

FEBRUARY 2006

Notice to Members

Notices

- 06-07** SEC Approves Amendments to Anti-Money Laundering Compliance Program Rule and Adoption of Interpretive Material; **Effective Date: March 6, 2006**
- 06-08** Amendments Relating to the Status of Persons Serving in the Armed Forces of the United States; **Effective Dates: IM-1000-2(a) and IM-1000-2(b): November 15, 2005; IM-1000-2(c): March 27, 2006**

Disciplinary and Other NASD Actions



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Notice to Members

FEBRUARY 2006

SUGGESTED ROUTING

Legal & Compliance
Operations
Registration
Senior Management

KEY TOPICS

Anti-Money Laundering
Compliance Programs
IM-3011-1
IM-3011-2
Rule 3011

GUIDANCE

Anti-Money Laundering Compliance Programs

SEC Approves Amendments to Anti-Money Laundering Compliance Program Rule and Adoption of Interpretive Material; **Effective Date: March 6, 2006**

Executive Summary

On December 28, 2005, the Securities and Exchange Commission (SEC) approved amendments to NASD Rule 3011 and the adoption of IM-3011-1 and IM-3011-2.¹ The amendments and new interpretive material require a firm to conduct an independent test of its anti-money laundering (AML) compliance program on an annual basis (with the exception of certain types of firms), clarify the persons not considered to be independent for purposes of the independent testing requirement, and require a firm, on a quarterly basis, to review and, if necessary, update the information regarding the firm's AML compliance person. The new rule text and interpretive material are contained in Attachment A and are effective on March 6, 2006.

Questions/Further Information

Questions concerning this *Notice* may be directed to Brant K. Brown, Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-6927.

Discussion

NASD Rule 3011 requires every NASD member firm to develop and implement a written AML program reasonably designed to achieve and monitor the firm's compliance with the requirements of the Bank Secrecy Act² and the implementing regulations promulgated thereunder by the Department of Treasury. Among other things, Rule 3011 requires that a firm's AML program provide for independent testing for compliance with the AML program. Firms also are required to designate and identify to NASD an individual or individuals responsible for implementing and monitoring the day-to-day operations and internal controls of the firm's AML program and to update this information as appropriate. The purposes of the amendments to Rule 3011 and the interpretive material are to clarify and provide guidance on certain aspects of these two requirements.

Independent Testing

As originally adopted, Rule 3011(c) required that a firm's AML program "provide for independent testing for compliance to be conducted by member personnel or by a qualified outside party." The amendments and IM-3011-1 provide further guidance on this requirement in two ways. First, the amended rule language establishes an expectation that, for most firms, the independent test should be performed at least once each calendar year. The new rule language, however, allows firms that do not execute transactions for customers or otherwise hold customer accounts and do not act as an introducing broker with respect to customer accounts to test once every two years (on a calendar-year basis) rather than on an annual basis.³

Second, IM-3011-1 clarifies certain types of individuals who NASD would not consider to be "independent," and, hence, not eligible to perform the required independent testing. As an initial matter, IM-3011-1(b) clarifies that the person conducting the independent test must have a working knowledge of applicable requirements under the Bank Secrecy Act and its implementing regulations. IM-3011-1(c) further clarifies that, to ensure sufficient separation of functions for independence purposes, the testing cannot be conducted by the AML compliance person(s) designated in Rule 3011, by any person who performs the AML functions being tested or by any person who reports to any of these persons. NASD, however, recognized that these limitations may effectively prevent certain small firms from using appropriate internal personnel to conduct the tests. Consequently, IM-3011-1(c) allows tests to be conducted by persons who report to either the AML compliance person or persons performing AML functions if (1) the firm has no other qualified personnel to conduct the test; (2) the firm establishes written policies and procedures to address potential conflicts that can arise from allowing the test to be conducted by a person in the reporting chain (e.g., anti-retaliation procedures); (3) to the extent possible, the results of the test are reported to someone senior to the person to whom the test conductor reports; and (4) the firm documents its rationale, which must be reasonable, for determining that it has no other alternative than to comply in this manner.⁴ In addition, if the person does not report the results to a person senior to the AML compliance person or persons performing AML functions, the member must document a reasonable explanation for not doing so.

AML Compliance Person

The amendment to Rule 3011(d) and IM-3011-2 each provide guidance concerning the requirement that firms designate and identify to NASD an individual or individuals responsible for implementing and monitoring the day-to-day operations and internal controls of the firm's AML program. The amendment to Rule 3011(d) clarifies that the AML compliance person is an "associated person" of the member firm. As the SEC noted in approving the amendment, "NASD considers designated AML compliance persons to be associated persons for purposes of their activities on behalf of the member."⁵

IM-3011-2 requires firms to review and, if necessary, update the information regarding its AML compliance person within 17 business days after the end of each calendar quarter. This time period is consistent with a member firm's FOCUS reporting schedule and the requirements that a member firm review and update its Executive Representative designation and contact information⁶ as well as its emergency contact information.⁷ When firms file their FOCUS reports each quarter, they are reminded of the need to review and update this information on the NASD Contact System.

Endnotes

- 1 Exchange Act Rel. No. 53030 (Dec. 28, 2005), 71 FR 632 (Jan. 5, 2006) (SR-NASD-2005-066).
- 2 31 U.S.C. 5311, *et seq.*
- 3 Regardless of which category a firm falls into, any firm must test its AML program more frequently if circumstances warrant. See IM-3011-1(a).
- 4 Consistent with SEC and NASD recordkeeping requirements, the firm must retain a copy of the documented rationale, which will be reviewed by NASD examiners to assess whether the firm's rationale reasonably supported its determination.
- 5 See Exchange Act Rel. No. 53030, at 3; 71 FR at 634. See also NASD Response to Comments (Dec. 15, 2005), available at www.sec.gov/rules/sro/nasd/nasd2005066/nasd121505.pdf. This view confirms NASD's previous guidance that AML compliance persons are associated persons of the firm but are not required to register with NASD solely because they serve in that capacity. See *Notice to Members 02-80*, at n.5 (Dec. 2002).
- 6 See NASD Rule 1150.
- 7 See NASD Rule 3520(b).

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ATTACHMENT A

New language is underlined; deletions are in brackets.

3011. Anti-Money Laundering Compliance Program

On or before April 24, 2002, each member shall develop and implement a written anti-money laundering program reasonably designed to achieve and monitor the member's compliance with the requirements of the Bank Secrecy Act (31 U.S.C. 5311, et seq.), and the implementing regulations promulgated thereunder by the Department of the Treasury. Each [member organization's] member's anti-money laundering program must be approved, in writing, by a member of senior management. The anti-money laundering programs required by this Rule shall, at a minimum,

(a) Establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. 5318(g) and the implementing regulations thereunder;

(b) Establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations thereunder;

(c) Provide for annual (on a calendar-year basis) independent testing for compliance to be conducted by member personnel or by a qualified outside party, unless the member does not execute transactions for customers or otherwise hold customer accounts or act as an introducing broker with respect to customer accounts (e.g., engages solely in proprietary trading or conducts business only with other broker-dealers), in which case such "independent testing" is required every two years (on a calendar-year basis);

(d) Designate[,] and identify to NASD (by name, title, mailing address, e-mail address, telephone number, and facsimile number) an individual or individuals responsible for implementing and monitoring the day-to-day operations and internal controls of the program (such individual or individuals must be an associated person of the member) and provide prompt notification to NASD regarding any change in such designation(s); and

(e) Provide ongoing training for appropriate personnel.

IM-3011-1. Independent Testing Requirements

(a) All members should undertake more frequent testing than required if circumstances warrant.

(b) Independent testing, pursuant to Rule 3011(c), must be conducted by a designated person with a working knowledge of applicable requirements under the Bank Secrecy Act and its implementing regulations.

(c) Independent testing may not be conducted by:

(1) a person who performs the functions being tested,

(2) the designated anti-money laundering compliance person, or

(3) a person who reports to a person described in either (1) or (2) above, except that a member may allow the test to be conducted by a person who reports to a person described in (1) or (2) above if all four of the following conditions are met:

(A) the member has no other qualified internal personnel to conduct the test;

(B) the member establishes written policies and procedures to address conflicts that may arise from allowing the test to be conducted by a person who reports to the person(s) whose activities he or she is testing (e.g., anti-retaliation procedures);

(C) to the extent possible, the person conducting the test reports the results of the test to a person at the member who is senior to the persons described in (1) or (2) above; and

(D) the member must document its rationale, which must be reasonable, for determining that it has no other alternative than to comply in the manner set forth in the exception to this paragraph (3). In addition, if the person does not report the results consistent with (C) above, the member must document a reasonable explanation for not doing so.

IM-3011-2. Review of Anti-Money Laundering Compliance Person Information

Each member must review and, if necessary, update the information regarding its anti-money laundering compliance person designated pursuant to Rule 3011(d) within 17 business days after the end of each calendar quarter to ensure the information's accuracy.

Notice to Members

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SUGGESTED ROUTING

Continuing Education
Executive Representatives
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KEY TOPICS

Active Military Duty
Continuing Education
IM-1000-2
Inactive Status
Registration Requirements
Rule 1021(c)
Rule 1031(c)
Rule 1041(c)
Transaction-Related Compensation

GUIDANCE

Active Military Service

Amendments Relating to the Status of Persons Serving in the Armed Forces of the United States; **Effective Dates: IM-1000-2(a) and IM-1000-2(b): November 15, 2005; IM-1000-2(c): March 27, 2006**

Executive Summary

On November 15, 2005, NASD filed with the Securities and Exchange Commission (SEC) for immediate effectiveness amendments to Interpretive Material (IM) 1000-2 to (1) clarify that the scope of the relief provided in the IM extends to any registered person of a firm who volunteers for or is called into active military duty, not just registered representatives; (2) codify the staff's existing interpretation with respect to the receipt of transaction-related compensation by registered persons who volunteer for or are called into active military duty; (3) clarify that the relief provided to a registered person of a firm who volunteers for or is called into active military duty is available to the person during the period that such person remains registered with the firm, regardless of whether the person returns to employment at a different firm upon completion of his or her active military duty; and (4) clarify that the "inactive" status designation is available to registered persons and sole proprietors who volunteer for or are called into active duty in the Armed Forces of the United States and is available to them only while they remain on active military duty.¹ As part of these amendments, NASD also labeled and numbered the existing rule text. These amendments became effective on November 15, 2005.

Additionally, on January 26, 2006, the SEC approved amendments to IM-1000-2 to toll the two-year expiration provisions for qualification examination requirements set forth in Rules 1021(c), 1031(c), and 1041(c) for certain former registered persons serving in the Armed Forces of the United States, including persons who commence their

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active military duty within two years after they have ceased to be registered with a member and persons who terminate their registration with a member while on active military duty.² These amendments become effective on March 27, 2006.

IM-1000-2, as amended, is set forth in Attachment A.

Questions/Further Information

Questions concerning this *Notice* may be directed to Afshin Atabaki, Assistant General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8902.

Background and Discussion

IM-1000-2 permits a firm to place a registered representative on “inactive” status while serving in the Armed Forces of the United States. Such “inactive” status excuses a registered representative from continuing education obligations, waives dues and assessments, and ensures that he or she is not subject to the two-year expiration period for securities licenses of persons who cease to be registered with a member (two-year licensing expiration provisions).³

Historically, NASD has provided tailored regulatory relief to securities industry professionals who volunteer for or are called into active military duty. For instance, following the September 11, 2001 attacks, NASD filed with the SEC for immediate effectiveness a rule change that amended IM-1000-2 to codify the staff’s position regarding the relief from Rule 1120 (Continuing Education Requirements) for securities industry professionals who volunteer for or are called into active military duty.⁴ Additionally, following discussions with SEC staff, NASD published on its Web site guidance stating that “inactive” registered persons serving in the Armed Forces of the United States may receive transaction-related compensation, provided that they do not perform any functions of a registered person while on “inactive” status.⁵

NASD recently received requests for further clarification on the scope of IM-1000-2 and the accompanying guidance. In particular, members questioned whether the IM applies to registered persons other than registered representatives and whether registered persons can receive commissions on accounts that have been temporarily re-assigned in their absence. Members also questioned the manner in which the relief applies if a registered person seeks employment with a different member upon completing active military duty.⁶ Members further requested that NASD toll the two-year licensing expiration provisions in certain cases, such as where a person commences active military duty within two years after he or she has ceased to be registered with a member or where a person on active military duty ceases to be registered with a member, but seeks employment in the industry following completion of active service.

In response, NASD has amended IM-1000-2 as described in the following pages.

IM-1000-2(a) (Inactive Status of Currently Registered Persons) and IM-1000-2(b) (Inactive Status of Sole Proprietorships)

NASD has amended IM-1000-2 to clarify that the scope of the relief provided in the IM extends to any registered person of a member who volunteers for or is called into active military duty, not just registered representatives.

NASD also has amended IM-1000-2 to expressly state that a registered person of a member who volunteers for or is called into active duty in the Armed Forces of the United States and who is placed on "inactive" status will remain eligible to receive transaction-related compensation, including continuing commissions, because he or she remains registered with a member of NASD. In addition, NASD has amended IM-1000-2 to provide that an employing member may allow such a person to enter into an arrangement with another registered person of the member to take over and service the person's accounts and to share transaction-related compensation based upon the business generated by such accounts. NASD further has amended IM-1000-2 to state that such "inactive" persons may not perform any of the duties performed by a registered person. These amendments are consistent with NASD's existing interpretation with respect to the receipt of transaction-related compensation by registered persons actively serving in the Armed Forces of the United States.⁷

Additionally, NASD has amended IM-1000-2 to clarify that the relief provided to a registered person of a member who volunteers for or is called into active military duty is available to the person during the period that such person remains registered with the member, regardless of whether the person returns to employment at a different member upon completion of his or her active military duty. NASD will not rescind the relief provided to such a person simply because he or she decides to register with another member upon completion of his or her active military duty. For instance, if a registered person of Firm Y who volunteers for or is called into active military duty and who is placed on "inactive" status with Firm Y decides to register with Firm Z upon completion of her active military duty, NASD will not invalidate the relief that was provided to the person while on "inactive" status with Firm Y.

Moreover, NASD has amended IM-1000-2 to clarify that the "inactive" status designation is available to registered persons and sole proprietors who volunteer for or are called into active duty in the Armed Forces of the United States and is available to them only while they remain on active military duty. Therefore, a registered person who is placed on "inactive" status pursuant to IM-1000-2 will be removed from "inactive" status if the person ceases to be registered with a member while serving in the Armed Forces of the United States. If he or she re-registers with a member while still serving in the Armed Forces of the United States, he or she will again be eligible for "inactive" status pursuant to the IM. Likewise, a registered person or sole proprietor who is placed on "inactive" status pursuant to IM-1000-2 will be removed from "inactive" status if the registered person or sole proprietor is no longer on active military duty.

Effective Date

IM-1000-2(a) and IM-1000-2(b) became effective on November 15, 2005.

Notifying NASD

With respect to a person seeking relief pursuant to IM-1000-2(a) or IM-1000-2(b), the firm with which the person is registered or the sole proprietor must provide to NASD the following documentation regarding the person's active military service start date once the person's military service starts:

1. A copy of the individual's orders (official call-up notification) or a copy of the letter of leave request for individuals that voluntarily join (either document must include the individual's start date, and should include the individual's military branch and location of service duty); and
2. A letter from the firm (on firm letterhead) to NASD that includes the firm's CRD number, date that the individual started active military service, individual's name and individual's CRD number.

Additionally, the firm with which the person is registered or the sole proprietor should provide to NASD the following documentation regarding the person's active military service end date once the person's military service ends:

1. A copy of the individual's discharge papers that indicate the start and end dates of service; and
2. A letter from the firm to NASD that includes the firm's CRD number, date the individual returned to the firm, individual's name and individual's CRD number.

IM-1000-2(c) (Status of Formerly Registered Persons)

NASD also has amended IM-1000-2 to toll the "two-year licensing expiration provisions" for a person previously registered with a member who commences his or her active military duty within two years after he or she has ceased to be registered with the member. The tolling period will start on the date such person enters active military service and will terminate 90 days following the person's completion of active service in the Armed Forces of the United States. The amendment requires that NASD be properly notified (as described below) of the person's period of active military service within 90 days following his or her completion of active service or upon his or her re-registration with a member, whichever occurs first. If such person does not re-register with a member within 90 days following his or her completion of active service in the Armed Forces of the United States, the amount of time in which the person must become re-registered with a member without being subject to the "two-year licensing expiration provisions" will consist of the standard two-year period reduced by the period of time between the person's termination of registration and beginning of active service in the Armed Forces of the United States.⁸

Finally, NASD has amended IM-1000-2 to toll the “two-year licensing expiration provisions” for a person placed upon “inactive” status pursuant to IM-1000-2 who while serving in the Armed Forces of the United States ceases to be registered with a member. In such cases, the tolling period will start on the date such person ceases to be registered with the member and will terminate 90 days following the person’s completion of active service in the Armed Forces of the United States, and NASD has to be properly notified of the person’s period of active military service within two years following his or her completion of active service or upon his or her re-registration with a member, whichever occurs first. NASD will toll the “two-year licensing expiration provisions” for such persons based on available information in the Central Registration Depository (CRD) regarding their active military status. If such person does not re-register with a member within 90 days following his or her completion of active service in the Armed Forces of the United States, the person would have 90 days plus two years following the end of the person’s active service in the Armed Forces of the United States to become re-registered with a member.⁹

Effective Date

IM-1000-2(c) becomes effective on March 27, 2006.

Notifying NASD

With respect to a person seeking relief pursuant to IM-1000-2(c), the firm with which the person is seeking to register must provide to NASD the following documentation:

1. After the firm has submitted a Form U4, a letter from the firm to NASD notifying NASD that the individual was on active military duty. The letter should also include the firm’s CRD number, individual’s name, individual’s CRD number, and the date that the firm submitted the Form U4; and
2. A copy of the individual’s discharge papers that indicate the start and end dates of active military service.

Submitting Documentation

The documentation required by IM-1000-2 must be submitted to NASD by facsimile or mail:

Fax Number: (240) 386-4849

Mailing Address: NASD
Registration & Disclosure Department
P.O. Box 9495
Gaithersburg, MD 20898-9495

Endnotes

- 1 See Securities Exchange Act Release No. 52980 (December 19, 2005), 70 FR 76477 (December 27, 2005) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Status of Registered Persons and Sole Proprietors Serving in the Armed Forces of the United States; File No. SR-NASD-2005-134).
- 2 See Securities Exchange Act Release No. 53182 (January 26, 2006), 71 FR 5391 (February 1, 2006) (Order Approving a Proposed Rule Change Relating to the Status of Former Registered Persons Serving in the Armed Forces of the United States; File No. SR-NASD-2005-135).
- 3 NASD Rules 1021(c), 1031(c), and 1041(c) provide that if a person does not register with a member within two years of his or her last registration, his or her qualification as a principal, representative or assistant representative will lapse and the person must then retest to function as a principal, representative or assistant representative. In the case of a person on "inactive" status due to active military duty, because he or she is considered registered for purposes of NASD Rules, the "two-year licensing expiration provisions" do not apply.
- 4 See Securities Exchange Act Release No. 45259 (January 9, 2002), 67 FR 2256 (January 16, 2002) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Relieve Registered Representatives Serving in the Armed Forces From Continuing Education Requirements; File No. SR-NASD-2002-03).
- 5 See *Registered Persons on Active Military Duty* (available at: www.nasd.com/RegisteredMilitary).
- 6 Some members questioned whether the return of a registered person who volunteers for or is called into active military duty to employment at a different member would negate or invalidate the relief the person has received while being deemed "inactive" at their original employing member.
- 7 The NASD staff's interpretation with respect to the receipt of transaction-related compensation by registered persons serving in the Armed Forces of the United States also is consistent with the New York Stock Exchange, Inc.'s (NYSE) interpretation to NYSE Rule 345(a), which the NYSE codified in June 2002. See NYSE Interpretation Handbook, NYSE Rule 345(a)/03. Firms should be aware that the relief regarding the ongoing receipt of transaction-based compensation does not extend to a sole proprietor member placed on "inactive" status pursuant to IM-1000-2. Rather, consistent with current practice, NASD staff, in consultation with SEC staff, will address such issues in the context of a sole proprietor member placed on "inactive" status on a case-by-case basis.
- 8 For instance, if a person terminates his registration with a firm on August 1, 2005 is called into active military duty on November 1, 2005 and returns from active military duty on May 1, 2006, NASD would toll the "two-year licensing expiration provisions" beginning on November 1, 2005 until July 30, 2006 (which is 90 days following completion of his active military duty). In this example, NASD would have to be notified of his period of active military service by no later than July 30, 2006 or upon his re-registration with a member, whichever occurs first. Further, if he does not re-register with a member by July 30, 2006, he would then have 21 months remaining (24 months less the three months that ran prior to his entering active service) to re-register with a firm without having to re-take a qualification exam or seek a waiver.

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- 9 For example, assume a person registered with Firm A, enters active military duty on January 1, 2006, and is placed on “inactive” status for purposes of NASD registration. He then terminates his registration with Firm A on July 1, 2006 while still on active military duty. He returns from active military duty on December 1, 2006. In this example, NASD would remove his “inactive” status designation on July 1, 2006 because he has ceased to be registered with a member. However, NASD would toll the “two-year licensing expiration provisions” beginning on July 1, 2006, until March 1, 2007 (which is 90 days following completion of his active military duty). NASD would have to be notified of his period of active military service by no later than December 1, 2008 (which is two years following completion of his active military duty) or upon his re-registration with a member, whichever occurs first.

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ATTACHMENT A

New language is underlined; deleted language is in brackets.

IM-1000-2. Status of [Sole Proprietors and Registered Representatives] Persons Serving in the Armed Forces of the United States

(a) Inactive Status of Currently Registered Persons

(1) A[ny] [R]registered [Representative] person of a member who volunteers for or is called into active duty in the Armed Forces of the United States shall be placed, after proper notification to [the Executive Office] NASD, upon inactive status and need not be re-registered by such member upon his or her return to active employment with the member. Such a person will remain eligible to receive transaction-related compensation, including continuing commissions, because he or she remains registered with a member of NASD. The employing member also may allow such a person to enter into an arrangement with another registered person of the member to take over and service the person's accounts and to share transaction-related compensation based upon the business generated by such accounts. However, since such persons are inactive, they may not perform any of the duties performed by a registered person.

[Any member (Sole Proprietor) who temporarily closes his or her business by reason of volunteering or being called into the Armed Forces of the United States, shall be placed, after proper notification to the Executive Office, on inactive status until his or her return to active participation in the investment banking and securities business.]

(2) A [R]registered [Representative] person who is placed on inactive status [as set forth above] pursuant to this paragraph (a) shall not be included within the definition of "Personnel" for purposes of the dues or assessments as provided in Article VI of the NASD By-Laws.

[Any member placed on inactive status as set forth above shall not be required to pay dues or assessments during the pendency of such inactive status and shall not be required to pay an admission fee upon return to active participation in the investment banking and securities business.]

(3) A [R]registered [Representative] person who is placed on inactive status [as set forth above] pursuant to this paragraph (a) shall not be required to complete either of the Regulatory or Firm Elements of the continuing education requirements set forth in Rule 1120 during the pendency of such inactive status.

(4) The relief provided in subparagraphs (a)(1), (a)(2), and (a)(3) shall be available to a registered person who is placed on inactive status pursuant to this paragraph (a) during the period that such a person

remains registered with the member with which he or she was registered at the beginning of active duty in the Armed Forces of the United States, regardless of whether the person returns to active employment with another member upon completion of his or her active duty in the Armed Forces of the United States.

(5) The relief described in this paragraph (a) will be provided only to a person registered with a member and only while the person remains on active military duty.

(b) Inactive Status of Sole Proprietorships

(1) A member that is a sole proprietor who temporarily closes his or her business by reason of volunteering for or being called into active duty in the Armed Forces of the United States, shall be placed, after proper notification to NASD, on inactive status while the member remains on active military duty.

(2) A sole proprietor member placed on inactive status as set forth in this paragraph (b) shall not be required to pay dues or assessments during the pendency of such inactive status and shall not be required to pay an admission fee upon return to active participation in the investment banking and securities business.

(3) The relief described in this paragraph (b) will be provided only to a sole proprietor member and only while the person remains on active military duty.

(c) Status of Formerly Registered Persons

(1) If a person who is currently not registered with a member volunteers for or is called into active duty in the Armed Forces of the United States at any time within two years after the date the person ceases to be registered with a member, NASD will defer the lapse of registration requirements set forth in Rules 1021(c), 1031(c), and 1041(c) (i.e., toll the two-year expiration provisions for qualification examination requirements). NASD will defer the lapse of registration requirements commencing on the date the person begins actively serving in the Armed Forces of the United States, provided that NASD is properly notified of the person's period of active military service within 90 days following his or her completion of active service or upon his or her re-registration with a member, whichever occurs first. The deferral will terminate 90 days following the person's completion of active service in the Armed Forces of the United States. Accordingly, if such person does not re-register with a member within 90 days following his or her completion of active service in the Armed Forces of the United States, the amount of time in which the person must become re-registered with a member without being subject to the qualification examination requirements shall consist of the standard two-year period provided in Rules 1021(c), 1031(c), and 1041(c) reduced by the period of time between the person's termination of registration and beginning of active service in the Armed Forces of the United States.

(2) If a person placed upon inactive status while serving in the Armed Forces of the United States ceases to be registered with a member, NASD will defer the lapse of registration requirements set forth in Rules 1021(c),

1031(c), and 1041(c) (i.e., toll the two-year expiration provisions for qualification examination requirements) during the pendency of his or her active service in the Armed Forces of the United States. NASD will defer the lapse of registration requirements based on existing information in the Central Registration Depository, provided that NASD is properly notified of the person's period of active military service within two years following his or her completion of active service or upon his or her re-registration with a member, whichever occurs first. The deferral will terminate 90 days following the person's completion of active service in the Armed Forces of the United States. Accordingly, if such person does not re-register with a member within 90 days following his or her completion of active service in the Armed Forces of the United States, the amount of time in which the person must become re-registered with a member without being subject to the qualification examination requirements shall consist of the standard two-year period provided in Rules 1021(c), 1031(c), and 1041(c).

Disciplinary and Other NASD Actions

REPORTED FOR FEBRUARY

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 January 2006.

Firms Fined, Individuals Sanctioned

Aura Financial Services, Inc. (CRD #42822, Birmingham, Alabama), Leonard Peter Farber, (CRD# 2437625, Registered Principal, Wantagh, New York), and Timothy Michael Gautney, (CRD #2552149, Registered Principal, Birmingham, Alabama) submitted an Offer of Settlement in which the firm was censured and fined \$15,000 jointly and severally with Gautney. Gautney was also suspended from association with any NASD member in a principal capacity for five business days. Farber was fined \$7,500 and suspended from association with any NASD member in a principal capacity for 20 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Farber failed to supervise a registered representative. The findings stated that the firm, acting through Gautney, failed to establish, maintain and enforce a system to supervise registered representatives' activities that was reasonably designed to achieve compliance with applicable securities laws and regulations, and NASD rules.

Gautney's suspension began on January 17, 2006, and concluded at the close of business on January 23, 2006. Farber's suspension began on January 17, 2006, and concluded at the close of business on February 13, 2006. **(NASD Case #CLI20050014/ELI2003020802)**

Brookstreet Securities Corporation (CRD #14667, Irvine, California) and Stanley Clifton Brooks (CRD #31684, Registered Principal, San Clemente, California) submitted a Letter of Acceptance, Waiver and Consent in which they were censured and fined \$25,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Brooks, failed to establish, maintain and enforce a system of supervisory control policies and procedures reasonably designed to prevent the firm from issuing payments to non-registered recruiters. **(NASD Case #E0220030154-02)**

C.E. Unterberg, Towbin, LLC (CRD #24790, New York, New York), Thomas Israel Unterberg (CRD #451739, Registered Principal, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm and Unterberg were censured and fined \$20,000 jointly and severally. The firm was also fined an additional \$7,500. Without admitting or denying the allegations, the firm and Unterberg consented to the described sanctions and to the entry of findings that the firm untimely filed Uniform Termination Notices for Securities Industry Registration (Forms U5) with NASD. The findings also stated that the firm, acting through Unterberg, permitted an individual to engage in activities that required registration as a General Securities Representative and General Securities Principal. **(NASD Case #E1020030088-01)**

Commerce Capital Markets, Inc. (CRD #6940, Stowe, Vermont) and Vincent Joseph Stafford (CRD #501262, Registered Principal, Philadelphia, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$600,000, and required to review its established systems and procedures reasonably designed to achieve compliance with MSRB Rule G-37 and within 180 days an officer of the firm must certify to NASD in writing that the review has been completed and that it has established systems and procedures designed to achieve compliance with G-37. Stafford was fined \$10,000 and suspended from association with any NASD member in a municipal securities principal or supervisory capacity for 90 days. Without admitting or denying the allegations, the firm and Stafford consented to the described sanctions and to the entry of findings that the firm's municipal finance professionals (MFPs) made contributions through a political action committee to a state official and then participated in negotiated underwritings involving the issuer in violation of MSRB Rule G-37, failed to report the contributions to the MSRB, and the firm's MFPs did not keep contributions records current. The findings also stated that the firm, acting through Stafford, did not establish and maintain a supervisory system and procedures reasonably designed to ensure compliance with MSRB Rule G-37, and did not have certain internal policies, systems or procedures relating to political contributions by its MFPs.

Stafford's suspension began on January 30, 2006, and will conclude on April 29, 2006. **(NASD Case #E9A2004003801)**

Fox & Company Investments, Inc. (CRD #18517, Phoenix, Arizona) and James Wilfred Moldermaker (CRD #858894, Registered Principal, Scottsdale, Arizona) were fined \$35,000, jointly and severally, and Moldermaker was barred from association with any NASD member as a financial and operations principal (FINOP) and suspended from association with any NASD member in any principal and supervisory capacity for 10 business days. The U.S. Securities and Exchange Commission (SEC) sustained the sanctions NASD imposed following appeal of an NASD decision. The sanctions were based on findings that the firm, acting through Moldermaker, conducted securities business while failing to maintain the minimum required net capital. NASD also found that the firm, acting through Moldermaker, prepared, or caused to be prepared, materially inaccurate ledgers or other records reflecting his member firm's assets and liabilities, income and expenses, and capital accounts. The findings stated that the firm, acting through Moldermaker, submitted a Financial and Operational Combined Uniform Single report (FOCUS) to NASD that contained materially inaccurate information, including net capital computations. Finally, the findings also stated that the firm, acting through Moldermaker, failed to report an arbitration claim to NASD and failed to timely amend a Form U5 to disclose material information.

Moldermaker's suspension will begin on February 21, 2006, and will conclude at the close of business on March 6, 2006. **(NASD Case #C3A030017)**

Global Financial Services, L.L.C. (CRD #35699, Houston, Texas), Robert Claus Arthur Benjamin (CRD #838266, Registered Principal, Houston, Texas), Gerardo Arturo Chapa (CRD #1451790, Registered Principal, Houston, Texas), and Ricardo Perusquia (CRD #1781426, Registered Principal, Houston, Texas) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$100,000, of which \$50,000 is jointly and severally with Chapa, Benjamin and Perusquia, who were each suspended from association with any NASD member in any principal capacity for 30 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry

of findings that the firm, acting through Benjamin, Chapa and Perusquia, failed to establish, maintain and enforce a system including written procedures, to supervise the activities of its registered persons reasonably designed to achieve compliance with NASD's Trade Reporting and Compliance Engine system (TRACE) reporting rules. The findings stated that the firm, acting through Benjamin, Chapa and Perusquia, failed to report, and failed to timely report, transaction information for corporate bond transactions through TRACE.

Benjamin's suspension began on February 6, 2006, and will conclude at the close of business on March 7, 2006. Chapa's suspension will begin on March 8, 2006, and will conclude at the close of business on April 6, 2006. Perusquia's suspension will begin on April 7, 2006, and will conclude on May 6, 2006. (NASD Case #E062004005301)

Tejas Securities Group, Inc. (CRD #36705, Austin, Texas) and Arnold Reed Durant (CRD #716150, Registered Principal, Austin, Texas) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$225,000, and Durant was fined \$10,000 and barred in all principal and supervisory capacities. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Durant: failed to disclose its ratings distribution and the meaning of those ratings on research reports; failed to include a required price chart on research reports; failed to disclose the receipt of investment banking compensation on a research report; failed to disclose its market making status on research reports; provided a copy of a research report to an issuer without redacting all necessary information, including analysts' opinions, estimates and other non-factual information, allowed an analyst to purchase warrants, at a discount, from an issuer Durant covered within two days following the issuance of a research report on that issuer; and failed to ensure that research reports contained analyst certifications. NASD also found that the firm, acting through Durant, failed to ensure that all principals were appropriately registered. NASD found that the firm, acting through Durant, failed to establish a system to maintain and preserve all emails. In addition, NASD found that the firm, acting through Durant, failed to maintain emails, and failed to implement a system to monitor, archive and retrieve

instant messages. Moreover, the findings stated that the firm, acting through Durant, failed to evidence email reviews, and failed to provide notification of retention of electronic correspondence by means of electronic storage media. The findings further stated that the firm, acting through Durant, failed to maintain records evidencing that the firm prepared a written needs analysis and training plan for the firm element of the continuing education program. In addition, NASD determined that the firm failed to report corporate bond trades through TRACE; failed to accurately report the execution time and/or quantity or price; failed to timestamp municipal trade order tickets with the receipt time, entry and execution; failed to maintain municipal trade order tickets; and failed to reflect all required information on order tickets. (NASD Case #E062004010901)

World Choice Securities, Inc. (CRD #30933, Bedford, Texas) and William Ross Morris, III (CRD #1749931, Registered Principal, Hurst, Texas) submitted a Letter of Acceptance, Waiver and Consent in which the firm was fined \$25,000, of which \$15,000 is jointly and severally with Morris. Morris was suspended from association with any NASD member in any principal or supervisory capacity for 60 days and required to requalify by examination as a general securities principal (Series 24) before he can reassociate with any NASD member firm in any principal or supervisory capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they failed to supervise a registered representative's unsuitable variable annuity and variable universal life insurance offers and sales to public customers.

Morris' suspension began on February 6, 2006, and will conclude at the close of business on April 6, 2006. (NASD Case #E062003037502)

Firms and Individuals Fined

American Eastern Securities, Inc. (CRD #25621, Los Angeles, California) and Charles Trangchong Hung (CRD #2006307, Registered Principal, Hacienda Heights, California) submitted a Letter of Acceptance, Waiver and Consent in which they were censured and fined \$15,000, jointly and severally, and the firm was fined an additional \$5,000. Without admitting or

denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm utilized the instrumentalities of interstate commerce to engage in securities business while failing to have and maintain sufficient net capital. The findings stated that the firm, acting under Hung's direction and control, participated in a contingency securities offering in the form of interests issued by a company, which it intended to operate as a hedge fund. The firm did not transmit investor funds it raised in the offering to an unaffiliated bank to hold in escrow for the investors until the contingency occurred. The findings further stated that the firm, acting under the direction and control of Hung, solicited investments in the contingency offering through the use of a private placement memorandum, which represented the offering would not be funded unless a minimum dollar amount was received by the specified date. NASD found that when the contingency deadline was not met, it was not extended and the investors' funds were not returned. In addition, NASD found that the release of investor funds to the control of issuer before the contingency was satisfied rendered the foregoing representations in the private placement memorandum false and misleading. (NASD Case #E0220040041-02)

D.E. Wine Investments, Inc. (CRD #21188, Houston, Texas) and Robert Anthony Yrshus (CRD #858876, Registered Principal, Houston, Texas) submitted a Letter of Acceptance, Waiver and Consent in which they were censured and the firm was fined \$20,000, \$15,000 of which is jointly and severally with Yrshus, and \$5,000 of which is jointly and severally with another individual. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Yrshus, failed to deposit customer funds received in connection with a network offering into a bank escrow account as required by SEC Rule 15c2-4. The findings stated that the firm failed to terminate the offering and return investor funds when the minimum offering amount was not obtained. The findings also stated that the firm, acting through an individual, failed to terminate another offering and return investor funds after failing to raise the minimum offering amount during the offering period. In addition, the firm failed to make any computations or deposits into a special reserve bank account for the exclusive benefit of the offering's customers. NASD also found that the firm

filed inaccurate (FOCUS) reports. The findings also stated that the firm, acting through Yrshus, conducted a securities business while failing to maintain its required minimum net capital. (NASD Case #E062005005901)

Firms Fined

Bisys Fund Services Limited Partnership (CRD #15634, Boston, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$50,000 and required to revise its procedures regarding email communication preservation. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that its written supervisory procedures were not reasonably designed to ensure compliance with email retention requirements in that they did not provide for adequate follow-up and review to ensure that hard copies of all email communications were being retained. In determining the amount of the fine, NASD took into account the demonstrable corrective actions undertaken by the firm before the staff commenced its examination. (NASD Case #E112004043501)

Buttonwood Partners, Inc. (CRD #27108, Madison, 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 reported municipal securities transactions to the MSRB late and with inaccurate execution times. The findings also stated that the firm failed to report municipal securities transactions and reported transactions to the MSRB with inaccurate prices. NASD found that the firm failed to prepare adequate written supervisory procedures addressing the new MSRB reporting requirements. The findings also stated that the firm effected securities transactions that were reportable as TRACE transactions that it failed to timely report or reported with inaccurate execution times. NASD also found that the firm recorded inaccurate times on the municipal debt securities transactions order memoranda, and failed to evidence accurate time stamps on the order memoranda for its TRACE-eligible, corporate debt securities transactions. (NASD Case #E8A2005002801)

Chase Investment Services Corporation (CRD #25574, Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$150,000 and ordered to pay \$140,262 in restitution to mutual fund companies. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to take adequate steps relating to the "block letters" it received from mutual funds and/or their distributors that placed restrictions on future transactions by market timing customers. The findings stated that the firm failed to conduct any follow-up and review to ensure that the terms of the block letters were enforced. In addition, NASD found that the firm lacked an adequate supervisory system to prevent and detect customers circumventing the block letter restrictions. The findings also stated that the firm lacked written supervisory procedures relevant to mutual fund market timing activity. (NASD Case# E0220040352-01)

Commonwealth Financial Network, (CRD #8032, Waltham, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$100,000 and required to certify in writing, within 90 days, that it has reviewed its systems and procedures for complying with its Article V and NASD Conduct Rule 3070 reporting obligations, and that it has established systems and procedures reasonably designed to achieve compliance with the reporting requirements set forth therein. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to file amendments to Uniform Applications for Securities Industry Registration or Transfer (Forms U4) and Forms U5 in a timely manner. NASD found that the firm made inaccurate or late 3070 filings. NASD also found that the firm's supervisory system and procedures were not reasonably designed to achieve compliance with its Article V, and with NASD rules concerning reporting obligations. (NASD Case #E112004004301)

Essex National Securities, Inc. (CRD #25454, Napa, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$60,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to comply with the requirements of SEC Rule 15c3-3(k)(2)(i) in that it delivered customer checks for securities transactions that its registered representatives received to third-party

insurance agencies for processing, and failed to create a "Reserve Bank Account." The findings stated that, in connection with variable annuity sales, the firm made payments, or allowed payments to be made by the non-member third-party insurance agencies of transaction-based commissions, to the non-member third-party insurance agencies. The findings also stated that the firm failed to establish and maintain a supervisory system and written supervisory procedures reasonably designed to ensure the firm's compliance with SEC Rule 15c3-3 and NASD Conduct Rule 2420. (NASD Case #E012004002803)

E*Trade Clearing LLC (CRD #25025, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$12,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it submitted reports with respect to equity securities traded on the NASDAQ Stock Market to the Order Audit Trail SystemSM (OATSSM) that were not in the electronic form prescribed by NASD, and failed to correct them. (NASD Case #20050002086-01)

IFMG Securities, Inc. (CRD #14416, Purchase, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to establish, implement and enforce written policies, procedures and internal controls that were reasonably described to achieve compliance with the various requirements imposed by the Bank Secrecy Act and the regulations promulgated thereunder. (NASD Case #E9B2004007201)

Jeffries & Company, Inc. (CRD #2347, Los Angeles, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$100,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, in connection with a company's modified "Dutch Auction" partial tender offer to purchase up to 6,800,000 shares of its Class B common stock, and acting in a principal capacity through one of its registered representatives, the firm tendered 158,000 shares of Class B common stock to the purchaser and did not have a net long

position in the company's common stock, either at the time of its tender or at the time when it was obligated to deliver them, therefore violating SEC Rule 14e-4. NASD found that the firm did not establish, maintain and enforce written supervisory procedures reasonably designed to achieve compliance with securities laws, regulations and NASD rules. (NASD Case #E052003030703)

Legent Clearing LLC (CRD #117176, Omaha, Nebraska) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$40,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it made net deposits into its reserve bank account with funds withdrawn in part on its revolver loan agreement with the same bank that maintained the firm's operating account, and did not record the draws in its books until the end of the business day, so the firm's operating account was in a net deficit position at the time of the deposits. The findings stated that the firm reported transactions that contained inaccurate order ticket information to TRACE, and omitted reportable order tickets. The findings also stated that the firm did not properly report municipal transactions to the MSRB, and included inaccurate order ticket information. (NASD Case #E042004008402)

Loop Capital Markets, LLC (CRD #43098, Chicago, Illinois) 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 TRACE-reportable transactions, but failed to report them or reported them inaccurately. The findings stated that the firm failed to establish, maintain and enforce adequate written supervisory procedures that were reasonably designed to achieve compliance with the applicable NASD rules related to TRACE reporting. (NASD Case #E8A2004020101)

McKinnon & Company, Inc., (CRD #21907, Norfolk, Virginia) 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 did not timely develop and implement a written anti-money laundering (AML) program reasonably designed to achieve and monitor

compliance with the Bank Secrecy Act and the regulations promulgated thereunder, and failed to respond to information requests from the Financial Crimes Enforcement Network (FinCEN). (NASD Case #E9A2004013601)

Oscar Gruss & Son, Inc. (CRD #2091, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$30,000 and required, within 30 business days, to revise its written supervisory procedures with respect to applicable securities laws, regulations, and NASD rules concerning best execution of agency orders, review of execution quality, riskless principal trade reporting and long/short sale reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it transmitted reports that contained inaccurate, incomplete or improperly formatted data to OATS. NASD found 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 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 identify a venue on its report on the routing of its non-directed orders in covered securities. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and NASD rules concerning best execution of agency orders, regular and rigorous review of execution quality, riskless principal trade reporting and long/short sale reporting. (NASD Case #20042000193-01)

Prudential Equity Group, LLC (CRD #7471, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to 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 security. NASD found that the firm failed to report a cancel/replace or cancel report for OATS-reportable orders to OATS, and failed to report the correct order receipt time for one OATS-reportable order. (NASD Case #20042000033-01)

Scottrade, Inc. (CRD #8206, St. Louis, Missouri) 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 failed to timely file customer complaints, and filed complaints with incorrect receipt dates. NASD found that the firm failed to timely report TRACE-eligible transactions within 30 minutes of the execution time. The findings stated that the firm failed to timely report inter-dealer transactions, and failed to have in place an adequate supervisory system reasonably designed to ensure the timely reporting of MSRB transactions. (NASD Case #E0420050093-01)

Sky Capital LLC (CRD #114657, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm acted as a placement agent in private placement offerings involving minimum-maximum contingencies, and was not included as a party in any written agreement with a bank under which the bank agreed to hold all money or other consideration received in escrow for the persons who had the beneficial interests therein, and to transmit or return such funds directly to the persons entitled thereto when the appropriate event or contingency had occurred. NASD found that the firm permitted an individual to act in a capacity that required registration while his NASD registration status was inactive due to his failure to complete the Regulatory Element of NASD's Continuing Education Requirement. (Case #E1020030479-02)

Southwest Texas Capital, LLC (CRD #104200, Plano, Texas) submitted a Letter of Acceptance, Waiver and Consent in which the firm was fined \$10,000, of which \$5,000 is jointly and severally with an individual. Without admitting or denying the allegations, the firm

consented to the described sanctions and to the entry of findings that the firm, acting through an individual, conducted a securities business while failing to maintain its required minimum net capital. The findings also stated that the firm failed to establish and maintain a supervisory system that was reasonably designed to achieve compliance with applicable securities laws and regulations and with NASD rules. Specifically, the firm's procedures stated that the firm and its associated persons could take possession of and promptly forward customer funds and securities, when in fact, based on its net capital requirement, the firm could not take possession of customer funds or securities, not even to forward the funds or securities to the firm's clearing firm on the same business day. (NASD Case #E062005004201)

Trautman Wasserman & Company, Inc. (CRD #33007, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to promptly report customer settlements to NASD. NASD found that the firm failed to report corporate bond transactions to TRACE, incorrectly reported principal purchase transactions as agency sell transactions and reported transactions more than 45 minutes from the execution time. NASD also found that order tickets were missing execution times, and others contained inaccurate execution times. (NASD Case #E102003052803)

UBS Securities, LLC (CRD #7654, Stamford, Connecticut) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it disseminated research reports that failed to contain required disclosures to its clients. (NASD Case #E112004018901)

UNX, Inc., (CRD #46145, Burbank, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it transmitted reports containing inaccurate, incomplete or improperly formatted data to OATS on its own behalf and on behalf of another member. (NASD Case #20050000165-01)

Utendahl Captial Partners, L.P. (CRD #30115, 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 executed TRACE-eligible bond transactions through its clearing firm that were late and contained incorrect data. The findings stated that the firm failed to have adequate written procedures to monitor its trade reporting to ensure compliance with TRACE reporting requirements. **(NASD Case #E1020040422-01)**

ViewTrade Securities, Inc. (CRD 46987, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$62,500, ordered to pay \$197 in restitution, and required to revise its written supervisory procedures with respect to the applicable securities laws and regulations, and NASD rules concerning SEC Rule 11Ac1-6, best execution, anti-intimidation/coordination, trade reporting, locking or crossing the market, affirmative determination, bid test and tick test. 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 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.

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 concerning the Display Rule. In addition, NASD found that the firm failed to timely report reportable order events (ROEs) to OATS, and submitted reports with respect to equity securities traded on NASDAQ to OATS that were not in the electronic form prescribed by NASD. The firm did not correct or replace the repairable reports. The findings further stated that the firm failed to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy or sell in such market so that the customer's resultant price was as favorable as possible under prevailing market conditions, and failed to report last sale reports of

transactions in NASDAQ securities executed during normal market hours through the Automated Confirmation Transaction ServiceSM (ACTSM). In addition, NASD found that the firm failed to report the correct symbol indicating whether the transaction was a buy, sell, sell short, sell short exempt or cross for transactions in eligible securities to ACT, and failed to report the correct symbol indicating whether the firm executed transactions in eligible securities in a principal, riskless principal or agency capacity to ACT. The findings also stated that the firm failed to ensure that its clearing firm properly coded and delivered orders into its trading system, resulting in the firm's failure to report the contra side executing broker in three transactions in eligible securities to ACT, and failed to contemporaneously or partially execute a customer limit order in an over-the-counter transaction (OTC) in a security quoted on the OTC Bulletin Board after it traded each subject security for its own market-making account at a price that would have satisfied each customer's limit order.

NASD also found that the firm transmitted reports that contained inaccurate, incomplete or improperly formatted data to OATS, and failed to discuss material aspects of its relationship with other venues in a published report on its routing of non-directed orders in covered securities, including a description of any payment arrangement for order flow and any profit-sharing relationship. NASD also found that the firm failed to notify customers in writing, at least annually, of the availability of the information on order routing upon request. In addition, the findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and NASD rules concerning SEC Rule 11Ac1-6, best execution, anti-intimidation/coordination, trade reporting, locking or crossing the market, affirmative determination, bid test and tick test. **(NASD Case #20042000016-01)**

Wave Securities, LLC (CRD #43705, Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$125,000, and required to revise its written supervisory procedures with respect to applicable securities laws and regulations concerning marking customer order tickets, bid test, prompt receipt and delivery of securities and ACT reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to

the entry of findings that it did not make and annotate an affirmation determination prior to accepting customer short sale orders; it relied upon a document that did not meet the requirements that any hard to borrow list include securities that are restricted pursuant to Uniform Practice Code Rule 11830, and the creator of the list attest in writing that the NNM or listed security not on the list is easy to borrow or available for borrowing; and the firm did not limit its use of the list to NNM and listed securities. The findings stated that the firm incorrectly classified a hedge fund customer account as a broker-dealer account. NASD found that the firm accepted short sale orders from the hedge fund customer and failed to make/annotate an affirmative determination. In addition, NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to marking customer order tickets, bid test, prompt receipt and delivery of securities and ACT reporting. (NASD Case #20041000038-01)

Wellington Securities, Inc. (CRD #16659, San Francisco, California) 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 received mutual fund orders from customers after the market closed, and as a result of the firm's use of the beta system, the orders received the current day's net asset value (NAV) price instead of the following day's NAV price. The findings stated that the firm failed to establish, maintain or enforce a supervisory system and written procedures that were reasonably designed to prevent and detect late mutual fund trading. (NASD Case #E0120040089-01)

Individuals Barred or Suspended

Ralph Gerard Adamo (CRD #1624126, Registered Representative, Newport Beach, California) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Adamo consented to the described sanctions and to the entry of findings that he entered settlement agreements with public customers without his member firm's knowledge or consent.

Adamo's suspension began on February 6, 2006, and will conclude at the close of on business March 7, 2006. (NASD Case #20050009581-01)

James Michael Adgar (CRD #4734751, Registered Representative, Alameda, 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 60 days. Without admitting or denying the allegations, Adgar consented to the described sanctions and to the entry of findings that he affixed a public customer's signature to a new account form and deferred compensation plan participant form without the customer's specific knowledge or consent.

Adgar's suspension began on February 6, 2006, and will conclude at the close of business on April 6, 2006. (NASD Case #20050023229-01)

Sharon Dale Anderson (CRD #3222901, Registered Representative, Eugene, Oregon) 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 Anderson reassociates with any NASD member following the suspension, or before she requests relief from any statutory disqualification. Without admitting or denying the allegations, Anderson consented to the described sanctions and to the entry of findings that she affixed, or caused to be affixed, a public customer's signature to a direct business transaction cover sheet without the customer's authorization, consent or knowledge.

Anderson's suspension began on February 6, 2006, and will conclude at the close of business on April 6, 2006. (NASD Case #2005000634901)

Jane Marie Andrashie (CRD #2709918, Registered Principal, Marshall, Wisconsin) submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Andrashie consented to the described sanction and to the entry of findings that she misappropriated funds of an insurance agency affiliated with her member firm for her personal use without the account holder's knowledge or consent. (NASD Case #2005000838001)

Scott William Ayers (CRD #2324759, Registered Representative, Flora, Indiana) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member for 10 business days. The fine must be paid before Ayers reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Ayers consented to the described sanctions and to the entry of findings that he effected transactions in public customers' accounts without having obtained their prior written authorization and the member firm's prior written acceptance of the accounts as discretionary.

Ayers' suspension began on February 6, 2006, and concluded at the close of business on February 17, 2006. (NASD Case #E8A2004096101)

Constance Mulherin Baumgarn (CRD #4684408, Registered Representative, Katy, Texas) 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, Baumgarn consented to the described sanction and to the entry of findings that she forged public customers' signatures on an investment application and a charge card authorization form. (NASD Case #2005002209001)

Randall Todd Becker (CRD #2706294, Registered Principal, Sammamish, Washington) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Becker consented to the described sanction and to the entry of findings that he participated in private securities transactions without prior written notice to, and approval from, his member firm. The findings stated that Becker paid \$233,428 of the firm's funds to himself as compensation without the firm's authorization, other than for the \$60,000 to which he was entitled pursuant to his employment agreement, thereby converting these funds for his own use and benefit. (NASD Case #E3B2004015601)

Marc Stephen Boriosi (CRD #2980789, Associated Person, Clarks Summit, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the

allegations, Boriosi consented to the described sanction and to the entry of findings that he misused \$15,000 of a public customer's funds by failing to purchase stock for that customer as promised, and failed to return the customer's funds until a later time. The findings also stated that Boriosi failed to respond to NASD requests for information. (NASD Case #E9B2004050901)

Sherwin Presly Brown (CRD #1842423, Associated Person, St. Paul, Minnesota) was barred from association with any NASD member in any capacity. The sanction was based on findings that he failed to respond to NASD requests for information and to appear for an on-the-record interview. (NASD Case #C04050026)

Ronald Scott Caputo (CRD #1464988, Registered Representative, Far Hills, 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, Caputo consented to the described sanction and to the entry of findings that he failed to attend scheduled NASD on-the-record interviews. (NASD Case #2005000028402)

Richard Dean Carter (CRD #2255043, Registered Representative, Lake Zurich, 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, Carter consented to the described sanction and to the entry of findings that he circumvented a heightened supervision plan by falsely representing that other registered representatives were the representatives on public customer accounts, when, in fact, Carter was the representative on the accounts and the one effecting the trades. (NASD Case #E8A2004064504)

Daniel Castaneda (CRD #4948757, Associated Person, Panorama City, California) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any member of NASD in any capacity for two years. The fine must be paid before Castaneda reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Castaneda consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on his Form U4.

Castaneda's suspension began on February 6, 2006, and will conclude at the close of business on February 5, 2008. (NASD Case #20050019101-01)

Jeffrey Lew Chapman (CRD# 2183259, Registered Representative, Millbrook, Alabama) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000, including a disgorgement of \$1,300 in commissions earned, and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Chapman reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Chapman consented to the described sanctions and to the entry of findings that he participated in private securities transactions and received compensation without providing prior written notice to his member firm.

Chapman's suspension began on January 17, 2006, and will conclude on April 16, 2006. (NASD Case #E052004029801)

Francis Byrne Colavita (CRD #1835415, Registered Representative, Milwaukee, Wisconsin) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Colavita consented to the described sanction and to the entry of findings that he misappropriated public customers' funds for his personal use without their knowledge and consent. The findings stated that he failed to respond to NASD requests for information. (NASD Case #2005000636901)

Frank Joseph Conte (CRD #1305007, Registered Representative, Millstone Township, 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, Conte consented to the described sanction and to the entry of findings that he borrowed funds from a public customer without providing notification of such borrowing to his member firm. The findings also stated that Conte failed to respond to NASD requests for information or to appear for testimony. (NASD Case #2005001426601)

Cynthia Mary Couyoumjian (CRD #1456630, Registered Principal, Tustin, California) submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$20,000 and suspended from association with any NASD member in any capacity for 31 days. Without admitting or denying the allegations, Couyoumjian consented to the described sanctions and to the entry of findings that she disseminated advertising and sales literature without prior approval from a registered principal of an NASD member firm, and failed to file the advertising and sales literature with NASD's Advertising Regulation Department within 10 business days of first use or publication. The findings stated that Couyoumjian's advertising and sales literature presented oversimplified claims that omitted material information, or failed to provide a sound basis for evaluating the facts, and contained exaggerated, unwarranted or misleading statements or claims.

Couyoumjian's suspension will begin on February 21, 2006, and will conclude at the close of business on March 23, 2006. (NASD Case #E0220030761-01)

John Dewayne Crist (CRD #4027334, Associated Person, Mesquite, Texas) submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Crist reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification (whichever is earlier). Without admitting or denying the allegations, Crist consented to the described sanctions and to the entry of findings that he willfully failed to disclose material information on a Form U4.

Crist's suspension began on January 17, 2006, and will conclude on July 16, 2006. (NASD Case #2005000741202)

Alan Richard Davidson (CRD #61514, Registered Principal, Palm Coast, Florida) 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 30 business days. Davidson was also suspended from association with any NASD member in any capacity for one year. The imposed suspensions will run concurrently. The fine must be paid before Davidson reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification

(whichever is earlier). Without admitting or denying the allegations, Davidson consented to the described sanctions and to the entry of findings that he engaged in activities outside the scope of his member firm, and accepted compensation without providing his member firm with prompt written notice. The findings stated that he participated in private securities transactions without providing his member firm with written or oral notice for some of the transactions, and gave oral notice, but not written notice, for the remaining transactions.

Davidson's suspensions began on January 17, 2006, and will conclude at the close of on business January 16, 2007. (NASD Case #E072004084101)

Anthony Otto DeGregorio, Sr. (CRD #64093, Registered Principal, Tinton Falls, 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, DeGregorio consented to the described sanction and to the entry of findings that he recommended the purchase of private placements of speculative securities to a public customer without having a reasonable basis for believing that the recommendations were suitable based on customer's investment objectives, financial situation and needs. NASD found that DeGregorio participated in private securities transactions without providing prior written notice to, or receiving written approval from, his member firm. (NASD Case #E9B2004018801)

Paul Joseph Disidoro (CRD #1268111, Registered Representative, Allston, 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, Disidoro consented to the described sanction and to the entry of findings that he received checks totaling \$50,000 from a public customer to be invested and, without the customer's knowledge or consent, Disidoro deposited the checks in his personal bank account and converted the proceeds for his own use and benefit. (NASD Case #E11200500190801)

Kevin Robert Drajer (CRD #4413189 Associated Person, South Bend, Indiana) 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,

Drajer consented to the described sanctions and to the entry of findings that he received funds from public customers for investment purposes, but did not apply the funds as directed without the customers' knowledge or consent. The findings stated that he used the funds for his personal benefit or the benefit of someone other than the customers. The findings also stated that he failed to respond to NASD requests for information. (NASD Case # E8A2004048201)

Daryl Irvin Drawbaugh (CRD #71778, Registered Principal, San Pedro, California) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and barred from association with any NASD member in a FINOP capacity. Without admitting or denying the allegations, Drawbaugh consented to the described sanctions and to the entry of findings that he failed to make and keep accurate financial records. The findings stated that he, on behalf of his member firm, utilized instrumentalities of interstate commerce to engage in a securities business while failing to maintain the required minimum net capital. The findings also stated that Drawbaugh submitted FOCUS reports on behalf of his firm, which contained materially inaccurate net capital computations. (NASD Case #E0220040193-01)

Joyce Lynn English (CRD #4594306, Associated Person, Dublin, Ohio) was barred from association with any NASD member in any capacity. The sanction was based on findings that she was in possession of unauthorized materials and cheated during a qualifications examination, which violated Registration Rule 1080 and Conduct Rule 2110. (NASD Case #C8A040091)

Peter Edward Firlie (CRD #1053561, Registered Supervisor, Cumberland, Maryland) submitted Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. The fine must be paid before Firlie reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Firlie consented to the described sanctions and to the entry of findings that he exercised discretion in public customers' accounts without obtaining their written authorization and his member firm's acceptance of the accounts as discretionary. Firlie's suspension began

on January 30, 2006, and concluded at the close of business on February 10, 2006. (NASD Case #E9B2004048501)

Bruce Larry Fleet (CRD #1529233, Registered Representative, Castle Rock, Colorado) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Fleet consented to the described sanctions and to the entry of findings that he recommended transactions to public customers without having a reasonable basis for his recommendations.

Fleet's suspension began on February 6, 2006, and will conclude at the close of business on February 27, 2006. (NASD Case #E3A20040156-01)

Sheldon Bruce Fox (CRD #814251, Registered Representative, Edison, 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, Fox consented to the described sanction and to the entry of findings that, in connection with a public customer's investment, he signed documents without the customer's authorization or consent. (NASD Case #E9B2004053201)

Heather Jannelle Furgason (CRD #4241326, Associated Person, Kalamazoo, Michigan) was barred from associating with any NASD member firm in any capacity. The sanction was based on the findings that she misused public customers' funds without their knowledge or consent. (NASD Case #C8A050054)

Christopher Edward Gaddy (CRD #4872241, Associated Person, El Mirage, Arizona) was barred from association with any NASD member in any capacity. The sanction was based on findings that he willfully failed to disclose material information on his Form U4. NASD found that Gaddy failed to respond to NASD requests for information. (NASD Case #C3A050038)

Gregory Gassoso (CRD #2873605, Registered Representative, Staten Island, New York) submitted an Offer of Settlement in which he was fined \$6,000 and suspended from association with any NASD member in any capacity for 60 days. Without admitting

or denying the allegations, Gassoso consented to the described sanction and to the entry of findings that he effected unauthorized transactions in public customers' accounts without their prior knowledge, authorization or consent. NASD found that Gassoso failed to forward incoming and outgoing electronic correspondence for his member firm's review that prevented his firm from discharging its supervisory obligation.

Gassoso's suspension began on January 17, 2006, and will conclude at the close of business on March 17, 2006. (NASD Case #C10050048/E102003059702)

Thomas Patrick Gibbons (CRD #2445588, Registered Representative, Forest Hill, Maryland) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gibbons consented to the described sanction and to the entry of findings that he converted \$1.5 million that belonged to persons who maintained accounts with him at his member firm for his own use and benefit. The findings also stated that he failed to respond to NASD requests for information. (NASD Case #2005001305901)

Melissa A. Gicherman (CRD #4646939, Associated Person, Watertown, New York) submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for 90 days. The fine must be paid before Gicherman reassociates with any NASD member following the suspension, or before she requests relief from any statutory disqualification. Without admitting or denying the allegations, Gicherman consented to the described sanctions and to the entry of findings that she signed a registered representative's name on insurance and annuity documents without the representative's knowledge or authorization.

Gicherman's suspension began on January 17, 2006, and will conclude on April 16, 2006. (NASD Case #2005001976301)

Juliette Suzanne Gleason (CRD #1648485, Registered Principal, Duxbury, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$15,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Gleason

reassociates with any NASD member following the suspension, or before she requests relief from any statutory disqualification. Without admitting or denying the allegations, Gleason consented to the described sanctions and to the entry of findings that she participated in private securities transactions and received commissions without providing prior written notice to, and receiving prior written approval from, her member firm.

Gleason's suspension will begin on March 6, 2006, and will conclude at the close of business on March 5, 2007. (NASD Case #E0220030722-01)

Stephen Scott Griffith (CRD #4665242, Registered Representative, Woburn, 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 60 days. The fine must be paid before Griffith reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Griffith consented to the described sanctions and to the entry of findings that he signed public customers' signatures on internal firm forms.

Griffith's suspension began on January 30, 2006, and will conclude at the close of business on March 30, 2006. (NASD Case #2005002366401)

Thomas Edwards Grimm (CRD #2702276, Registered Representative, West Islip, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, Grimm consented to the described sanctions and to the entry of findings that he altered the date on a previously signed automated customer account transfer (ACAT) form in order to effect a transfer of a public customer's account from his former employing firm to his new employing firm without the customer's authorization.

Grimm's suspension began on December 10, 2005, and concluded at the close of business on February 7, 2006. (NASD Case #2005001069901)

Stephen Craig Hanke (CRD #1253189, Registered Representative, Kennesaw, Georgia) submitted a Letter of Acceptance, Waiver and Consent in which

he was suspended from association with any NASD member in any capacity for 20 business days. In light of Hanke's financial status, no monetary sanctions were imposed. Without admitting or denying the allegations, Hanke consented to the described sanctions and to the entry of findings that he borrowed funds from a public customer without obtaining his member firm's written pre-approval.

Hanke's suspension began on February 6, 2006, and will conclude at the close of business on March 6, 2006. (NASD Case #2005003475901)

Michael Jay Heathman (CRD #2937131, Registered Representative, Lexington, Kentucky) 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, Heathman consented to the described sanction and to the entry of findings that he solicited and accepted \$43,374 from a public customer, then deposited the funds into his bank account for his personal use without the customer's knowledge or consent. The findings stated that he failed to respond to NASD requests for information. (NASD Case #E8A20040867)

Adam Wesner Holden (CRD #1904035, Registered Representative, Bloomington, Indiana) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000, ordered to pay \$60,992 in disgorgement, and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Holden reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Holden consented to the described sanctions and to the entry of findings that he participated in private securities transactions for compensation without providing prior written notification to, and receiving prior written approval from, his member firm.

Holden's suspension began on January 3, 2006, and will conclude at the close of business on January 2, 2007. (NASD Case #E8A2003078701)

John Iarussi (CRD #3035702, Registered Representative, Fanwood, New Jersey) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity.

Without admitting or denying the allegations, larussi consented to the described sanction and to the entry of findings that, in connection with the purchase or sale of securities, he directly or indirectly, by the use of the means or instrumentalities of interstate commerce or of the mails, or of any facility of any national securities exchange, knowingly or recklessly employed devices, schemes or artifices to defraud; made untrue statements of material facts 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; engaged in acts, practices, or courses of business that operated, or would operate as a fraud or deceit upon any person; or effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive or other fraudulent devices or contrivances. Among other things, NASD found that larussi engaged in a pattern and practice of allocating profitable transactions to the firm's proprietary account and allocating inferior executions within the same securities to customer accounts. The findings also stated that larussi failed to respond to NASD requests for information. (NASD Case #E9B2004035501)

Johnny Marc Jordan (CRD #1972813, Registered Representative, Keller, Texas) was barred from association with any NASD member in any capacity. The sanction was based on the findings that Jordan failed to respond to NASD requests for information. The findings stated that he failed to follow a public customer's trading instructions. (NASD Case #2005000126701)

Susan Lynne Kankaras (CRD #2860297, Registered Principal, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for 90 days. Without admitting or denying the allegations, Kankaras consented to the described sanctions and to the entry of findings that she engaged in outside business activities without providing her member firm prompt written notice.

Kankaras' suspension began on January 17, 2006, and will conclude on April 16, 2006. (NASD Case #2005001707-01)

Vincent Alan Krey (CRD #2645442, Registered Principal, Sparta, Michigan) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any

member of NASD in any capacity for one year. The fine must be paid before Krey reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Krey consented to the described sanctions and to the entry of findings that he affixed a public customer's signature on a change of broker-dealer authorization Form without the customer's knowledge or consent.

Krey's suspension began on February 6, 2006, and will conclude at the close of business on February 5, 2007. (NASD Case #E8A20040386801)

Michael Joseph Lancaster (CRD #1353552, Registered Representative, Magnolia, Ohio) submitted a Letter of Acceptance, Waiver and Consent in which Lancaster 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, Lancaster consented to the described sanctions and to the entry of findings that he effected discretionary transactions in public customers' accounts without obtaining their prior written authorization and his member firm's prior written acceptance of the accounts as discretionary.

Lancaster's suspension began on January 3, 2006, and concluded at the close of business on January 17, 2006. (NASD Case #E8A2004099501)

David Richard Ludowese (CRD #2354873, Registered Representative, Rochester, Minnesota) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any member of NASD in any capacity for six months. The fine must be paid before Ludowese reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Ludowese consented to the described sanctions and to the entry of findings that he failed to promptly respond to NASD requests for information. The findings stated that he distributed a misleading email regarding a potential investment to a public customer.

Ludowese's suspension began on February 6, 2006, and will conclude at the close of business on August 5, 2006. (NASD Case #E042004036501)

Gordon Scott Lurry (CRD #2047101, Registered Representative, Fort Worth, Texas) 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, Lurry consented to the described sanctions and to the entry of findings that he received a loan from a public customer and did not obtain his member firm's written approval to borrow the customer's funds.

Lurry's suspension began on February 6, 2006, and will conclude at the close of business on February 17, 2006. (NASD Case #2005001829701)

Scott Edward Macek (CRD #4272865, Registered Representative, Cable, 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, Macek consented to the described sanction and to the entry of findings that he caused the withdrawal of at least \$35,938 from a public customer's account for his personal use without the customer's knowledge or consent. The findings stated that he opened credit cards in a public customer's name without the customer's knowledge or consent, and converted at least \$7,275 for his personal use. NASD found that he forged the customer's signature on the member's client change request form in order to change the representative of the account to himself. (NASD Case #E8A2004087801)

Loren William Magill (CRD #4732113, Associated Person, Santa Monica, California) submitted an Offer of Settlement in which Magill was fined \$5,000 and suspended from association with any NASD member in any capacity for nine months. The fine must be paid before Magill reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Magill consented to the described sanctions and to the entry of findings that he willfully failed to disclose material facts on his Form U4.

Magill's suspension began on February 6, 2006, and will conclude on November 5, 2006. (NASD case #E0220040228-03)

Jeffrey Bruce Marasso (CRD #2088364, Registered Representative, Bonita, California) submitted a Letter of Acceptance, Waiver and Consent in which he was

suspended from association with any NASD member in any capacity for 90 days. Without admitting or denying the allegations, Marasso consented to the described sanction and to the entry of findings that he participated in private securities transactions without providing prior written notice to, and receiving prior written approval from, his member firm.

Marasso's suspension began on February 6, 2006, and will conclude on May 6, 2006. (NASD Case #E0220030721-01)

Donald Gerard Mayer (CRD #2915419, Registered Representatives, Mason, 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, Mayer consented to the described sanction and to the entry of findings that he engaged in private securities transactions, but failed to give written notice to his member firm and failed to receive written approval from his member firm, prior to engaging in such activities. (NASD Case #E8A20040965)

Kenneth Lee McLaughlin (CRD #1645641, Registered Principal, Akron, Ohio) and Jon Martee Wade (CRD #1642488, Associated Person, Little Rock, Arkansas) McLaughlin was fined \$10,000 and suspended from association with any NASD member in any capacity for one year, and Wade was barred from association with any NASD member in any capacity. The findings state that McLaughlin failed to establish, maintain and enforce written supervisory procedures to ensure compliance with his member firm's AML program. The findings also stated that Wade engaged in excessive mutual fund and municipal bond trading in a public customer's account. In addition, the findings stated that Wade failed to respond to NASD requests for information.

McLaughlin's suspension began on January 3, 2006, and will conclude at the close of business on January 2, 2007. (NASD Case #C8A050048)

Robert Patrick Naif (CRD #4667146, Associated Person, Riverside, California) was fined \$10,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Naif reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. The

sanctions were based on findings that he willfully failed to disclose material information on his Form U4.

Naif's suspension began on January 2, 2006, and will conclude on January 1, 2008. **(NASD Case #E0220030845-01)**

Lawrence Nallie (CRD #2364153, Associated Person, New Albany, Ohio) was barred from association with any NASD member in any capacity. The sanctions were based on the findings that he misused public customers' funds. The findings stated that he engaged in outside business activities and failed to provide his firm with prompt written notification of his activities. The findings also stated that he failed to respond to NASD requests for information. **(NASD Case #C8A050004)**

Charles William Naron (CRD #2647163, Associated Person, Lake Worth, Florida) was barred from association with any NASD member in any capacity. The sanction was based on the findings that he engaged in outside business activities for compensation without providing his member firm with prompt written notice. **(NASD Case # C07050048)**

Alan Reinhold Peterson Jr. (CRD #1315018, Registered Principal, Illesheim, Germany) 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, Peterson 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 #2005000364201)**

Douglas Alan Rauh (CRD #1465225, Registered Principal, Laguna Niguel, California) was fined \$118,495 and barred from association with any NASD member in any capacity. The sanctions were based on findings that he willfully failed to disclose material information on his Form U4. NASD found that Rauh exercised discretion in the public customers' accounts without receiving their prior written authorization to exercise such discretionary power and without receiving his member firm's acceptance of the discretionary account. The findings stated that Rauh recommended and effected securities transactions in a public customer's account without having reasonable grounds for believing that such transactions were suitable for the customer in view of the size, frequency, concentration

of the speculative securities, and nature of the recommended transactions, and in light of the customer's financial situation, investment objectives, circumstances and needs. The findings also stated that Rauh, while exercising control over a public customer's account, executed options trades without reasonable grounds for believing that the customer was capable of evaluating the transactions' risks; was financially able to bear the risks of the recommendations; and the trades were not suitable. **(NASD Case #C02040044)**

Charles Duke Riehle (CRD #1976394, Registered Representative, Cedar Falls, Iowa) 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, Riehle consented to the described sanction and to the entry of findings that he accepted a check for investment purposes from a public customer and misused the funds. The findings stated that he failed to respond to NASD requests for information. **(NASD Case #20050022998-01)**

Sergio M. Rovner (CRD #2884441, Registered Principal, Brooklyn, 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 30 days. Without admitting or denying the allegations, Rovner consented to the described sanctions and to the entry of findings that he engaged in a pattern of trading activity in a public customer's account that was excessive in light of the customer's objectives, financial situation and needs.

Rovner's suspension began on January 5, 2006, and concluded at the close of business on February 3, 2006. **(NASD Case #ELI2003002604)**

Kenneth Robert Rowlett (CRD #1662012, Registered Principal, Portland, Oregon) 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, Rowlett consented to the described sanction and to the entry of findings that he affixed, or caused to be affixed, the signatures of public customers on a mutual release that he delivered to attorneys representing his former member firm in defense of an arbitration claim brought by the customers. **(NASD Case #C3B050003)**

Christopher Eric Saxon (CRD #2746882, Registered Representative, Indianapolis, Indiana) 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, Saxon consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. **(NASD case #20050024723-01)**

Joseph Giuseppe Scali, Jr. (CRD #2564129, Registered Representative, Garden City, 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 10 business days. Without admitting or denying the allegations, Scali consented to the described sanctions and to the entry of findings that he solicited a public customer to purchase a security, but misrepresented material facts and made price projections about the security.

Scali's suspension began on January 17, 2006, and concluded at the close of business on January 30, 2006. **(NASD Case #20050014706-01)**

Marsha Kay Schubert (CRD #2205744, Registered Representative, Crescent, Oklahoma) submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Schubert consented to the described sanction and to the entry of findings that, without prior notice to or approval from her member firms, she made material false representations to induce public customers to invest \$7,738,500 in an investment program she operated, and repaid \$1,118,700 to certain of the customers with funds obtained from other investors—not from the trading of option contracts. The findings stated that Schubert failed to respond to NASD requests for information and to appear for an on-the-record interview. **(NASD Case #E052004030701)**

Prasanna C. Singhvi (CRD #3092706, Registered Representative, Plano, 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. The fine must be paid before Singhvi reassociates with any NASD member following the suspension, or before

he requests relief from any statutory disqualification. Without admitting or denying the allegations, Singhvi consented to the described sanctions and to the entry of findings that he exercised discretion in a public customer's account without obtaining prior written authorization and obtaining approval of the account as discretionary.

Singhvi's suspension began on January 17, 2006, and concluded at the close of business on January 30, 2006. **(NASD Case #2005001077401)**

Timothy John Stearns (CRD #2504340, Registered Principal, Arlington Hts., Illinois) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$6,000, suspended from association with any NASD member in any capacity for one month, and must requalify by exam in any and all capacities. Without admitting or denying the allegations, Stearns consented to the described sanctions and to the entry of findings that he failed to disclose to his member firm that he engaged in securities transactions with representatives of another firm who owned a beneficial interest in some of the securities that were held in his personal securities accounts, causing the firms to have inaccurate books and records. NASD also found that Stearns engaged in private securities transactions and neglected to give written notice to, and receive written approval from, his member firm prior to engaging in such activities.

Stearns' suspension will began on February 6, 2006, and will conclude on March 5, 2006. **(NASD Case #E8A2003082801)**

Raymond Cecil Stephens (CRD #830452, Registered Supervisor, Durham, North Carolina) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Stephens consented to the described sanction and to the entry of findings that he refused to answer questions during an NASD on-the-record interview. **(NASD Case #20050032185-01)**

Tracy Mahealani Vasquez (CRD #4244094, Registered Representative, Kapolei, Hawaii) submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any member of NASD in any capacity. Without admitting or denying the allegations, Vasquez consented to the

described sanction and to the entry of findings that she obtained possession of approximately \$24,000, representing proceeds of matured certificates of deposits belonging to public customers, and converted the funds to her own use and benefit. The findings stated that she failed to respond to NASD requests for information. **(NASD Case #E0120040238-01)**

Jason Carl Weigand (CRD #2834931, Registered Principal, Columbus, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, Weigand consented to the described sanctions and to the entry of findings that he borrowed money from public customers without first obtaining his member firm's written approval.

Weigand's suspension began on January 30, 2006, and will conclude at the close of business on March 30, 2006. **(NASD Case #2005001031101)**

Randall Leon Wells (CRD #2098771, Registered Representative, Ozark, Alabama) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$15,000, which includes disgorgement of \$2,870 for commissions earned, and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Wells reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Wells consented to the described sanctions and to the entry of findings that he participated in private securities transactions and received compensation without providing prior written notice to his member firm.

Wells' suspension began on January 17, 2006, and will conclude on July 16, 2006. **(NASD Case #E052004029901)**

Richard Scott Wezner (CRD #1698221, Registered Representative, Blue Bell, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the

allegations, Wezner consented to the described sanction and to the entry of findings that he failed to provide information NASD requested. **(NASD Case #2005001923401)**

Doyle Mark White (CRD #2212634, Registered Representative, Irving, Texas) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, White consented to the described sanction and to the entry of findings that he manipulated the market for, and the price of, a company's common stock. The findings stated that he engaged in a series of wash trades in the company's stock at arbitrary and artificial prices, which were misleading to the investing public and market participants in that they gave the false appearance of market interest in the stock at the arbitrary prices White had created. The findings stated that he permitted an unregistered person to associate with a member firm. The findings further stated that he failed to notify member firms of his association with his member firm and failed to notify his member firm of his accounts at other member firms. NASD also found that he failed to update his Form U4 with material facts. **(NASD Case #CMS040048)**

Scott Martin Zimmerman (CRD #1851588, Registered Principal, Dunwoody, 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, Zimmerman consented to the described sanction and to the entry of findings that he knowingly or recklessly prepared and disseminated misleading offering materials, monthly statements and newsletters to investors in that he made exaggerated, unwarranted and/or misleading statements concerning, among other things, the performance of a private limited partnership compared to the S&P 500, the accuracy of market predictions, the purchasing of insiders compared to sales, the effectiveness and understanding of trading strategies, and indicators of market peaks. The findings also stated that Zimmerman failed to fully testify at an NASD on-the-record interview. **(NASD Case #2005000880301)**

Individuals Fined

Howard Jay Chalfin (CRD #2284555, Registered Principal, New City, New York) submitted an Offer of Settlement in which he was censured and fined \$15,000. The fine must be paid before Chalfin reassociates with any NASD member. Without admitting or denying the allegations, Chalfin consented to the described sanctions and to the entry of findings that Chalfin, acting on behalf of his member firm, conducted municipal securities transactions prior to, and without NASD's approval to do so. NASD found that Chalfin, acting on behalf of his firm, failed to ensure that its municipal securities transactions were approved and supervised by a properly registered municipal securities principal. (NASD Case #E1020040324-01)

Frederick E. Graboyes (CRD #2641859, Registered Principal, Watchung, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which he was censured and fined \$10,000. Without admitting or denying the allegations, Graboyes consented to the described sanctions and to the entry of findings that he, in connection with securities transaction referrals, paid an unregistered person \$12,700 in commissions. (NASD Case #E9B2004027203)

John Halle Gutfreund (CRD #232344, Associated Person, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was censured and fined \$25,000. Without admitting or denying the allegations, Gutfreund consented to the described sanctions and to the entry of findings that while not registered as a general securities representative and general securities principal, he engaged in activities at his member firm that required such registration. (NASD Case #E1020031694-01)

Robert David Williams (CRD #826960, Registered Supervisor, Overland Park, Kansas) submitted a Letter of Acceptance, Waiver and Consent in which he was censured and fined \$10,000. Without admitting or denying the allegations, Williams consented to the described sanctions and to the entry of findings that he failed to execute his member firm's written supervisory procedures in that he did not require a representative to follow the steps set forth in the procedures. (NASD Case #E0420030333-03)

Decision Issued

The following decision has been issued by the Office of Hearing Officers and has been appealed or called for review by the NAC as of January 31, 2006. The findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be posted in the next *Notice to Members*.

Morton Bruce Erenstein (CRD #201845, Registered Representative, Livingston, New Jersey) was barred from association with any NASD member in any capacity. The sanction was based on findings that Erenstein refused to answer a question during an NASD on-the-record interview and failed to respond to NASD written requests for information.

The decision has been appealed to the NAC, and the sanction is not in effect pending consideration of the appeal. (NASD Case #C9B040080)

Complaints Filed

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

Elias Emile Ashooh (CRD #867625, Registered Principal, Manchester, New Hampshire) was named as a respondent in an NASD complaint alleging that despite his awareness of the firm's prohibition, he borrowed funds from a public customer and failed to inform his firm of the loan or otherwise obtain its permission. (NASD Case #2005000923801)

Dean Russel Baker (CRD #4493790, Registered Representative, Coral Springs, Florida) was named as a respondent in an NASD complaint alleging that he executed unauthorized trades in public customer accounts, used margin without authorization and overbought trades that were authorized in a pattern of knowing misconduct. (NASD Case #E072003109501)

Eric James Brown (CRD #2203972, Registered Representative, Highland Beach, Florida) was named as a respondent in an NASD complaint alleging that he recommended and effected the purchase of variable annuity contracts for public customers without having a reasonable basis for believing that such transactions were suitable for them based on their financial situations, investment objectives, circumstances and needs. The complaint also alleges that Brown, on a public customer's behalf, completed applications to purchase the equitable variable annuity that contained false statements, and created a false book and record at his member firm. **(NASD Case #E112003006903)**

Shawn Douglas Burke (CRD #1463381, Registered Representative, Mechanicsburg, Pennsylvania) was named as a respondent in an NASD complaint alleging that he received checks totaling \$313,256.84 from public customers for investment purposes, and deposited the funds in a bank account he controlled, thereby converting these funds for his own use and benefit. The complaint also alleges that Burke failed to respond to NASD requests for information. **(NASD Case #2005000924701)**

Saverio Cataldo (CRD #2746819, Registered Representative, Seaford, New York) was named as a respondent in an NASD complaint alleging that in connection with the purchase or sale of securities, 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 made, 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. The complaint alleges that Cataldo recommended and effected transactions in a public customer's account without having reasonable grounds for believing that such transactions were suitable for the customer in view of the size and frequency of the transactions, nature of the account and the customer's financial situation, investment objectives and needs. **(NASD Case #E9B2003032501)**

Steven Charles Clyde (CRD #1512386, Registered Principal, Fair Oaks, California) was named as a respondent in an NASD complaint alleging that he made unauthorized withdrawals from public customers' accounts without their knowledge, authorization or consent. The complaint alleged that he forged, or caused to be forged, customers' signatures on documents without their authorization, and provided them with false documents to assuage their concerns about the withdrawals from their accounts. The complaint also alleged that he failed to appear for an NASD on-the-record interview. **(NASD Case #E062004019501)**

Adrian Cooper (CRD #3271084, Registered Representative, Edmond, Oklahoma) was named in an NASD complaint alleging that he received \$40,000 from a public customer for investment purposes and, contrary to customer's instructions, he converted the funds for his own use and benefit without the the customer's knowledge or consent. The complaint also alleges that Cooper failed to respond to NASD requests for information. **(NASD Case #E052004028001)**

Jorge Guillermo Fernandez (CRD #1220231, Registered Principal, Mayfield Hts, Ohio) was named as a respondent in an NASD complaint alleging that he opened a corporate bank account in his member firm's name and falsely identified himself in the account opening documents as the member's president without authorization or knowledge of his member firm. The complaint alleges that Fernandez instructed public customers to deposit the proceeds from their investments into bank accounts and to make checks totaling \$1,904,000 payable to his member firm, deposited the checks in the bank account he had opened in firm's name and transferred \$1,500,000 to an overseas bank for his own personal use. The complaint also alleges that Fernandez failed to respond to NASD requests for information. **(NASD Case #2005000545601)**

Peter J. Maldjian (CRD #4471819, Registered Principal, Brielle, New Jersey) was named as a respondent in an NASD complaint alleging that he, in order to open a brokerage account for a public customer, created a fictitious certificate of a formation for a purported limited liability company using the business filing number from another customer's certificate of formation, and replicated the New Jersey

State Treasurer “filed” stamp. The complaint alleges that Maldjian submitted the fictitious certificate to his firm in an attempt to open the account, and prepared an account application that falsely identified the purported company as a limited liability company with a tax identification number that belongs to another company. **(NASD Case #E9B2004028401)**

William Warren Smith (CRD #1932595, Registered Representative, Collierville, Tennessee) was named as a respondent in an NASD complaint alleging that he falsified Letters of Authorization in order to convert a public customer’s funds for his own use and benefit without the customer’s knowledge or consent. **(NASD Case #E052004033201)**

Mary Frances Spears (CRD #4297575, Registered Representative, Nampa, Idaho) was named as a respondent in an NASD complaint alleging that she participated in a private securities transaction and did not provide her member firm with prior written notice describing in detail the proposed transaction her proposed role therein, and stating whether she had received or might receive selling compensation in connection with the transaction, and she did not receive her firm’s written permission to participate in the transaction. The complaint alleges that Spears recommended securities transactions that were unsuitable for the customers based upon the facts they disclosed as to their own securities holdings, financial situation and needs. The complaint also alleges that Spears engaged in an outside business activity for compensation and failed to provide her member firm with prompt written notice. **(NASD Case #E3B20040231-02)**

Brad Alan Weaver (CRD #2505931, Registered Principal, Chicago, Illinois) was named as a respondent in an NASD complaint alleging that he permitted an individual to engage in the securities business while not only being unregistered, but barred from the industry. The complaint alleges that he deposited \$118,825 belonging to another individual in his personal bank account, and used the funds to purchase securities in his securities account, causing Weaver’s member firm’s books and records to be inaccurate. The complaint also alleges that Weaver sent checks totaling \$11,800 written against his member firm to credit a customer’s account to give the customer’s account a positive balance. The complaint further alleges that Weaver engaged in outside business activities for compensation, and neglected to give his member firm prompt written notice of his engagement in such activities. **(NASD Case #E8A2004050201)**

Firm Suspended for Failure to Supply Financial Information

The following firm was suspended from membership with NASD for failure to comply with formal written requests to submit financial information to NASD. The action was based on the provisions of NASD Rule 9552. The date the suspension commenced is listed after the entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

Sun's Brothers Securities, Inc.
Dallas, Texas
(January 6, 2006 - January 23, 2006)

Individuals Barred Pursuant to NASD Rule 9552(h)

Eduardo Jose Miranda
Lutz, Florida
(December 23, 2005)

Tanveer Ahmad Paracha
Chicago, Illinois
(December 13, 2005)

David Wayne Parsons
Baldwin, New York
(December 5, 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.)

Raffi Michael Boghosian
Rockville, Maryland
(December 19, 2005)

Ronald Raymond Cournoyer
Warwick, Rhode Island
(December 5, 2005)

Lorin Terese Diaz
Franklin Square, New York
(December 19, 2005)

Harold Howard Hopkins, Jr.
Aurora, Ohio
(December 21, 2005)

Linda Carol Hopkins
Aurora, Ohio
(December 21, 2005)

Jason Ronald Ingram
Woodland, California
(December 12, 2005)

Adam John Korejsza
Farmington Hills, Michigan
(December 14, 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.)

Francis Joshua Coady
Malibu, California
(December 19, 2005)

Timothy Bryan Dickey
Durant, Oklahoma
(January 12, 2006)

Harry Gabriel Francois
Norwalk, Connecticut
(January 21, 2005 - January 9, 2006)

Andrew Strachan Goodwyn
Atlanta, Georgia
(December 1, 2005)

William Franklin Herndon
Wichita, Kansas
(January 11, 2006)

Dennis Alvin Pearson, Jr.
San Diego, California
(December 19, 2005)

Steven Ernest Muth
Aurora, Colorado
(December 19, 2005)

William Zane Jackson, Jr.
Columbia, South Carolina
(January 12, 2006)

Frank Santisario
Astoria, New York
(January 12, 2006)

Emanuele Anthony Scarso
Brooklyn, New York
(December 8, 2005)

Mikhail S. Shklovsky
Fair Lawn, New Jersey
(January 12, 2006)

Richard Walter Simpson
San Diego, California
(December 19, 2005)

NASD Charges Oppenheimer & Co. and CEO Albert Lowenthal with Knowingly Producing Inaccurate Data to NASD in Breakpoint Sweep

In Separate Action, NASD Fines Oppenheimer \$250,000 for Late Reporting of Potential Broker Misconduct to Public, Regulators, Brokerages

NASD has charged Oppenheimer & Co. and the firm's CEO, Albert Lowenthal, with knowingly submitting inaccurate and incomplete data in response to NASD's request that the firm perform a self-assessment of its mutual fund breakpoint discount practices. This is the second time in eight months that NASD has charged the firm with failing to produce documents and information requested by NASD. The first complaint, issued in May 2005, involved an investigation of municipal bond transaction reporting violations.

"All regulated firms have a fundamental obligation to cooperate with NASD requests for information by providing complete, accurate and responsive data in a timely manner," said Barry Goldsmith, NASD Executive Vice President and Head of Enforcement. "The ability of NASD and other securities regulators to protect investors and police the markets depends upon compliance with that obligation. Today's matter is especially troubling not only because of the firm's repeated lack of cooperation with NASD, but more significantly because, as stated in the complaint, the CEO himself allegedly directed the firm to provide NASD with information that he knew to be inaccurate."

The complaint has its origins in a March 2003 report jointly issued by NASD and other securities regulators that showed that nearly one in three mutual fund transactions in front-end load mutual funds that appeared eligible for a breakpoint discount did not receive one. As a result of those findings, NASD required approximately 2,000 broker-dealers that sold front-end load mutual funds during 2001-2002—including Oppenheimer—to conduct a self-assessment of their compliance with mutual fund breakpoint discount requirements and report the results to NASD. As a result of the breakpoint sweep and ensuing NASD enforcement actions, more than \$130 million has been returned to investors who did not receive appropriate breakpoint discounts.

Typically, breakpoint discounts are applied to front-end load Class "A" share transactions to reduce sales loads at the investment levels of \$50,000, \$100,000, \$250,000 and \$1 million. Class "B" and "C" share transactions typically do not charge front-end sales charges and thus, are generally not entitled to breakpoint discounts.

Specifically, NASD required Oppenheimer to sample 800 front-end load Class "A" share transactions effected between Jan. 1, 2001 and Dec. 31, 2002, and to furnish certain information about these transactions in an online self-assessment form posted on NASD's web site. Oppenheimer's breakpoint self-assessment was due on June 13, 2003.

In its complaint, NASD alleges that on or about June 10, 2003—three days before the due date—Lowenthal learned that the firm's 800-transaction sample included Class "A," "B" and "C" share transactions. The complaint alleges that Lowenthal knew that the firm's inclusion of "B" and "C" share transactions improperly diluted the firm's sample, resulting in the firm sampling fewer Class "A" transactions than NASD had required. Regardless, Lowenthal allegedly ordered the submission of this flawed data to NASD; Lowenthal neither notified NASD about the flawed data, nor did he request anyone else to notify NASD about the flawed data, either before or after the firm's submission.

NASD quickly discovered this deficiency, as well as numerous other significant deficiencies, in the firm's self-assessment submission, and on June 13, 2003, directed the firm to immediately generate and submit a new self-assessment. In its complaint, NASD alleges

that, in response, Lowenthal assigned the same senior officer whom he had charged with preparing the initial self-assessment the task of preparing the second self-assessment. A few months later, Lowenthal terminated this same senior officer, but allegedly failed to assume or delegate responsibilities for the self-assessment to another qualified principal of the firm.

NASD's complaint alleges that the firm's second self-assessment, submitted more than five months after the firm's initial submission, contained many of the same defects as the first—it continued to include certain Class "B" share transactions; failed to identify linked accounts; failed to include proper discount information; failed to provide the actual sales charge percentages, appropriate sales charge percentages, and the proper discount descriptions; and failed to identify overcharged trades, among other problems. To date, now more than two and one-half years after the initial self-assessment was due, the complaint alleges that neither the firm nor Lowenthal has submitted to NASD a complete and accurate self-assessment.

The complaint further charges that Oppenheimer's self-assessment submissions so completely and fundamentally failed to comply with NASD's regulatory request that NASD could not rely on or use the firm's data for purposes of analyzing the firm's breakpoint compliance in both absolute terms, and in relation to the approximately 2,000 other registered firms that contemporaneously submitted breakpoint self-assessments.

In another matter involving Oppenheimer, NASD censured and fined the firm \$250,000 for at least 230 late disclosures of reportable information about its brokers, including customer complaints, regulatory actions and investigations, and terminations. Reportable information on all registered brokers is maintained in NASD's Central Registration Depository (CRD) and is available free of charge to the public through NASD's BrokerCheck. Last year, approximately four million investors investigated brokers' backgrounds through BrokerCheck. In settling the matter, the firm neither admitted nor denied the charges, but consented to the entry of NASD's findings.

This settlement reflects NASD's continuing commitment to ensure that registered firms comply with their obligation to timely and accurately disclose reportable information about their brokers to the public. In 2004,

NASD fined 30 firms more than \$11 million for similar late reporting violations.

Under NASD rules, a firm or individual named in a complaint can file a response and request a hearing before an NASD disciplinary panel. Possible remedies include a fine, censure, suspension or bar from the securities industry, disgorgement of gains associated with the violations, and payment of restitution.

The issuance of a disciplinary complaint represents the initiation of a formal proceeding by NASD in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint. Because this complaint is unadjudicated, interested persons may wish to contact the respondent before drawing any conclusions regarding the allegations in the complaint.

NASD Fines Municipal Securities Dealer and its President \$100,000 for Failing to Report Gubernatorial and Other Political Contributions

Chicago's Berean Capital Also Cited for Reporting, Disclosure and Research Violations

NASD has censured and fined Berean Capital Incorporated of Chicago and its president, Dudley Brown, Jr., \$100,000 for failing to disclose political contributions Brown made to city and state officials in Illinois and elsewhere while Berean Capital was acting as a municipal securities dealer. The firm was also cited for numerous reporting, disclosure and research violations.

MSRB Rule G-37 requires all dealers to disclose certain political contributions, as well as other information, to allow public scrutiny of political contributions and the municipal securities business of a dealer. Dealers are to disclose, with some limited exceptions, contributions to state and city officials with responsibility for issuing municipal debt and payments to political parties made by the dealer and certain persons employed by the dealer. Contributions to these officials by firms or their municipal finance professionals trigger a two-year prohibition on most future municipal business. NASD is responsible for enforcing the rules of the Municipal Securities Rulemaking Board (MSRB).

NASD found that Brown made three political contributions to Illinois Governor Rod Blagojevich.

The first two were made during then-Congressman Blagojevich's gubernatorial campaign in 2002. Brown made another contribution to Blagojevich in July 2003, following Blagojevich's election as governor. The total amount of the contributions was \$12,000. Brown also made a \$2,500 political contribution to Joan Pratt, Comptroller of the City of Baltimore in August 2003. None of these contributions was disclosed until after NASD discovered them and instructed the firm to report them.

Berean Capital also violated MSRB Rule G-37 by engaging in a municipal securities business with an issuer within the two-year prohibited period after a political contribution to an issuer official. In this instance, a \$500 contribution was made by one of the firm's municipal finance professionals to Darlene Green, Comptroller for the City of St. Louis and head of the Department of Finance that directs the city's debt financing. Approximately 21 months later, Berean Capital entered into municipal securities business with the City of St. Louis that involved purchasing \$50 million of the city's Tax and Revenue Anticipation Notes in June 2003, as lead underwriter in a negotiated offering.

NASD found other MSRB reporting and disclosure failures by Berean Capital. The firm failed to disclose its participation in a City of Chicago-negotiated municipal underwriting for the quarter ended Sept. 30, 2002. When an amended MSRB Form G-37/38 was filed disclosing the underwriting, the form was filed 78 days late. In addition, Berean Capital failed to include the time of execution on order memoranda for inter-dealer municipal securities transactions, as required by MSRB Rule G-8.

NASD also found violations by Berean Capital relating to its general securities business. Specifically, the firm violated NASD's research analyst rule by publishing 20 research reports between February 2003 and February 2004 that failed to include numerous required disclosures. For example, the research reports failed to include the meaning and distribution of ratings, current information of the firm's distribution of ratings, valuation methods used to determine price targets, and statements that the firm was a market maker of companies that were the subject of the published research. The firm also failed to present its disclosures prominently, as required by Rule 2711.

In settling this matter, Berean Capital and Dudley Brown, Jr. neither admitted nor denied the charges, but consented to the entry of NASD's findings.