute orders promptly, failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such a market so that the resultant price was as favorable as possible under prevailing market conditions, and failed to fully execute market orders. The findings also stated that the firm failed to report the correct symbol indicating whether the firm executed transactions in eligible securities in a principal or agency capacity to ACT. NASD found that the firm made a report on its routing of non-directed orders available that included incomplete information regarding venues to which orders were routed, hence failing to disclose the identity of all venues to which the largest number of total non-directed orders were routed, and the firm identified those venues as "unspecified route venue." 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 locked and crossed markets, ACT trade reporting, ACT reporting of short sale indicators and publishing order routing statistics. (NASD Case #2004200007101)

Calton & Associates, Inc. (CRD #20999, Tampa, Florida) 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 with respect to Trade Reporting and Compliance Engine (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 eligible securities executed on a business day during TRACE system hours to TRACE within 45 minutes of execution time. 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 TRACE reporting. (NASD Case #2004200022801)

Cantor Fitzgerald & Co. (CRD #134, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$39,500, and required to revise its written supervisory procedures with respect to applicable securities laws and regulations, and NASD rules concerning riskless principal trade reporting, affirmative determination and OATS. 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 the firm's bid or offer in each such security.

The findings stated that the firm failed to submit required information to OATS and transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data. The findings also stated that the firm failed to provide its customers with written notification disclosing its correct capacity in certain transactions, and the commission charged in another transaction. The findings also stated that the firm made a report on covered orders available that it received for execution in national market system securities that included incorrect information as to average realized spread and at-the-quote average time. NASD found that the firm failed to preserve the memorandums of customer sale brokerage orders, customer sale confirmations and a customer account statement for a period of not less than three years, the first two in an accessible place. NASD determined that the firm failed to show the correct terms, conditions and times on the memorandums of brokerage orders. NASD also found that the firm's supervisory system did not provide for supervision reasonable designed to achieve compliance with respect to the applicable securities laws and regulations, and NASD rules concerning riskless principal trade reporting, affirmative determination and OATS. (NASD Case #2004200006301)

Empire Financial Group, Inc. (CRD #28759, Longwood, Florida) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to submit required information to OATS. NASD also 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 OATS. (NASD Case #2004200025601)

Equity Planning Securities Corp. (CRD #6125, Beachwood, 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 implement a written anti-money laundering (AML) program reasonably designed to achieve compliance with the requirements of the Bank Secrecy Act and the regulations promulgated thereunder. The findings stated that the firm prepared an inaccurate trial balance and net capital computation. NASD also found that the firm filed an NASD FOCUS Part IIA Report that was inaccurate as, among other things, it overstated the firm's net capital. (NASD Case #E072004049201)

Forge Financial Group, Inc. (CRD #100020, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$50,000 and required to revise its written supervisory procedures with respect to trade reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit last sale reports of transactions in NASDAQ securities and OTC equity securities through ACT, and failed to designate last sale reports in NASDAQ and OTC equity securities as late through ACT. The findings stated that the firm failed to report the correct execution time for late last sale reports of transactions in NASDAQ securities through ACT. The findings also stated that the firm designated last sale reports of transactions in NASDAQ securities executed during normal market hours through ACT as ".T." The findings further stated that the firm failed to show the terms and conditions, as well as the correct time of entry, on brokerage order memoranda. In addition, NASD found that the firm effected short sale transactions for the firm's proprietary account and failed to make/annotate an affirmative determination that the firm could borrow the securities or otherwise provide for their delivery by the settlement date. The findings also stated that the firm failed to report the correct symbol indicating whether certain transactions in eligible securities were buys, sells, short sales, exempt short

sales or crosses to ACT. NASD also found that the firm failed to report the correct symbol indicating whether the firm executed transactions in eligible securities in a principal or agency capacity to ACT. The findings stated that the firm incorrectly reported transactions with a ".W" modifier to ACT. The findings further stated that the firm failed to submit, for the offsetting, "riskless" portion of "riskless" principal transactions in NASDAQ National Market (NNM) and OTC equity securities, either a clearing-only report with the capacity indicator of "riskless principal," or a non-tape, non-clearing report with a capacity indicator of "riskless principal." NASD also determined that the firm failed to make a profit-sharing disclosure for internalized order flow in its report on its routing of non-directed orders in covered securities publicly available. In addition, NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations, and NASD rules concerning trade reporting. (NASD Case #2004200014201)

GFI Securities LLC (CRD #19982, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which it 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 failed, within 90 seconds after execution, to transmit last sale reports of transactions in OTC equity securities through the NASDAQ Market Center. The findings stated that the firm failed to designate such last sale reports as late. 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 ACT reporting. (NASD Case #20050000999-01)

Goldman, Sachs & Co. (CRD #361, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it effected short sales in securities for the firm's proprietary accounts, and failed to make/annotate an affirmative determination that the firm could borrow the securities or otherwise provide for their delivery by the settlement date. The findings stated that the firm failed to report short sale transactions with a short sale modifier, incorrectly reported long sale transactions with a short sale modifier, and incorrectly reported journal entries between the firm's accounts to the NASDAQ Market Center. 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 registration and books and records. (NASD Case #2005000234301)

Hornor, Townsend & Kent, Inc. (CRD #4031, Horsham, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it permitted a person subject to a statutory disqualification to be associated with the firm as a registered representative. **(NASD Case #E3A2004024601)**

Intercapital Securities LLC (CRD #20004, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$20,000 and required to revise its written supervisory procedures with respect to 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, and double-reported transactions in TRACE-eligible securities to TRACE. 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 TRACE reporting. **(NASD Case #20050001493-01)**

Jennings Securities LLC (CRD #37651, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000, of which \$5,000 is jointly and severally with another respondent. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, acting through an individual, it failed to establish, maintain and enforce adequate written supervisory procedures reasonably designed to achieve compliance with applicable securities laws regulations, and NASD rules. NASD found that the firm failed to develop and implement an AML program reasonably designed to achieve compliance with the requirements of the Bank Secrecy Act and the regulations promulgated thereunder. **(NASD Case #E102004021901)**

Lazard Capital Markets LLC f/k/a Lazard Freres & Co. LLC (CRD #134736, New York, New York) 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 executed corporate bond transactions that had a discrepancy between the time stamp on the trade ticket and the trade time reported to TRACE. The findings also stated that the firm failed to establish an adequate supervisory system to ensure the accurate reporting of transactions to TRACE. **(NASD Case #E1020040241-01)**

MML Distributors, LLC (CRD #38030, Springfield, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$90,000.

Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it distributed pieces of institutional sales materials relating to variable annuities to other broker-dealers, its registered representatives, internal sales staff and/or wholesalers that contained omissions of material information, and unwarranted, misleading, exaggerated or improper promissory statements or claims. The findings stated that the firm utilized pieces of institutional sales material without obtaining a compliance principal's prior approval, as required by the firm's own written supervisory procedures. The findings also stated that the firm failed to establish, maintain and enforce an adequate supervisory system and procedures to ensure compliance with NASD advertising rules. **(NASD Case #EAF0401000001)**

Penson Financial Services, Inc. (CRD #25866, Dallas, Texas) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it submitted new order reports and related subsequent reports to OATS with timestamps that were more than three seconds later than the timestamps on the related subsequent reports. **(NASD Case #20050000142-01)**

Pond Equities (CRD #30934, Brooklyn, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit last sale reports of transactions in OTC equity securities through the NASDAQ Market Center and failed to designate some of them as late. 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 trade reporting. **(NASD Case #20050004896-01)**

Pruco Securities, LLC. (CRD #5685, Newark, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$550,000, and required to conduct internal audits to evaluate the effectiveness of its system for ensuring compliance with the reporting obligations of the Uniform Applications for Securities Industry Registration or Transfer (Form U4) and the Uniform Termination Notice For Securities Industry Registration (Form U5). In addition, an officer of the firm must certify that such audits have occurred, that recommendations from the audits have been implemented, and that the firm has established systems and procedures reasonably designed to achieve compliance with NASD reporting requirements. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to file certain

amendments to Forms U4 and U5 in a timely manner, and filed Forms U5 for terminated registered representatives late. The findings also stated that the firm's supervisory system and procedures were not reasonably designed to achieve compliance with its reporting obligations. (NASD Case #E9B2003004301)

SAMCO Financial Services, Inc. (CRD #30108, Phoenix, Arizona) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$27,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to develop and implement a written AML program reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act and the regulations promulgated thereunder. The findings further stated that the firm failed to report inter-dealer municipal securities transactions to the Municipal Securities Rulemaking Board (MSRB), and that its procedures were not reasonably designed to ensure the reporting of the inter-dealer side of the transactions by the firm. NASD found that the firm both failed to report and double-reported transactions in TRACE-eligible securities to TRACE, and failed to report the correct contra-party identifier for transactions in TRACE-eligible securities to TRACE. NASD also found that the firm improperly reported its mark-up/mark-down as both a mark-up/mark-down and as a commission in certain transactions to TRACE. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to TRACE reporting. (NASD Case #E3A2004002501)

Scottrade, Inc. (CRD #8206, St. Louis, Missouri) 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 timely report reportable order events (ROEs) to OATS. The findings further stated that the firm did not correct or replace repairable OATS reports with respect to equity securities traded on The NASDAQ Stock Market that were submitted by the firm but rejected by OATS for not being in the electronic form prescribed by NASD. (NASD Case #2005000003201)

The Seidler Companies Incorporated (CRD #3911, Los Angeles, California) submitted a Letter of Acceptance Waiver, and Consent in which the firm was censured and fined \$30,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report transactions and the correct execution time for transactions to the MSRB. The findings stated that the firm failed to make and maintain customer records and transactions. The findings also stated that the firm failed to file its third-quarter report with respect to its underwriting and consulting activity with the MSRB, and failed

to enforce its written supervisory procedures, which required branch managers to review municipal securities order tickets on a daily basis to ensure compliance with MSRB Rule G-8. NASD found that the firm's written supervisory procedures were inadequate with respect to how and when supervisors were required to review the firm's municipal trade reports to ensure compliance with MSRB Rule G-14. (NASD Case #E0220030011-03)

Sentra Securities Corporation (CRD #10249, Phoenix, Arizona) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$122,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it filed late, or did not file, amendments to the previously filed Forms U4 of persons registered with the firm and Forms U5 pertaining to persons formerly registered with the firm. The findings stated that the firm failed to report, or reported late, matters that required disclosure within 10 days as required by NASD. The findings also stated that the firm reported late, did not report or inaccurately reported matters required to be included on quarterly statistical reports. The findings further stated that the firm paid transaction-related compensation to a person previously, but no longer, registered with the firm. NASD found that individuals of the firm who were required to participate in an annual compliance interview did not. NASD further found that the firm's written supervisory procedures documenting its supervisory system did not assign a principal with the responsibilities for the review of the firm's supervisory system and procedures and for making recommendations to the firm's management for changes to them. In addition, the findings stated that the firm's supervisory system and procedures for its municipal securities business did not include provisions for record retention, new municipal securities accounts, transaction reporting, suitability reviews and mark-up reviews. Furthermore, NASD found that the firm's supervisory system and procedures were not reasonably designed to achieve compliance with applicable rules, to oversee the activities of the firm's geographically dispersed sales force, to assure that proper steps were taken to review the conduct of persons whose histories in the securities business indicated the propriety of heightened supervision, to assure that proper steps were taken to recover firm records and property from persons whose registrations were terminated, and to timely report information required by NASD. The findings also stated that the firm did not consistently and systematically enforce some of its written supervisory procedures. (NASD Case #E3A2004007001)

Sentry Equity Services, Inc. (CRD #5069, Stevens Point, Wisconsin) 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 maintain an adequate written AML program reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act and the regulations promulgated thereunder. (NASD Case #E8A2004024801)

SII Investments, Inc. (CRD #2225, Appleton, Wisconsin) 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 detect and prevent a registered representative from using its clearing firm platform to hold stock, thereby failing to supervise the representative in a manner reasonably calculated to prevent the representative from engaging in private securities transactions. (NASD Case #E0420020559-01)

Sterne, Agee & Leach, Inc. (CRD #791, Birmingham, Alabama) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$20,000 and required to revise its written supervisory procedures with respect to 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 for each security; or when the order was priced equal to the firm's bid or offer and the national best bid or offer of 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 for each security. In addition, 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 Limit Order Display Rule. (NASD Case #20050000977-01)

Track Data Securities Corporation (CRD #103802, Brooklyn, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$100,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it implemented a computer program change to its Track Data electronic communication network (ECN), so that the ECN delayed its response for four and a half seconds when declining orders delivered to its quote through SuperMontage by market participants that had outstanding fee disputes with Track Data ECN, thus violating an NASD rule. The findings further 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 when implementing computer program changes. (NASD Case #2005000026101)

WestPark Capital, Inc. (CRD #39914, Los Angeles, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it accepted orders to sell shares of stock from public customers and, for each order, failed to make/annotate an affirmative determination that the firm would receive delivery of the security on the customer's behalf, or that the firm could borrow the security on behalf of the customer for delivery by the settlement date. The findings further stated that the firm executed short sale orders and failed to properly mark the order tickets for those orders as short. In addition, the findings stated that the firm failed to preserve the memorandum of brokerage orders for a period of not less than three years, the first two in an accessible place. (NASD Case #20042000073-01)

Individuals Barred or Suspended

Jason Eugene Abruzere (CRD #4121049, Registered Principal, Conshohocken, Pennsylvania) 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 Abruzere reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Abruzere consented to the described sanctions and to the entry of findings that he recommended and effected mutual fund switch transactions in public customers' accounts without having reasonable grounds that such transactions were suitable for them. The findings stated that each of these transactions generated additional compensation for Abruzere while subjecting the public customers to one or more of the following: higher annual expenses (immediately or in the near future), reduced yield and/or returns, a lengthier contingent deferred sales charge (CDSC) period and/or a CDSC charge. NASD also found that Abruzere failed to disclose to public customers, or otherwise afford them, the opportunity to reduce their annual expenses on mutual fund investments by either remaining in the mutual fund shares that they had owned for several years or by effecting a free exchange into a comparable fund within the same family. The findings further stated that Abruzere misrepresented and omitted to state material facts to customers.

Abruzere's suspension began November 21, 2005, and will conclude May 20, 2006. (NASD Case #C9B20050020/E9B2003042103)

Jose Antonio Alba (CRD #4680317, Registered Representative, North Bergen, New Jersey) was barred from association with any NASD member in any capacity. The sanction was based on findings that Alba converted funds totaling \$5,160 from his member firm. The findings also stated that he failed to respond to NASD requests for information. (NASD Case #C1020050021)

Labib Amir Al Sharif (CRD #1576068, Registered Representative, Lawrenceville, Georgia) 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, Amir-Al-Sharif consented to the described sanction and to the entry of findings that he caused unauthorized withdrawals from a public customer's account through the use of withdrawal requests that he forged or caused to be forged, then obtained checks payable to the customer, and endorsed and deposited the checks into a bank account under his control, thereby converting \$34,150 of the customer's funds. (NASD Case #2005001659201)

Hurson Belizaire, Jr. (CRD #2700118, Registered Representative, Freeport, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Belizaire failed to respond to NASD requests for information. Belizaire was also found to have published an unbalanced electronic bulletin board message on the Internet which failed to disclose material facts and to have sent a misleading, false, exaggerated and unwarranted e-mail to a public customer without his member firm's prior approval. In light of the bar, no additional sanction was assessed based on these findings. (NASD Case #C10050026)

Joao Uchoa Borges (CRD #4406848, Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for two months. Without admitting or denying the allegations, Borges consented to the described sanctions and to the entry of findings that he participated in securities transactions in violation of AML procedures and other written supervisory procedures of his member firm by effecting transactions that had no business or apparent lawful purpose, by failing to contact his customers' senior management to both ascertain reasons for off-market transactions and exchange correspondence documenting such reasons, and by failing to ensure that confirmations of the transactions contained qualifying material information regarding the transactions.

Borges' suspension began on October 17, 2005, and will conclude at the close of business December 16, 2005. (NASD Case #E102002159106)

James Walton Bridges (CRD #1879224, Registered Representative, Huntsville, Alabama) 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 five business days. Without admitting or denying the allegations, Bridges consented to the described sanctions and to the entry of findings that he effected transactions in a public customer's account without first consulting with, or obtaining written authorization from, the customer to exercise discretion. The findings further stated that he did not obtain written authorization to engage in discretionary trading in the account from his firm.

Bridges' suspension began December 12, 2005, and concluded at the close of business December 16, 2005. (NASD Case #E052004011501)

Marie Ann Brown (CRD #4285587, Registered Representative, Loveland, Ohio) 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 60 days. The fine must be paid before Brown reassociates with any NASD member or requests relief from any statutory disqualification. Without admitting or denying the allegations, Brown consented to the described sanctions and to the entry of findings that she affixed a public customers' signature to a beneficiary designation form without the customer's permission and consent.

Brown's suspension began December 5, 2005, and will conclude on the close of business February 2, 2006. (NASD Case #2005001264701)

Herschell Eugene Buchanan, Jr. (CRD #2740909, Registered Representative, Duluth, Georgia) 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, Buchanan consented to the described sanction and to the entry of findings that he forged a public customer's signature on financial service agreements, mutual fund redemption forms and transfer requests. The findings also stated that he failed to respond to NASD requests for information. (NASD Case #2005001785001)

Anthony Ralph Cardino (CRD #2544204, Registered Representative, Hoboken, 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, Cardino consented to the described sanction and to the entry of findings that he converted at least \$31,800 of a public customer's funds for his own use and benefit. (NASD Case #E9B2004041601)

Thomas George Carr (CRD #2063529, Registered Representative, San Clemente, 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, Carr consented to the described sanctions and to the entry of findings that he failed to amend his Form U4 to disclose a material fact.

Carr's suspension began December 5, 2005, and will conclude March 4, 2006. (NASD Case #20050003783-01)

Thomas James Carr (CRD #1613787, Registered Representative, Carlsbad, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that he effected securities transactions in a public customer's account without the customer's knowledge or consent. The findings also stated that Carr recommended and effected securities transactions to a customer without having a reasonable basis for believing that the recommendations were suitable for the customer. The findings further stated that Carr failed to respond to NASD requests for information. (NASD Case #C01040029)

Gwendolyn Faye Cash (CRD #4907909, Associated Person, Memphis, Tennessee) submitted an Offer of Settlement in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for nine months. Without admitting or denying the allegations, Cash consented to the described sanctions and to the entry of findings that she willfully failed to disclose material facts on her Form U4.

Cash's suspension began November 21, 2005, and will conclude August 20, 2006. (NASD Case #C0720050044/2005000890102)

John Barry Chambers (CRD #2136192, Registered Representative, Dallas, Texas) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity and ordered to pay public customers \$73,750 in restitution. Without admitting or denying the allegations, Chambers consented to the described sanctions and to the entry of findings that he, directly or indirectly, by the use of means or instrumentalities of interstate commerce or the mails, employed artifices, devices or schemes to defraud; made untrue statements of material facts or omitted to state material facts necessary in order to make the statements, in light of the circumstances under which they were made, not misleading; engaged in acts, practices or courses of business that operated or would operate as a fraud or deceit, and/or effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive or other fraudulent devices or contrivances. NASD found that Chambers induced public customers to submit \$180,600 for investing purposes to his

company or its agent and, without their knowledge, authorization or consent, he misused and/or converted the customers' funds for his own use and benefit. The findings also stated that Chambers recommended securities transactions to public customers without reasonable grounds to believe the investments were suitable for them in light of their financial situations, investment objectives, needs and the risks associated with the investments. NASD also found that Chambers engaged in private securities transactions and outside business activities without providing his member firm with prior written notice. In addition, NASD determined that Chambers willfully failed to amend and to timely submit an amendment to his Form U4 to disclose material information. (NASD Case #CLI20040031/ELI2002045104)

Timothy Bryan Dickey (CRD #2541369, Registered Principal, Durant, Oklahoma) was barred from association with any NASD member in any capacity and fined \$221,846.52, representing disgorgement of his financial benefit. The sanctions were based on findings that he recommended and effected an investment strategy to public customers without having a reasonable basis for believing that the strategy was suitable for them given their financial needs and conditions. The findings stated that Dickey participated in private securities transactions without providing prior written notice and obtaining approval from his member firm. The findings also stated that Dickey failed to respond to NASD requests for information. (NASD Case #C0520050017)

Ziad Nawaf El Assad (CRD #4263626, Registered Representative, Miami Beach, Florida) submitted a Letter of Acceptance, Waiver and Consent in which he was censured and suspended from association with any NASD member in any capacity for six months. In light of El Assad's financial status, no monetary sanction was imposed. Without admitting or denying the allegations, El Assad 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 ECN at prices that he knew would improve the NBBO for that security. The findings stated that, after entering orders into the ECN that improved the NBBO, El Assad 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, El Assad intentionally and knowingly cancelled some of the priced limit orders that he had entered to improve the NBBO, thereby obtaining a financial benefit. NASD found that he caused limit orders to be published or circulated 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.

El Assad's suspension began November 21, 2005, and will conclude May 20, 2006. (NASD Case #20042000018-06)

Mark W. Eshleman (CRD# 1244069, Registered Representative, Coconut Creek, Florida), Fernando Fernandez (CRD #4008751, Registered Representative, Boca Raton, Florida), Adam Todd Forman (CRD #2826964, Registered Representative, Royal Palm Beach, Florida), Shannon Lee Norris (CRD #2983568, Registered Representative, Coconut Creek, Florida) and Kristian F. Sierp (CRD #2428092, Registered Representative, Parkland, Florida) were barred from association with any NASD member in any capacity. Forman is required to pay \$41,115, plus interest, in restitution to a public customer and Norris is required to pay \$15,557.71, plus interest, in restitution to a public customer. The sanctions were based on the findings that the respondents, by the use of means or instrumentalities of interstate commerce or of the mails, each intentionally and recklessly effected transactions in, and induced the purchase and the sale of stocks by means of deceptive, manipulative and other fraudulent devices or contrivances. The findings also stated that Fernandez, Forman, Norris and Sierp each failed to timely amend their respective Forms U4 to disclose a material fact. (NASD Case #CMS20040094)

Dean Anthony Esposito (CRD #2303699, Registered Representative, Boca Raton, Florida) 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, Esposito consented to the described sanction and to the entry of findings that he signed new account forms with the purported signature of another registered representative without his authorization. The findings also stated that Esposito provided inaccurate, incomplete testimony during an NASD on-the-record interview. (NASD Case #CLI20050015/ELI2003017305)

Craig Tyson Feltz (CRD #2447886, Registered Principal, Smithtown, New York) submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, Feltz consented to the described sanctions and to the entry of finding that he, on behalf of his member firm, obtained a subordinated loan agreement for \$5 million, but then entered into a side agreement with the lender that contradicted the terms of the secured demand note. NASD found that the side agreement states that Feltz, on behalf of the firm, would not attempt to pledge, hypothecate or encumber the collateral for the note and that, in furtherance of the side agreement, a limited

power of attorney was signed giving the lender control of a bank account containing the funds used for collateral. NASD found that Feltz, on behalf of the firm, filed the required documents with NASD to get approval of the \$5 million subordinated loan for net capital purposes without disclosing the side agreement and power of attorney to NASD. If the filing had not been misleading, NASD would not have approved the demand note. As a result, the firm was allowed to conduct business for over a year until NASD learned of the side agreement and power of attorney. When NASD's approval was rescinded, the firm was forced to cease doing business for lack of adequate net capital.

Feltz's suspension began November 21, 2005, and will conclude at the close of business February 20, 2006. (NASD Case #E102004085603)

Carl Gene Fiebich (CRD #2189769, Registered Representative, Fenton, Michigan) 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, Fiebich consented to the described sanction and to the entry of findings that he engaged in outside business activities without giving his member firm prompt written notice. (NASD Case #C8A20040109/E8A2002082203)

Ryan Michael Gainor (CRD #2703931, Registered Representative, San Diego, 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, Gainor consented to the described sanction and to the entry of findings that he refused to appear for an NASD on-the-record interview, and failed to respond to NASD requests for information and documents. (NASD Case #E022004017301)

Edward Leigh Geisenheimer (CRD #3191810, Registered Representative, South Plainfield, NJ) 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, Geisenheimer consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. (NASD Case #2005001847101)

Michael Wayne Gibson (CRD #1501602, Registered Representative, Sacramento, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that he committed theft and embezzlement of \$30,000 from a public customer. The findings also stated that Gibson failed to respond to NASD requests for information. (NASD Case #C0120050006)

Scott Harris Gitomer (CRD# 3101148, Registered Representative, Boynton Beach, Florida) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000, required to pay \$15,000 plus interest in restitution to a public customer, and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, Gitomer consented to the described sanctions and to the entry of findings that he effected unauthorized and excessive transactions in a public customer's securities accounts.

Gitomer's suspension began November 21, 2005, and will conclude at the close of business January 19, 2006. (NASD Case #E072004029001)

Arthur Harry Guterding, Jr. (CRD #1053453, Registered Representative, Henderson, Nevada) was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. The sanctions were based on findings that he exercised discretion in public customers' accounts without his firm's acceptance of the accounts as discretionary and in direct disregard of an acknowledgement that he signed with his firm stating that he was aware that exercising such discretionary authority was prohibited.

Guterding's suspension began November 7, 2005, and will end at close of business November 6, 2006. (NASD Case #C0220050045)

Donald Jordan Haskell (CRD #239370, Registered Principal, San Diego, California) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000, suspended from association with any NASD member in any capacity for six months, and must requalify by examination as a general securities representative (Series 7). The fine must be paid before Haskell reassociates with any NASD member following the suspension, or requests relief from any statutory disqualification. Without admitting or denying the allegations, Haskell consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing written or oral notification to, or receiving prior written approval from, his member firm. The findings stated that Haskell settled a customer complaint and did not inform his member firm of the customer's complaints, or of his agreement to personally help repay the notes to the customer.

Haskell's suspension began August 15, 2005, and will conclude at close of business February 14, 2006. (NASD Case #E0220040658-01)

Steven Hadley Haynes (CRD #1032930, Registered Principal, East Longmeadow, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any

capacity. Without admitting or denying the allegations, Haynes 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 #2005001169801)

Steven Ernest Henley (CRD #4262164, Registered Representative, Caldwell, Idaho) submitted a Letter of Acceptance, Waiver and Consent in which he was suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, Henley consented to the described sanction and to the entry of findings that he participated in an outside business activity for compensation without giving his member firm prompt written notice.

Henley's suspension began November 21, 2005, and will conclude at close of business February 20, 2006. (NASD Case #E3B20030307-01)

Paul R. Hunt (CRD #4304579, Registered Representative, Greenville, North Carolina) 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, Hunt consented to the described sanction and to the entry of findings that he effected transactions in public customers' accounts without their prior knowledge or authorization. The findings stated that Hunt failed to respond to NASD requests for information. (NASD Case #2005000308802)

Patricia Anne Kwan (CRD #2297069, Registered Representative, Honolulu, Hawaii) 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, Kwan consented to the described sanctions and to the entry of findings that she obtained CDSC waivers for customers by misrepresenting that they were disabled. The findings further state that these waivers deprived mutual fund companies of fees that they were otherwise entitled to, and that caused her company's books and records relating to the redemptions to contain false information regarding the customers' disability statuses. The findings also stated that Kwan exercised discretion in public customers' accounts without written authorization. (NASD Case #E9B2003045001)

Michael Louis Lieb (CRD #1022137, Registered Representative, Kettering, Ohio) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 days. Without admitting or denying the allegations, Lieb consented to the described sanctions and to the entry of findings that he attempted to compensate a public customer for penalties incurred when withdrawals from the customer's IRA account were not

returned to the account in a timely manner. The findings stated that Lieb wrote a personal check payable to the customer without informing his member firm that he had attempted to compensate the customer, and without obtaining authority from his firm to settle the loss in this manner.

Lieb's suspension began November 21, 2005, and concluded at the close of business November 30, 2005. (NASD Case #E8A2004063701)

Tammy Ranae Loshier (CRD #4663281, Registered Representative, Woodburn, Indiana) 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 Loshier reassociates with any NASD member following the suspension or requests relief from any statutory disqualification. Without admitting or denying the allegations, Loshier consented to the described sanctions and to the entry of findings that she effected transactions in a public customer's account without the customer's knowledge or consent, and without written or oral authorization to exercise discretion in the said account.

Loshier's suspension began on December 5, 2005, and concluded at the close of business on December 16, 2005. (NASD Case #E8A2004107901)

Timothy James Malone (CRD #4491818, Registered Representative, Nanuet, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Malone reassociates with any NASD member or requests relief from any statutory disqualification. Without admitting or denying the allegations, Malone consented to the described sanctions and to the entry of findings that he signed a variable annuity withdrawal request form for a public customer without the customer's authorization or consent.

Malone's suspension began December 5, 2005, and will conclude March 4, 2006. (NASD Case #E9B2004045401)

Terrence Edward Maryniw (CRD #1705662, Registered Representatives, Crystal lake, 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 10 business days. Without admitting or denying the allegations, Maryniw consented to the described sanctions and to the entry of findings that he purchased securities in another broker's securities account who was registered at a different NASD firm than Maryniw. The findings stated that Maryniw placed orders for the purchase of securities in a securities account that was maintained at a firm with which he was not registered, without notifying that firm

that he was associated with another NASD firm, and without notifying his own firm that he had a beneficial interest in the other broker's securities account. The findings also stated that Maryniw participated in a private securities transaction in that he failed and neglected to give written notice to his employing NASD firm, and failed to receive written approval from his firm, prior to engaging in such activity.

Maryniw's suspension began November 21, 2005 and concluded at the close of business on December 2, 2005. (NASD Case #E8A2003082802)

Gary L. McKinley (CRD #3039024, Registered Representative, Ponte Vedra, Florida) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before McKinley reassociates with any NASD member following the suspension or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, he consented to the described sanctions and to the entry of findings that he affixed a public customer's signature to documents relating to the purchases of a variable annuity and an insurance product.

McKinley's suspension began November 21, 2005, and will conclude at the close of business December 20, 2005. (NASD Case #E072004061601)

Regina L. McKissack (CRD #4606506, Registered Representative, Houston, Texas) submitted a Letter of Acceptance, Waiver and Consent in which she was suspended from association with any NASD member in any capacity for four months. In light of McKissack's financial status, no monetary sanction has been imposed. Without admitting or denying the allegations, McKissack consented to the described sanctions and to the entry of findings that she drafted a letter of authorization and signed a public customer's name to it without the customer's knowledge or authorization.

McKissack's suspension began November 21, 2005, and will conclude at the close of business March 20, 2006. (NASD Case #2005001143901)

Michael Edward McNulty (CRD #3029403, Registered Representative, Bel Air, Maryland) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$15,000 and suspended from association with any NASD member in any capacity for two months. Without admitting or denying the allegations, McNulty consented to the described sanctions and to the entry of findings that he knowingly and intentionally entered one-share orders through his firm's proprietary trading account into NASDAQ's SuperMontage to sell (buy) a NASDAQ security to (from) a NASDAQ market maker when the market maker was quoting 100 shares at the

NASDAQ Best Bid and Offer (QBBO), and received executions for these orders. NASD found that McNulty knew that the relevant market maker utilized an automated quoting system that was designed to keep a consistent spread between its bid and offer, and that the type of order he was placing would result in the market participant's offer (bid) adjusting to a more favorable QBBO. NASD further found that McNulty then entered orders for at least 100 shares through his firm's proprietary trading account into NASDAQ's SuperMontage on the opposite side of the market and received executions at the new QBBO from the same market maker that executed McNulty's share order. The findings stated that by knowingly and intentionally engaging in this course of conduct, McNulty, on behalf of his customers, was able to buy (sell) shares of the subject securities at prices that were lower (higher), than would otherwise have been obtained. This conduct resulted in a total advantageous gain for his customers and a market maker's loss.

McNulty's suspension began December 5, 2005, and will conclude at the close of business February 4, 2006. (NASD Case #20050000239-01)

Gerald Stuart Miller (CRD #1087230, Registered Representative, Fresno, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that he received checks totaling \$23,760 from public customers for investment purposes but deposited the checks to his personal bank account, thereby converting the funds for his own use and benefit. The findings further stated that Miller failed to respond to NASD requests for information. (NASD Case #C0120050002)

Brian Robert Mitchell (CRD #1191608, Associated Person, Yorktown Heights, New York) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. The sanction was based on findings that he, in connection with the offer, purchase or sale of securities, and through the means of instrumentalities of interstate commerce, including the mails, he employed a device, scheme or artifice to defraud; obtained money or property by means of an untrue statement of material fact or omission to state material facts necessary to make the statement not misleading; and engaged in transactions, practices or courses of business that operate as a fraud or deceit upon a public customer. The findings stated that Mitchell prepared and issued, or caused to be prepared and issued to the trustees of the customer account, false account statements, confirmation statements and Forms 1099 of the Internal Revenue Service that purported to represent the performance of the customer account to conceal his misconduct, and that overstated the value of the customer's account by several million dollars. (NASD Case # CLI20050009/2005001017102)

Raymond James Morrison, Jr. (CRD #2490927, Registered Representative, Madison, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity and required to pay public customers \$750 in restitution. Without admitting or denying the allegations, Morrison consented to the described sanctions and to the entry of findings that he received \$750 from public customers to pay the premium on a homeowner policy. Instead, he deposited the funds to his personal checking account without the customers' knowledge or consent. (NASD Case #E9B2004040001)

Kevin Paul O'Brien (CRD #1782288, Registered Representative, Cincinnati, Ohio) submitted a Letter of Acceptance, Waiver and Consent in which he was suspended from association with any NASD member in any capacity for 10 business days and fined \$2,500. Without admitting or denying the allegations, O'Brien consented to the described sanctions and to the entry of findings that he engaged in outside business activities without giving his firm prompt written notice.

O'Brien's suspension began November 21, 2005, and concluded at the close of business December 2, 2005. (NASD Case #E8A2004062301)

Rachael Janine O'Connor (CRD #4256098, Associated Person, Jackson, Michigan) was barred from association with any NASD member in any capacity. The sanction was based on the findings that O'Connor failed to respond to NASD requests for documents and information. (NASD Case #C8A20050024)

Ian Sean Onizuka (CRD #4019100, Registered Representative, Kailua, Hawaii) 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, Onizuka consented to the described sanction and to the entry of findings that he converted \$52,295 he received from public customers for investment purposes for his own use and benefit. The findings stated that Onizuka failed to respond to NASD requests for documents and information. (NASD Case #E012004030102)

David Brian Paige (CRD #1018286, Registered Representative, Marietta, Ohio) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Paige consented to the described sanction and to the entry of findings that he converted at least \$212,648 of public customers' funds for his personal use or for some purpose other than the customers' benefit. (NASD Case #E8A2004087101)

Jennifer Cochrane Prussack (CRD #4405629, Registered Representative, Garland, Texas) was barred from association with any NASD member in any capacity. The sanction was based on the findings that she made unauthorized debit withdrawals from public customers' accounts in the amount of at least \$57,000, and converted these funds for her own personal use and benefit. The findings also stated that Prussack failed to respond to NASD requests for information. (NASD Case #C0620050006)

Robert Mark Racusen (CRD #1601853, Registered Representative, Buffalo Grove, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Racusen consented to the described sanction and to the entry of findings that he effected transactions in a public customer's account without the customer's knowledge or consent and in the absence of written or oral authorization to exercise discretion in the said account. The findings also stated that Racusen failed to timely respond to NASD requests for information. (NASD Case #E8A2004089001)

Tonya Andrea Roberts (CRD #4174065, Registered Representative, Virginia Beach, Virginia) was barred from association with any NASD member in any capacity. The sanction was based on findings that she improperly used a public customer's personal information to obtain and use credit for her own use and benefit without the customer's knowledge, authorization or consent. The findings also stated that Roberts failed to respond to NASD requests for information. (NASD Case #C8A20050042)

Jack Mace Schwartz (CRD #1027281, Registered Principal, Salina, Kansas) submitted an Offer of Settlement in which he was fined \$5,000, suspended from association with any NASD member in any capacity for 10 business days and required to pay \$17,837.57 in restitution to public customers. Without admitting or denying the allegations, Schwartz consented to the described sanctions and to the entry of findings that he recommended and effected securities transactions in public customers' accounts without having reasonable grounds for believing the transactions were suitable for them based on their financial situations and needs.

Schwartz's suspension began December 5, 2005, and will conclude at the close of business December 16, 2005. (NASD Case #E042003045604)

Matthew M. Sexton (CRD #3261031, Registered Principal, Floral Park, 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, Sexton consented to the described sanction and to the entry of findings that he effected

unauthorized purchase and sale transactions in a public customer's account without the customer's knowledge, authorization or consent. The findings also stated that Sexton failed to respond to NASD requests for information and failed to appear for an on-the-record interview. (NASD Case #ELI2004040701)

Alphonsus Marion Sommers, III (CRD #4385866, Registered Representative, Midland, Texas) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Sommers consented to the described sanctions and to the entry of findings that he effected mutual fund sale transactions in a public customer's account without being associated with the member firm where the customer's account was carried.

Sommers' suspension began December 5, 2005, and will conclude at the close of business December 16, 2005. (NASD Case #E062004036801)

Palit Paul Suranakapan (CRD #4435490, Registered Representative, Beverly 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, Suranakapan consented to the described sanction and to the entry of findings that he falsified and forged customer signatures on authorization letters and converted \$24,000 of customers' funds without the customers' knowledge, authorization or consent. The findings stated that Suranakapan, in an attempt to conceal his misconduct, changed the address of one of the customer's accounts and, when the customer became aware of the unauthorized change of address and a wire transfer from the customer's account, he created and sent the customer a letter on his member firm's letterhead, without the firm's knowledge, authorization or consent, falsely representing that the wire transfer was due to a firm system error which was then corrected. (NASD Case #E022004064901)

Terry Shane Taylor (CRD #2456326, Registered Representative, Bossier City, Louisiana) 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, Taylor consented to the described sanction and to the entry of findings that he caused public customers' accounts to be charged fees for investment advisory services that they had not authorized and did not receive, by forging, or causing to be forged, customers' signatures on various documents to authorize the fees to be charged. The findings also stated that he failed to respond to NASD requests for information. (NASD Case #2005000771001)

Michael Waton Tsang (CRD #2448848, Registered Representative, North Providence, Rhode Island) 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 Tsang reassociates with any NASD member following the suspension or prior to application for or requesting relief from any statutory disqualification. Without admitting or denying the allegations, Tsang consented to the described sanctions and to the entry of findings that he engaged in business activities outside the scope of his member firm, without providing prompt written notice of these activities to his firm.

Tsang's suspension began November 21, 2005, and will conclude May 20, 2006. (NASD Case #2005000183801)

Sonny C. Uwadia (CRD #4921933, Associated Person, Lancaster, 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, Uwadia consented to the described sanction and to the entry of findings that he willfully failed to disclose a material fact on his Form U4 and failed to respond to NASD requests for information. (NASD Case #2005001143701)

Melissa Jean Williams (CRD #4562127, Associated Person, Mishawaka, Indiana) was barred from association with any NASD member in any capacity. The sanction was based on the findings that she submitted a falsified Series 7 examination score report to her member firm and failed to respond to NASD requests for information and documents. (NASD Case #C8A20050022)

Trevi M. Wray (CRD #4297171, Registered Principal, Springfield, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before he reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Wray consented to the described sanctions and to the entry of findings that he willfully failed to disclose material facts on his Form U4.

Wray's suspension began November 21, 2005, and will conclude on February 20, 2006. (NASD Case #2005001430601)

Individual Fined

John Yasushi Hasegawa (CRD #1058386, Registered Representative, Santa Ana, California) submitted a Letter of Acceptance, Waiver and Consent in which he was censured and fined \$10,000. The fine must be paid before Hasegawa reassociates with any NASD member. Without admitting or denying the allegations, Hasegawa consented to the described sanctions and to the entry of findings that he received a prospective public customer referral from an unregistered person, then paid the unregistered person a referral fee. The findings further stated that Hasegawa engaged in electronic communications with customers from his personal computer, but failed to provide notice to his member firm, preventing the firm from discharging its obligations to review and retain outgoing correspondence relating to its securities business. (NASD Case #2005000435802)

Decision Issued

The following decision has been issued by the Office of Hearing Officers and has been appealed to or called for review by the NAC as of October 7, 2005. The findings and sanctions imposed in the decision may be increased, decreased, modified or reversed by the NAC. An initial decision whose time for appeal has not yet expired will be reported in the next *Notice to Members*.

Charles Albert DaCruz (CRD #2444684, Registered Principal, Williston Park, New York) and Thomas John Linda (CRD #2404854, Registered Representative, Atlanta, Georgia). DaCruz was fined \$67,000, suspended from association with any NASD member in any capacity for one year and required to requalify by examination as a registered representative within 60 days of the termination of his suspension. Linda was fined \$200,000, suspended from association with any NASD member in any capacity for one year and required to requalify by examination as a registered representative within 60 days of the termination of his suspension. The fines must be paid before the respondents reassociate with any NASD member following the suspension or before requesting relief from any statutory disqualification. The sanctions were based on findings that the respondents, while using the means and instrumentalities of interstate commerce to offer securities for sale, neglected to state material facts necessary in order to make the statements made in connection with such offers, in light of the circumstances in which they were made, not misleading. The findings also stated that the respondents, while using the means and instrumentalities of interstate commerce to offer securities for sale, made material misrepresentation in the form of price predictions to induce public customers to make purchases.

This decision has been appealed to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C3A20040001/E3A20030219)

Complaints Filed

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

Gregory Thomas Boston (CRD #2064738, Registered Representative, Washington Courthouse, Ohio) was named as a respondent in an NASD complaint alleging that he improperly used a public customer's funds—totaling approximately \$23,000—without the customer's knowledge and approval. The complaint also alleges that he failed to respond to NASD requests for information. (NASD Case #E8A2004107701)

Jeffrey Marc Esposito, Sr. (CRD #2683912, Registered Principal, Dallas, Texas) was named as a respondent in an NASD complaint alleging that, by the use of the means or instrumentalities of interstate commerce or of the mails, he employed devices, a scheme or artifice to defraud; made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices or a course of business which operated or could operate as a fraud or deceit upon persons, in connection with the purchase or sale of securities. The complaint also alleges that Esposito failed to appear for an NASD on-the-record interview. (NASD Case #EAF0400220004)

David Nathaniel Garcia (CRD #1335400, Associated Person, Santa Fe, New Mexico) was named as a respondent in an NASD complaint alleging that he received cash and checks from public customers intended for the payment of insurance premiums. Instead, he used the cash payments totaling \$4,624.09 for personal expenses and retained the checks for a period of time, contrary to the intent and expectations of customers that the checks be timely submitted for payment of insurance premiums. The complaint also alleges that Garcia failed to respond to NASD requests for information. (NASD Case #2005000551401)

Thomas Mark Hunt (CRD #4517916, Registered Representative, Oklahoma City, Oklahoma) was named as a respondent in an NASD complaint alleging that he converted

\$1,770 of a public customer's funds for his own personal use and benefit. The complaint also alleges that Hunt failed to respond to NASD requests for information. (NASD Case #E052004032901)

Ralph Merhi (CRD# 3094962, Registered Principal, Boca Raton, Florida) was named in an NASD complaint alleging that he engaged in excessive trading and exercised discretion in a public customer's account without the customer's written authority, and without having his member firm approve the account as a discretionary account. (NASD Case #E072004044201)

Lawrence Nallie (CRD #2364153, Registered Representative, New Albany, Ohio) was named as a respondent in an NASD complaint alleging that he received a check totaling \$1,300 from a public customer for a financial plan and financial services. However, Nallie cashed the check without providing the financial plan and services to the customers. The complaint alleges that Nallie engaged in outside business activities and failed to provide prompt written notice of his activities to his member firm. The complaint also alleges that he failed to respond to NASD requests for documents and information. (NASD Case #2005000725301)

Gregory Francis Summers (CRD #1080556, Registered Representative, Watchung, New Jersey) was named as a respondent in an NASD complaint alleging that, in connection with an offer to purchase shares of stock in a modified "Dutch Auction" partial tender offer announced by a company and in response to the company tender offer, he instructed an employee of his member firm to tender shares of stock to the company in its principal capacity without having a net long position. The complaint alleges that Summers, by use of the means or instrumentalities of interstate commerce or of the mails, or of any facility of any national securities exchange, employed a device, scheme or artifice to defraud; made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices or a course of business which operated or could operate as a fraud or deceit upon persons, in connection with the purchase or sale of securities. The complaint also alleges that Summers executed common stock transactions that involved no change in the beneficial ownership thereof, for the purpose of creating or inducing a false appearance of activity in an eligible security. In addition, NASD alleges that Summers effected trades and caused a notice or communication to be published or circulated which purported to report transactions as a purchase and sale of securities when he did not believe, or had no reasonable basis to believe, that such transactions were bona fide purchases and securities sales. (NASD Case #E052003030702)

Maritsa Electra Varvitsiotes (CRD #1339252, Registered Representative, Southold, New York) was named as a respondent in an NASD complaint alleging that she engaged in a pattern of excessive trading in a public customer's discretionary account that was unsuitable for the customer. The complaint alleges that Varvitsiotes assisted and participated in excessive trading and unsuitable transactions in a customer's discretionary account. (NASD Case #E102001042604)

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

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

E.S. Hope Financial
San Diego, California
(November 9, 2005 to November 16, 2005)

LMT Capital Markets LLC
New York, New York
(November 9, 2005 to November 22, 2005)

Individuals Barred Pursuant to NASD Rule 9552(h)

Fernando Fernandez
Boca Raton, Florida
(October 28, 2005)

Mario Rodriguez
Bayonne, New Jersey
(October 19, 2005)

Timothy LeRoy Steadman
Modesto, California
(October 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.)

Anssy Akhabue Okoebor
Ladera Ranch, California
(October 19, 2005)

Roman Pasinkovsky
Brooklyn, New York
(October 18, 2005)

Michael Ross Turner
Manteca, California
(October 24, 2005)

Saleem Zamindar
San Francisco, California
(October 24, 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.)

Frank Augustus Badger E.
Grand Rapids, Michigan
(November 9, 2005)

Michael Edward Carbone
Delrey Beach, Florida
(November 9, 2005)

Michael Joseph Curran
Sea Girt, New Jersey
(November 9, 2005)

Corey Lshon Fuller
Atlanta, Georgia
(November 9, 2005)

Adam Chamroeurn Heng
Brooklyn, New York
(November 9, 2005)

Scott Ian Martin
Bala-Cynwyd, Pennsylvania
(November 21, 2005)

Andrew Kim Matteson
Boca Raton, Florida
(November 9, 2005)

Peter Frederick McKinnon
Beaverton, Oregon
(November 9, 2005)

Brian Joseph Methvin
Sherwood, Oregon
(November 9, 2005)

James Michael Palladino, Sr.
Wellington, Florida
(November 8, 2005)

David Franklin Price, III
Redding, Connecticut
(November 9, 2005)

Bruce A. Ranney
Chicago, Illinois
(November 9, 2005)

Robert Paul Schulte, Jr.
Scranton, Pennsylvania
(November 9, 2005)

Otto Keith Vaughan, Jr.
Aurora, Colorado
(November 9, 2005)

NASD Fines Ameriprise Financial Services \$12.3 Million for Directed Brokerage Violations

NASD announced that it has fined Ameriprise Financial Services, Inc. of Minneapolis, MN, \$12.3 million in connection with its receipt of directed brokerage in return for providing preferential treatment to certain mutual fund companies. The conduct at issue occurred when the firm was known as American Express Financial Advisors. The Securities and Exchange Commission (SEC) has also sanctioned the firm for related conduct.

The action involves violations of NASD's Anti-Reciprocal Rule, which prohibits firms from favoring the sale of shares of particular mutual funds on the basis of brokerage commissions received by the firm. Among other things, the rule prohibits a firm from recommending funds or establishing preferred lists of funds in exchange for receipt of directed brokerage.

"This case demonstrates that NASD will remain vigilant in its efforts to eliminate conflicts of interest in the sale of mutual funds," said Barry Goldsmith, NASD Executive Vice President and Head of Enforcement. "NASD's Anti-Reciprocal Rule is an important regulatory tool that is designed to ensure that firms recommend mutual funds on their merits and not because of the receipt of brokerage commissions, which are assets of the mutual fund shareholders and should not be used for marketing purposes."

NASD found that from January 2001 through December 2003, Ameriprise operated two shelf space (or revenue sharing) programs in which participating mutual fund companies paid a fee in return for preferential treatment by Ameriprise. That treatment included enhanced access to Ameriprise's sales force, including participation in conferences and meetings, distribution and display of marketing materials at Ameriprise branches, and in-office visits with Ameriprise registered representatives—all designed to increase sales of those mutual funds.

In addition, Ameriprise promoted the funds on its internal website, identifying the mutual funds as "Preferred Providers," and posted sales literature for the funds as well as information about the funds and their fund managers. Ameriprise also charged its advisors reduced sales ticket charges for the sale of Preferred Provider funds. None of these benefits were available to non-participating mutual funds. While Ameriprise sold funds offered by approximately 32 fund companies during the period at issue, 24 were Preferred Providers.

The mutual fund complexes that participated in these programs paid extra fees for the preferential treatment they received. Seven of the 24 fund complexes paid their fees for participating in the programs by directing approximately \$41 million in mutual fund portfolio brokerage commissions to Ameriprise. The funds accomplished this by directing portfolio trades to the trading desks of clearing firms designated by Ameriprise, and the clearing firms then remitted a portion of the trading commissions—generally 75 to 86 percent—to Ameriprise, the designated "introducing broker." The commissions paid under these arrangements were sufficiently large to pay for the preferential treatment and other benefits received by the funds as well as the costs of trade execution. This use of directed brokerage allowed the fund complexes to use assets of the mutual funds instead of their own money to meet their revenue sharing obligations. The remaining fund complexes paid their fees for participating in the Preferred Provider program in cash to Ameriprise.

NASD acknowledges the assistance of the Midwest Regional Office of the SEC in investigating this matter.

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

NASD has brought 29 previous actions for similar violations.

NASD Fines Clearing Firm, Two Other Firms More Than \$300,000 For Facilitating Violations of Net Capital Rule

Violations Include Concealing Loss On Unsecured Customer Debt; Firms' Senior Officers Also Fined, Suspended

NASD announced that it has fined two firms, First Avantis Securities, Inc. (now known as Riverstone Wealth Management, Inc.) of Austin, TX, and National Securities Corporation of Seattle, WA, as well as their clearing firm, First Clearing Corporation of Glen Allen, VA, for engaging in conduct that circumvented and/or assisted in circumventing the net capital rule. Specifically, First Clearing entered into agreements with the two introducing firms that resulted in those firms failing to appropriately book liabilities, thereby creating net capital deficiencies. First Clearing also provided

clearing and execution services to First Avantus and National Securities while those firms were in violation of the net capital rule.

First Avantus was fined \$100,000. Three of its principals were fined a total of \$75,000 and suspended from serving in principal capacities for periods ranging from 60 days to four months. First Clearing was fined \$110,000, of which \$17,500 was assessed jointly and severally against its president. National Securities and its president were jointly and severally fined \$30,000 for net capital violations. National was fined an additional \$55,000 for supervisory and books and records violations, as well as for violations of the membership application rules for failing to seek approval of a material change in its business.

"Net capital requirements are designed to help ensure the financial stability of broker-dealer firms, and accurate financial reporting is a cornerstone of the process," said Barry Goldsmith, NASD Executive Vice President and Head of Enforcement. "The transactions that these firms engaged in hid liabilities and resulted in making inaccurate financial information available to regulatory authorities."

First Avantus entered into an agreement with First Clearing that had the effect of concealing certain liabilities. National Securities entered into an agreement with First Clearing that subsequently created a net capital deficiency for National Securities. The duration and extent of these violations ranged up to 22 months, with net capital deficiencies ranging from \$119,000 to \$1.452 million.

In the matter involving First Avantus and First Clearing, a dispute arose between the two firms in October 2001 over responsibility for a failed customer check in the amount of \$2.8 million. To resolve arbitration proceedings arising from this dispute, First Avantus and First Clearing entered into a settlement agreement, the terms of which required First Clearing to assume responsibility for the customer's unsecured debit balance, which was otherwise a liability of First Avantus. In return, First Avantus agreed to increase its monthly clearing fees due to First Clearing by \$500,000 over five years. Neither First Clearing nor First Avantus treated the \$500,000 payment as a liability of First Avantus. Nevertheless, First Avantus continued to conduct a securities business, thus violating the net capital rule, and First Clearing continued to provide clearing and execution services for First Avantus. In a separate instance, beginning in March 2002, First Avantus failed to treat a customer's unsecured debit balance, which had risen to almost \$206,000, as a firm liability for a period of at least five months. These liabilities resulted in net capital deficiencies during the relevant periods of \$222,000 to \$557,000.

In the matter involving National Securities, First Clearing advanced a loan to National Securities' parent, Olympia Cascade, in August 2001. In connection with the loan, Olympia Cascade and National Securities entered into a security agreement pledging National Securities' assets as collateral for the loan. As a result of that security agreement, the value of National Securities' assets should have been deducted from its net capital to the extent of any liability owed by National Securities' parent under the terms of the promissory note. National Securities failed to do so, resulting in capital deficiencies between \$119,000 to \$1.452 million, over a 22-month period.

In addition to the three firms, NASD took action against the following individuals in connection with the net capital violations. Each of the individuals played a role with regard to the transactions that created the net capital violations.

- **David Lawrence Williams of Richmond, VA**, formerly the President of First Clearing. Williams was censured and fined \$17,500, jointly and severally with First Clearing.
- **Steven A. Rothstein of Wilmette, IL**, formerly Chairman and Chief Executive Officer of National Securities. Rothstein was censured and fined \$30,000, jointly and severally with National Securities.
- **Brian Edward Smith of Austin, TX**, President of First Avantus. Smith was fined \$25,000, jointly and severally with First Avantus. In addition, Smith was suspended from serving in any principal capacity for sixty days.
- **Bryan Torrey Forman of Tyler, TX**, formerly Chief Executive Officer of First Avantus. Forman was fined \$25,000 and suspended from serving in any principal capacity for four months.
- **Kyle Timothy Holland of Austin, TX**, formerly the Chief Financial Officer of First Avantus. Holland was fined \$25,000 and suspended in all capacities for one month and in any principal capacity for three months for violations that included the net capital issues noted above.

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

NASD Orders Chase Investment Services to Pay More Than \$290,000 For Permitting Hedge Fund to Market Time Mutual Fund Shares

*Firm to Pay \$150,000 Fine and Restitution to Funds
Totaling \$140,262*

NASD announced that it has ordered Chase Investment Services of Chicago, IL, to pay more than \$290,000 for failing to have an adequate supervisory system and controls in place to prevent deceptive market timing by one of its hedge fund clients. The firm was fined \$150,000 and ordered to pay a total of \$140,262 to the affected mutual funds.

“Deceptive market timing—by hedge funds or any other market participant—is both unfair and harmful to other mutual fund shareholders,” said Barry Goldsmith, NASD Executive Vice President and Head of Enforcement. “In this case, Chase’s failure to have systems and controls in place to enforce trading limits set by the mutual funds themselves resulted in a hedge fund gaining an impermissible advantage over other fund shareholders.”

NASD found that Chase failed to maintain, update and enforce effective internal policies, systems and procedures with respect to preventing deceptive mutual fund market timing activity by one of its customers, which operated a hedge fund. From at least February 2002 through August 2003, Chase received notice of trading restrictions or “block letters” from 19 mutual funds—with each fund restricting the hedge fund customer from effecting future transactions within the fund. Chase did not have adequate supervisory systems or controls designed to ensure that the block letters would be enforced.

Further, Chase failed to conduct any follow-up and review of the hedge fund customer’s accounts to ensure that it enforced the terms of the block letters it received and/or detected and prevented the hedge fund’s attempts to circumvent the block letter restrictions. The firm permitted the hedge fund customer to evade fund restrictions by establishing new accounts through which it continued to trade in funds that had previously issued block letters. As a result, in 81 instances, Chase failed to prevent its customer from effecting further trades in contravention of the restrictions imposed by the funds. The customer earned profits in 13 of those funds totaling \$140,262.

In resolving this action, Chase has agreed to pay restitution totaling \$140,262 to various mutual funds within families of funds including, but not limited to, American Funds, Vanguard Funds and TIAA-CREF. Chase settled the action without admitting or denying the allegations, but consented to the entry of NASD’s findings.