

JUNE 2006

Notice to Members

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Disciplinary and Other NASD Actions



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Notice to Members

JUNE 2006

SUGGESTED ROUTING

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

KEY TOPICS

Short Sales
Rule 3210

GUIDANCE

Short Sale Delivery Requirements

SEC Approves New Rule 3210 Applying Short Sale Delivery Requirements to Non-Reporting OTC Equity Securities; **Effective Date: July 3, 2006**

Executive Summary

On April 4, 2006, the Securities and Exchange Commission (SEC) approved new Rule 3210, Short Sale Delivery Requirements, which applies short sale delivery requirements to those equity securities not otherwise covered by the delivery requirements of Regulation SHO, namely non-reporting OTC equity securities.¹ Rule 3210, among other things, requires participants of registered clearing agencies to take action on failures to deliver that exist for 13 consecutive settlement days in certain non-reporting securities. In addition, if the fail to deliver position is not closed out in the requisite time period, a participant of a registered clearing agency or any broker-dealer for which it clears transactions is prohibited from effecting further short sales in the particular specified security without borrowing, or entering into a bona-fide arrangement to borrow, the security until the fail to deliver position is closed out.

Rule 3210, as adopted, is set forth in Attachment A of this *Notice*. Also included in this *Notice* is information about the list of non-reporting securities that meet the requirements of Rule 3210 ("Rule 3210 Threshold Securities List") that NASD will publish. The rule becomes effective on July 3, 2006.

Questions/Further Information

Questions regarding this *Notice* may be directed as follows: for questions regarding Rule 3210, contact the Legal Section, Market Regulation, at (240) 386-5126; or Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8071. For questions regarding the Rule 3210 Threshold Securities List, contact NASD Operations at (866) 776-0800.

06-28

Background and Discussion

On June 23, 2004, the SEC adopted Regulation SHO under the Exchange Act, which provides a new regulatory framework governing the short selling of equity securities.² Regulation SHO includes several new provisions relating to short sales, one of which imposes delivery requirements on clearing agency participants for certain securities that have a substantial level of failures to deliver.³ Specifically, Regulation SHO requires clearing agency participants to close out all failures to deliver in a “threshold security” that have existed for 13 consecutive settlement days. Regulation SHO defines a “threshold security” as any equity security of an issuer that is registered under Section 12 of the Exchange Act or that is required to file reports under Section 15(d) of the Exchange Act (referred to as “reporting securities”) that (1) for five consecutive settlement days had aggregate fails to deliver at a registered clearing agency of 10,000 shares or more; (2) the level of fails is equal to a least one-half of one percent of the issue’s total shares outstanding; and (3) is included on a list published by a self-regulatory organization.

The Regulation SHO delivery requirements apply only to reporting securities. NASD believes applying delivery requirements to non-reporting securities is an important step in reducing long-term fails to deliver in this sector of the marketplace. Therefore, NASD proposed, and the SEC approved, new Rule 3210, which applies a delivery framework to non-reporting OTC equity securities substantially similar to the Regulation SHO delivery framework. Rule 3210 requires clearing agency participants to close out all failures to deliver in “non-reporting threshold securities” that have existed for 13 consecutive settlement days. For purposes of Rule 3210, a non-reporting threshold security is any equity security that is not a reporting security and, for five consecutive settlement days, has: (1) aggregate fails to deliver at a registered clearing agency of 10,000 shares or more; and (2) a reported last sale during normal market hours (9:30 a.m. to 4 p.m., Eastern Time (ET)) for the security on that settlement day that would value the aggregate fail to deliver position at \$50,000 or more.⁴

If the fail to deliver position is not closed out in the requisite time period, a clearing agency participant or any broker-dealer for which it clears transactions would be prohibited from effecting further short sales in the particular specified security without borrowing, or entering into a bona-fide arrangement to borrow, the security until the fail to deliver position is closed out. To the extent that the participant can identify the broker-dealer(s) that have contributed to the fail to deliver position, the requirement to borrow or arrange to borrow prior to effecting further short sales may apply only to those particular broker-dealers to which the participant has allocated such fail to deliver position.

NASD will publish daily a list of the non-reporting securities that meet the threshold requirements of Rule 3210 (Rule 3210 Threshold Securities List). To be removed from the Rule 3210 Threshold Securities List, a security must not meet either of the threshold tests in Rule 3210 for five consecutive settlement days.

NASD intends to apply and interpret the requirements of Rule 3210 consistent with the SEC's application and interpretation of Regulation SHO. In this regard, the SEC Division of Market Regulation published Responses to Frequently Asked Questions Concerning Regulation SHO, in which the SEC staff addresses, among other things, questions relating to the Regulation SHO delivery requirements, close-out requirements and pre-borrow requirements. A copy of the interpretive guidance is available on the SEC's Web site at www.sec.gov/divisions/marketreg/mrfaqregsho1204.htm. NASD encourages members and other interested parties to review the interpretive guidance.

Rule 3210 becomes effective July 3, 2006. Consistent with the application and interpretation of Regulation SHO, open fail positions in non-reporting securities that exist prior to July 3, 2006 will not be required to be closed out under Rule 3210.⁵ As such, on July 3, 2006, NASD will begin the calculations necessary to determine whether securities qualify as non-reporting threshold securities, and July 11, 2006 is the first day for which NASD will publish a non-reporting threshold list. Until a security appears on a non-reporting threshold list for 13 consecutive settlement days and an open fail position for such security exists for that same period, Rule 3210 does not require a broker-dealer to close out the open fail position. Therefore, the first day on which a close-out action would be required under Rule 3210 is July 28, 2006.

Questions and Answers Relating to New Rule 3210

To help members implement Rule 3210, NASD is publishing the following questions and answers relating to the Rule 3210 Threshold Securities List.

Q1 What is a non-reporting threshold security?

A1 As defined in Rule 3210, a "non-reporting threshold security" is any equity security of any issuer that is not registered under Section 12 of the Exchange Act, and for which the issuer is not required to file reports under Section 15(d) of the Exchange Act, where, (1) for five consecutive settlement days:

- ▶ There are aggregate fails to deliver at a registered clearing agency of 10,000 shares or more; and
- ▶ The reported last sale during normal market hours (9:30 a.m. to 4 p.m., Eastern Time (ET)) for the security on that settlement day would value the aggregate fail to deliver position at \$50,000 or more; and

(2) The security is included on a list published by NASD.

A security ceases to be a non-reporting threshold security if it does not meet either of the threshold tests in (1) above for five consecutive settlement days.

Q2 How can I access the Rule 3210 Threshold Securities List?

A2 NASD will calculate the Rule 3210 Threshold Securities List on a daily basis. The Rule 3210 Threshold Securities List will be combined with the Regulation SHO Threshold Security List currently posted on www.nasdaqtrader.com/asp/regsho.aspx. The combined list will contain a separate column indicating that the security is subject to Rule 3210.

Q3 What will be the format of the file?

A3 The file layout and data field definitions are the same as the Regulation SHO file layout and data fields, found at: www.nasdaqtrader.com/asp/regsho.aspx.

Q4 What does the date in the file name mean?

A4 The date in the file name reflects the settlement date that the data is based on. For example, the file name for the file posted containing July 11, 2006 settlement date data will be 20060711.

Q5 How can I tell what time the Rule 3210 Threshold Securities List was created?

A5 The end of the data file will contain a file creation timestamp, reflecting the date and time the file is complete. The timestamp will be in the following format: `yyyymmddhhmmss`.

Q6 What if the Rule 3210 Threshold Securities List is posted late?

A6 Consistent with guidance provided by staff of the SEC Division of Market Regulation regarding the Regulation SHO Threshold List, firms will be permitted to use the previous settlement day's Rule 3210 Threshold Securities List to comply with Rule 3210 if the file is unavailable by midnight (00:00 ET). Firms are still obligated to analyze the current settlement day's data when it becomes available to determine compliance with Rule 3210's close-out requirements.

Q7 When will the Rule 3210 Threshold Securities List be posted?

A7 As noted above, Rule 3210 defines a "non-reporting threshold security" as one that exceeds the specified level of fails for five consecutive settlement days. Since the new rule takes effect on July 3, 2006, the first date a security can meet this definition will be five settlement days after the effective date. Accordingly, the first Rule 3210 Threshold Securities List will be posted before midnight on July 10, 2006, and will be available before the opening of trading on July 11, 2006.

Endnotes

- 1 See Securities Exchange Act Release No. 53596 (April 4, 2006), 71 FR 18392 (April 11, 2006) (File No. SR-NASD-2004-044).
- 2 See Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (August 6, 2004).
- 3 The term "clearing agency participants" refers to "participants" (as defined in Section 3(a)(24) of the Exchange Act) of a "registered clearing agency," meaning a clearing agency (as defined in Section 3(a)(23)(A) of the Exchange Act) that is registered with the SEC pursuant to Section 17A of the Exchange Act.
- 4 In the event there is no reported last sale on any settlement day during such five-day period, the value of the aggregate fail position would be based on the previously reported last sale.
- 5 See Division of Market Regulation: Responses to Frequently Asked Questions Concerning Regulation SHO (Question 5.1). As noted in Question 5.1, this does not affect the obligations of sellers of securities to deliver those securities to buyers under existing delivery and settlement guidelines.

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ATTACHMENT A

New language is underlined; deletions are in brackets.

3210. [Reserved.] Short Sale Delivery Requirements

(a) If a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in a non-reporting threshold security for 13 consecutive settlement days, the participant shall immediately thereafter close out the fail to deliver position by purchasing securities of like kind and quantity.

(b) The provisions of this rule shall not apply to the amount of the fail to deliver position that the participant of a registered clearing agency had at a registered clearing agency on the settlement day immediately preceding the day that the security became a non-reporting threshold security; provided, however, that if the fail to deliver position at the clearing agency is subsequently reduced below the fail to deliver position on the settlement day immediately preceding the day that the security became a non-reporting threshold security, then the fail to deliver position excepted by this paragraph (b)(1) shall be the lesser amount.

(c) If a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in a non-reporting threshold security for 13 consecutive settlement days, the participant and any broker or dealer for which it clears transactions, including any market maker that would otherwise be entitled to rely on the exception provided in paragraph (b)(2)(iii) of SEC Rule 203 of Regulation SHO, may not accept a short sale order in the non-reporting threshold security from another person, or effect a short sale in the non-reporting threshold security for its own account, without borrowing the security or entering into a bona-fide arrangement to borrow the security, until the participant closes out the fail to deliver position by purchasing securities of like kind and quantity.

(d) If a participant of a registered clearing agency reasonably allocates a portion of a fail to deliver position to another registered broker or dealer for which it clears trades or for which it is responsible for settlement, based on such broker or dealer's short position, then the provisions of this rule relating to such fail to deliver position shall apply to the portion of such registered broker or dealer that was allocated the fail to deliver position, and not to the participant.

(e) A participant of a registered clearing agency shall not be deemed to have fulfilled the requirements of this rule where the participant enters into an arrangement with another person to purchase securities as required by this rule, and the participant knows or has reason to know that the other person will not deliver securities in settlement of the purchase.

(f) For the purposes of this rule, the following terms shall have the meanings below:

(1) the term “market maker” has the same meaning as in section 3(a)(38) of the Exchange Act.

(2) the term “non-reporting threshold security” means any equity security of an issuer that is not registered pursuant to section 12 of the Exchange Act and for which the issuer is not required to file reports pursuant to section 15(d) of the Exchange Act:

(A) for which there is an aggregate fail to deliver position for five consecutive settlement days at a registered clearing agency of 10,000 shares or more and for which on each settlement day during the five consecutive settlement day period, the reported last sale during normal market hours for the security on that settlement day that would value the aggregate fail to deliver position at \$50,000 or more, provided that if there is no reported last sale on a particular settlement day, then the price used to value the position on such settlement day would be the previously reported last sale; and

(B) is included on a list published by NASD.

A security shall cease to be a non-reporting threshold security if the aggregate fail to deliver position at a registered clearing agency does not meet or exceed either of the threshold tests specified in paragraph (f)(2)(A) of this rule for five consecutive settlement days.

(3) the term “participant” means a participant as defined in section 3(a)(24) of the Exchange Act, that is an NASD member.

(4) the term “registered clearing agency” means a clearing agency, as defined in section 3(a)(23)(A) of the Exchange Act, that is registered with the Commission pursuant to section 17A of the Exchange Act.

(5) the term “settlement day” means any business day on which deliveries of securities and payments of money may be made through the facilities of a registered clearing agency.

(g) Pursuant to the Rule 9600 Series, the staff, for good cause shown after taking into consideration all relevant factors, may grant an exemption from the provisions of this rule, either unconditionally or on specified terms and conditions, to any transaction or class of transactions, or to any security or class of securities, or to any person or class of persons, if such exemption is consistent with the protection of investors and the public interest.

Special Notice to Members

JUNE 19, 2006

SUGGESTED ROUTING

Legal & Compliance
Senior Management

KEY TOPICS

National Adjudicatory Council

GUIDANCE

NAC Nominations

NASD Announces Nomination Procedures for Regional Industry Member Vacancies on the National Adjudicatory Council; **Nomination Deadline: July 17, 2006**

Executive Summary

The purpose of this *Special Notice to Members* is to advise members of the nomination procedures to fill two upcoming vacancies on the National Adjudicatory Council (NAC). The three-year terms of the NAC regional Industry members from the New York and West Regions will expire in January 2007. Exhibit I contains information regarding the NAC regional Industry members whose terms expire in January 2007. Exhibit II contains a list of all 2006 NAC members. The procedures to fill the NAC regional Industry vacancies are outlined in Exhibit III. Also, a Candidate Profile Sheet is included in Exhibit IV.

Nomination Process

Members are encouraged to submit nominations for the upcoming NAC vacancies. To nominate a candidate, members should submit a cover letter and the Candidate Profile Sheet (Exhibit IV) to the Regional Nominating Committee Chair, the NASD Regional or District Director, or the NASD Corporate Secretary (listed in Exhibit I) by **July 17, 2006**.

The completed Candidate Profile Sheets will be provided to the appropriate Regional Nominating Committee for review. On or about **August 23, 2006**, the Regional Nominating Committees will provide NASD members with written notice of the NAC candidates that the Committees propose for nomination to the National Nominating Committee. Pursuant to Article V, Section 5.3(a) of the NASD Regulation By-Laws, the NASD National Nominating Committee shall nominate all candidates for the NAC for subsequent appointment by the Board.

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Questions/Further Information

Questions concerning this *Special Notice* may be directed to the Regional or District Directors listed in Exhibit I, or to Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD at (202) 728-8062 or via e-mail at barbara.sweeney@nasd.com.

National Adjudicatory Council Membership and Function

Membership

The NAC consists of 14 members—seven Industry members and seven Non-Industry members, three of whom are Public. Exhibit II contains a list of all current NAC members. Two Industry members are appointed by the NASD Regulation Board of Directors as at-large members. Five Industry members each represent one of the following geographic regions:

- Midwest Region:** Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin.
- New York:** The counties of Nassau and Suffolk, and the five boroughs of New York City.
- North Region:** Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York (except for the counties of Nassau and Suffolk, and the five boroughs of New York City), Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia.
- South Region:** Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Puerto Rico, the Canal Zone and the Virgin Islands.
- West Region:** Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming and the former U.S. Trust Territories.

We are seeking nominations for the New York and West Regions.

Function

According to the NASD By-Laws, the NAC is authorized to act for the NASD Board of Governors in matters concerning:

- ▶ appeals or reviews of disciplinary proceedings, statutory disqualification proceedings or membership proceedings;
- ▶ the exercise of exemptive authority; and
- ▶ other proceedings or actions authorized by NASD rules.

The NAC also considers and makes recommendations to the Board on enforcement policy and rule changes relating to the business and sales practices of NASD members and associated persons.

EXHIBIT I

NAC Industry Member with a Term Expiring in January 2007

New York Region (District 10)

NAC Incumbent: Judith R. MacDonald

If you are interested in nominating yourself or a colleague to represent the New York Region for a three-year term on the NAC, please submit a cover letter and a completed Candidate Profile Sheet (Exhibit IV) to any of the following individuals by July 17, 2006.

Lon T. Dolber

Regional Nominating Committee Chair

American Portfolios Financial Services
4250 Veterans Memorial Highway
Holbrook, NY 11741

(631) 439-4600
(631) 439-1325 fax

Barbara Z. Sweeney

Senior Vice President and
Corporate Secretary

NASD
1735 K Street, NW
Washington, DC 20006

(202) 728-8062
(202) 728-8075 fax

Hans L. Reich

Regional Director, District 10

One Liberty Plaza
165 Broadway
New York, NY 10006

(212) 858-4000
(212) 858-4078 fax

NAC Industry Member with a Term Expiring in January 2007

West Region (Districts 1, 2 and 3)

NAC Incumbent: Neal E. Nakagiri

If you are interested in nominating yourself or a colleague to represent the West Region for a three-year term on the NAC, please submit a cover letter and a completed Candidate Profile Sheet (Exhibit IV) to any of the following individuals by July 17, 2006.

Arlene M. Wilson

Regional Nominating Committee Chair

D.A. Davidson & Co.
8 Third Street North
Great Falls, MT 59401

(406) 791-7456
(406) 268-3045 fax

Joseph M. McCarthy

District Director, District 3 (Denver)

370 17th Street
Suite 2900
Denver, CO 80202-5629

(303) 446-3100
(303) 620-9450 fax

Elizabeth P. Owens

Regional Director, District 1

525 Market Street
Suite 300
San Francisco, CA 94105-2711

(415) 882-1200
(415) 546-6991 fax

James G. Dawson

District Director, District 3 (Seattle)

601 Union Street
Suite 1616
Seattle, WA 98101-2327

(206) 624-0790
(206) 623-2518 fax

Lani M. Sen Woltmann

District Director, District 2

300 South Grand Avenue
Suite 1600
Los Angeles, CA 90071-3126

(213) 229-2300
(213) 617-3156 fax

Barbara Z. Sweeney

Senior Vice President and
Corporate Secretary

NASD
1735 K Street, NW
Washington, DC 20006

(202) 728-8062
(202) 728-8075 fax

EXHIBIT II

2006 National Adjudicatory Council

Judith R. MacDonald, Chair	Rothschild, Inc.
Constance E. Bagley	Harvard Business School
Jayne W. Barnard	College of William and Mary, Marshall-Wythe School of Law
Stephanie L. Brown	LPL Financial Services
Thomas Donaldson	University of Pennsylvania, Wharton School of Business
W. Dennis Ferguson	Sterne Agee Clearing
Kathleen M. Hagerty	Northwestern University, Kellogg School of Management
Timothy Henahan	Baker & Co., Inc.
David M. Levine	Deutsche Bank AG
Harold O. Levy	Kaplan, Inc.
Neal E. Nakagiri	NPB Financial Group, LLC
James M. Rogers	J.J.B. Hilliard, W.L. Lyons, Inc.
William Wang	University of California, Hastings College of the Law
Samuel Wolff	Akin Gump Strauss Hauer & Feld LLP

EXHIBIT III

National Adjudicatory Council Nomination Procedures

1. NASD maintains Regional Nominating Committees in the manner specified in Article VI of the NASD Regulation By-Laws.
2. Members located in the New York and West Regions are hereby notified of the upcoming election of members to the National Adjudicatory Council and are encouraged to submit names of potential candidates to the Chair of the Regional Nominating Committee, NASD Regional or District Directors, or the NASD Corporate Secretary, Barbara Z. Sweeney (see Exhibit I) by **July 17, 2006**.
3. Nominees will be asked to complete a Candidate Profile Sheet, which will be reviewed by the appropriate Regional Nominating Committee.
4. The Regional Nominating Committee shall review the background of the candidates and the description of the NASD membership provided by NASD staff and shall propose to the National Nominating Committee one or more candidates for the National Adjudicatory Council. In proposing a candidate for nomination, the Regional Nominating Committee shall endeavor to secure appropriate and fair representation of the region.
5. On or about **August 23, 2006**, the Regional Nominating Committee shall notify in writing the Executive Representatives and branch offices of the NASD members in the region of the name of the candidate or candidates it will propose to the National Nominating Committee for the National Adjudicatory Council.
6. If an officer, director or employee of an NASD member in the region is not proposed for nomination by the Regional Nominating Committee and wants to seek the nomination, he or she shall send a written notice to the Regional Nominating Committee Chair or the Secretary of NASD within 14 calendar days after the mailing date of the Regional Nominating Committee's notice (#5 above) and proceed in accordance with the Contested Nomination Procedures found in Article VI of the NASD Regulation By-Laws.
7. If no additional candidate comes forward within 14 calendar days, the Regional Nominating Committees shall certify their candidates to the National Nominating Committee. Additional information pertaining to the National Adjudicatory Council Election Procedures can be found in Article VI of the NASD Regulation By-Laws. The By-Laws can be found in the online *NASD Manual* at www.nasd.com.

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EXHIBIT IV

Candidate Profile Sheet

Date: / /

Current Registration

Name: _____ CRD#: _____

Firm: _____ #RRs at Firm: _____

Title/Primary Responsibility: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Email: _____

Prior Registration (List the most recent first. Feel free to include extra pages if necessary.)

Firm: _____

Title/Primary Responsibility: _____

Firm: _____

Title/Primary Responsibility: _____

General Areas of Expertise (please check all that apply)

- Compliance/Legal
- Corporate Finance
- Financial/Operational
- Institutional Sales
- Investment Advisory
- Retail Sales
- Trading/Market Making
- Other

Product Expertise (please check all that apply)

- Corporate Bonds
- Direct Participation Programs
- Equity Securities
- Municipal/Government Securities
- Investment Company
- Options
- Variable Contracts Securities
- Other

Memberships/Positions Held in Trade or Business Organizations

Past NASD Experience and Dates of Service (please check all that apply)

- Committee Member (Identify committee: _____) Approx. Dates: _____
- Arbitrator Approx. Dates: _____
- Mediator Approx. Dates: _____
- Expert Witness (arbitrations; disciplinary proceedings): _____ Approx. Dates: _____
- Other: _____ Approx. Dates: _____

Educational Background

School: _____ Degree: _____

School: _____ Degree: _____

Notice to Members

JUNE 2006

SUGGESTED ROUTING

Legal and Compliance
Operations
Senior Management

KEY TOPICS

Extension of Time Requests
Fees
Regulation T
Schedule A to NASD By-Laws
SEC Rule 15c3-3

GUIDANCE

Fee Increase for Extension of Time Requests

Amendments to the Fee for Extension of Time Requests under Regulation T and SEC Rule 15c3-3;
Effective Date: July 1, 2006

Executive Summary

On May 15, 2006, NASD filed with the Securities and Exchange Commission (SEC) for immediate effectiveness a rule change to amend Section 8 of Schedule A to NASD's By-Laws to increase the service charge for processing extension requests to \$4 per request.¹

Schedule A to NASD's By-Laws, as amended, is set forth in Attachment A of this Notice. The revised fee will be implemented on July 1, 2006.

Questions/Further Information

Questions regarding this Notice may be directed to Susan M. DeMando, Associate Vice President, Financial Operations, at (202) 728-8411; or Kathryn M. Moore, Assistant General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 974-2974.

Background and Discussion

Regulation T, issued by the Board of Governors of the Federal Reserve System (FRB) pursuant to the Securities Exchange Act of 1934 (Exchange Act), among other things, governs the extension of credit to customers by broker-dealers for purchasing securities.² Rule 15c3-3 under the Exchange Act governs, among other things, the time period in which customer sell orders must be completed.³ Under SEC Rule 15c3-3(n), a self-regulatory organization (SRO) may grant a broker-dealer an extension of time for delivery on sales of securities if: (1) it is satisfied that the broker-dealer is acting in good faith in making the request; and (2) exceptional circumstances warrant such action. Regulation T has a similar standard to allow an extension of time for payment for purchases of securities.⁴

06-30

NASD has amended Section 8 of Schedule A to NASD's By-Laws to increase the service charge for processing each extension of time request pursuant to the provisions of Regulation T and SEC Rule 15c3-3 from \$2 (or \$1 in the case of electronically filed extension of time requests) to \$4 for all manually or electronically filed extension of time requests.⁵ NASD believes that the proposed fees align with the actual costs associated with reviewing, processing, recording and responding to such requests.⁶

The revised fee will be implemented on July 1, 2006.

Endnotes

- 1 See SR-NASD-2006-063 and Amendment No. 1 filed on May 25, 2006. Under Section 19(b) of the Securities Exchange Act of 1934, the SEC has the authority to summarily abrogate this type of rule change within 60 days of filing.
- 2 12 CFR 220.4(c) and 220.8(d). Regulation T generally requires that customers with a cash account pay for securities within five business days of purchase; for customers with a margin account, there must be sufficient minimum margin (typically 50%) to support the purchase.
- 3 17 CFR 240.15c3-3. In particular, SEC Rule 15c3-3(m) requires a broker-dealer that executes a customer sell order to obtain possession of the securities within ten business days of the settlement date or to close the transaction by purchasing the securities.
- 4 Under Regulation T, a firm's examining authority may grant an extension unless the examining authority believes that the broker-dealer is not acting in good faith or that the broker-dealer has not sufficiently determined that exceptional circumstances warrant such action.
- 5 NASD also has filed a proposed rule change with the SEC to adopt new NASD Rule 3160 to require (1) all clearing firm members for which NASD is the designated examining authority (DEA) pursuant to Rule 17d-1 under the Exchange Act to submit to NASD requests for extensions of time pursuant to the provisions of Regulation T and SEC Rule 15c3-3; and (2) each clearing firm member for which NASD is the DEA to file a monthly report with NASD indicating all broker-dealers for which it clears that have overall ratios of requested extensions of time to total transactions for the month that exceed a percentage specified by NASD. See SR-NASD-2006-064.
- 6 The New York Stock Exchange (NYSE) similarly increased the fee it charges its members for extensions of time requests to \$4 per extension. See Exchange Act Release No. 53235 (Feb. 6, 2006), 71 FR 7820 (Feb. 14, 2006) (SR-NYSE-2005-92) (SEC Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No.1 Thereto Relating to Increasing Certain Fees Charged by the NYSE to Its Members and Member Organizations).

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ATTACHMENT A

New language is underlined; deletions are in brackets.

* * * * *

SCHEDULE A TO NASD BY-LAWS

* * * * *

Section 8 - Service Charge for Processing Extension of Time Requests

(a) No Change.

(b) The service charge for processing each initial extension of time request and for all subsequent extension of time requests (1) involving the same transaction under Regulation T and/or (2) involving an extension of time previously granted pursuant to SEC Rule 15c3-3(n) shall be [~~\$2.00~~; provided, however, that the service charge shall be \$1.00 for extension of time requests filed electronically by members using NASD's Automated Regulatory Reporting System]\$4.00 per request.

Notice to Members

JUNE 2006

SUGGESTED ROUTING

Executive Representatives
Legal and Compliance
Operations
Registration
Senior Management
Systems
Trading

KEY TOPICS

Business Continuity
Capital and Financial Reporting Requirements
Extensions or Credit and Securities Delivery
Filing and Reporting Requirements
Licensing
Operations
Supervision
Trade Reporting
Temporary Account Transfers

REQUEST FOR COMMENT

Pandemic Regulatory Relief

NASD Requests Comment on Regulatory Relief that Should Be Granted in Response to a Possible Pandemic or Other Major Business Disruption; **Comment Period Expires July 31, 2006**

Executive Summary

NASD recognizes that, in the event of a global pandemic or similar disaster, some level of regulatory flexibility may be necessary to allow firms to best serve investors and maintain market stability. NASD also understands that investor protection is perhaps most critical during times of financial and social stress. To help NASD strike the appropriate balance, we are soliciting comment from members and other interested persons regarding what specific, short-term regulatory relief may be appropriate and consistent with NASD's mission, and what specific conditions may warrant such relief.

Action Requested

NASD encourages all interested parties to comment on this proposal. Comments must be received by July 31, 2006. Members and interested persons can submit their comments using the following methods:

- ▶ Mail comments in hard copy to the address below; or
- ▶ Email written comments to pubcom@nasd.com.

To help NASD process and review comments more efficiently, persons commenting on this proposal should use only one method. Comments sent by hard copy should be mailed to:

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

06-31

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

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

Questions/Further Information

As noted above, hard copy comments should be mailed to Barbara Z. Sweeney. Questions concerning this *Notice* may be directed to Eric Moss, Vice President and Director of Emerging Regulatory Issues, at (202) 728-8982.

Background and Discussion

The precise impact of a flu pandemic or similar business disruption on the global markets is impossible to predict, but some experts believe that the impact could be severe. For example, some analysts project that areas affected by an outbreak of pandemic flu could experience absentee rates as high as 30 percent to 50 percent of the workforce for an extended period of time, possibly as long as several months. Affected regions may also experience quarantines and travel restrictions.

Over the past few months, NASD has consulted with a number of firms in an effort to gauge how they are preparing for such a possibility. Firms are considering a range of approaches to maintain their ability to serve their customers, including moving certain functions to one of several overseas locations where the business disruption may have had a less severe impact and permitting employees to perform certain functions from their homes. Some firms, particularly smaller firms with no overseas affiliates, are considering the benefits of developing emergency "hand-off" plans that would allow them to pass client orders and other functions to clearing or other firms in a remote location, or even overseas.

While some firms already are making preparations, they currently are constrained because they do not know what kind of regulatory relief they can expect, particularly in terms of licensing, supervision, and reporting and filing requirements. Firms may find it useful to consider the regulatory relief that was available in the aftermath of Hurricane Katrina and the September 11th attacks on the World Trade Center. The relief offered in those circumstances related to emergency office relocations and requirements regarding continuing education, registered personnel engaged in active military duty, books and records, handling of customers' funds and securities, customer communications, information barriers, the three-quote rule, and regulatory filings.³

NASD is publishing this request for comment to solicit industry input as to what regulatory relief would be appropriate, and under what circumstances, in the event of a global pandemic or other major business disruption. NASD will work with the U. S. Securities and Exchange Commission and other self-regulatory organizations (SROs) to determine what regulatory relief is appropriate.⁴

Comments that identify specific rule relief that may be appropriate and under what specific circumstances will be particularly useful. To facilitate the comment process, we have identified some topics that have been discussed during our initial consultation with industry representatives; however, commenters are encouraged to submit comments or recommendations relating to other areas.

- ◆ Licensing requirements: Who can do what, from where, and whose rules will apply.
- ◆ Capital and financial reporting requirements if operating abroad: Which jurisdiction's rules will apply.
- ◆ Supervision: Both in remote U.S. and non-U.S. locations.
- ◆ Trade reporting: Particularly where a market(s) may not be functioning.
- ◆ Temporary account transfers.
- ◆ Extensions or credit and securities delivery.
- ◆ Filing and reporting requirements.

Conclusion

NASD is committed to working with the industry and other regulators to minimize the impact of a global pandemic or other major business disruption on our financial markets. We are confident that the financial services industry will respond to such an event with the same commitment to market integrity and investor protection that was displayed in the aftermath of Hurricane Katrina and the attacks of September 11.

Endnotes

- 1 See *Notice to Members 03-73* (November 2003) (NASD Announces Online Availability of Comments). Personal identifying information, such as names or email addresses, will not be edited from submissions. Submit only information that you wish to make publicly available.
- 2 Section 19 of the Securities Exchange Act of 1934 (Exchange Act) permits certain limited types of proposed rule changes to take effect upon filing with the SEC. The SEC has the authority to summarily abrogate these types of rule changes within 60 days of filing. See Exchange Act Section 19 and the rules thereunder.
- 3 See *Notice to Members 05-57* (Guidance to Members Affected by Hurricane Katrina) and Testimony of Robert R. Glauber, President and Chief Executive Officer, National Association of Securities Dealers, Inc., Before the Senate Banking, Housing and Urban Affairs Hearing on the Condition of the U.S. Financial Markets (September 20, 2001).
- 4 Our efforts to date in this area have not been limited to the United States. Given the international implications, NASD has reached out to SROs in other jurisdictions with the goal of identifying a set of principles that SROs could follow in addressing the legal, jurisdictional and logistical challenges such a pandemic would present.

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Notice to Members

JUNE 2006

SUGGESTED ROUTING

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

KEY TOPICS

Debt Securities
Operations
Rule 6200 Series
TRACE Rules
Transaction Reporting

REQUEST FOR COMMENT

Corporate Debt Securities

NASD Requests Comment on Providing Public Access to Historic TRACE Data Not Previously Disseminated or Otherwise Publicly Available; **Comment Period Expires July 31, 2006**

Executive Summary

NASD has received multiple requests to broaden the provision of previously non-public historic Trade Reporting and Compliance Engine (TRACE) transaction-level data to a variety of persons for business, academic, personal or other purposes. TRACE data is information reported to NASD by broker-dealers when they are parties to transactions in corporate bonds that are TRACE-eligible securities. NASD requests comment on providing public access to previously non-public historic TRACE transaction-level data described in greater detail below.

Action Requested

NASD encourages all interested parties to comment on this proposal. Comments must be received by July 31, 2006. Members and interested persons can submit their comments using the following methods:

- ◆ Mail comments in hard copy to the address on the address below; or
- ◆ Email written comments to pubcom@nasd.com.

To help NASD process and review comments more efficiently, persons commenting on this proposal should use only one method. Comments sent by hard copy should be mailed to:

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

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

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

Questions/Further Information

As noted above, hard copy comments should be mailed to Barbara Z. Sweeney. Questions regarding this *Notice* may be directed to Elliot Levine, Chief Counsel, Transparency Services, Markets, Services and Information, at (202) 728-8405; David Lefferts, Vice President, Transparency Services, at (212) 858-4389; or Sharon K. Zackula, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8985.

Background and Discussion

The TRACE rules have two primary aspects: the reporting of individual corporate bond transactions (transaction-level data) to NASD through TRACE and the public dissemination of certain transaction information.³ When the TRACE rules became effective on July 1, 2002, all transactions in TRACE-eligible securities were required to be reported by any broker-dealer that was a party to a transaction. However, dissemination of transaction-level data was more limited in order to carefully gauge the relationship between transparent transaction information and its impact on the market and liquidity. As a result, transactions in the majority of instruments reported to TRACE were not subject to transaction-level public dissemination at launch.

Concurrently, NASD committed to the ongoing study and periodic review of the impact on those segments of the bond market subject to transaction-level information dissemination. NASD expanded transaction-level information dissemination gradually over time from July 1, 2002 through January 9, 2006, in several phases.⁴ Currently, each transaction in TRACE-eligible securities reported to NASD is subject to immediate public dissemination, except those transactions in TRACE-eligible securities that are purchased or sold pursuant to Rule 144A under the Securities Act of 1933 (Rule 144A transactions). Those TRACE transactions subject to public dissemination are redistributed on a transaction-by-transaction basis (transaction-level) to and through multiple market data vendors who display the transaction-level data in real time, often provide value-added analytics and, finally, store aggregate and transaction-level data for historic retrieval and analysis by their clients.

The TRACE transaction data that is reported to NASD comprise the first complete database of transaction and last-sale pricing ever compiled on the U.S. corporate bond market and, as such, is of widespread interest to corporate bond market participants, other financial intermediaries, market observers, academicians and financial regulators, among others. Since the introduction of TRACE, NASD has compiled and made available aggregated statistics from both disseminated and non-disseminated TRACE transaction information that have proven valuable in providing insights on activity in the overall corporate bond market. In doing so, NASD has been careful to aggregate the statistics in order to protect transaction-level non-disseminated data from being ascertained.

More recently, NASD has received requests to make more historic, non-disseminated transaction-level data publicly available for research. Specifically, two types of requests have been made: 1) for standard TRACE-disseminated transaction-level data⁵ in publicly traded bonds (*i.e.*, not Rule 144A transactions) that had previously not been disseminated (*i.e.*, non-disseminated transactions prior to full dissemination, which began February 7, 2005) and 2) for additional data fields on individual transactions that are **reported** to NASD for regulatory purposes, but are not publicly disseminated at the transaction level (report-only data).

NASD requests comment on whether NASD should make publicly available standard TRACE transaction-level data for public transactions that were not disseminated previously. If yes, NASD requests comment on whether access should be limited in any way, or if the data should be redacted as to certain types of information. Additionally, NASD requests comment on whether it should provide access to any portion of the transaction-level historic report-only data.

Standard TRACE Transaction-Level Data for Previously Non-Disseminated Transactions

1. Should NASD provide public access to historic transaction-level data (*i.e.*, using the standard disseminated data format) for the period during which these transactions in publicly traded bonds were previously not disseminated? Should these non-disseminated transactions be made available for the entire period of July 1, 2002 through February 6, 2005, in which they may not have been disseminated, or some more limited period?

Historic Report-Only Data

2. Should NASD provide public access to fields of TRACE historic, transaction-level information that is report-only data? If so, which additional fields (*see table of candidates for report-only data fields*) of historic report-only transaction-level data should be made available publicly?
 - a. Examples include historic report-only data transaction-level data fields, such as:
 - ▶ Providing uncapped volumes (par value) for each large transaction in Investment-Grade and Non-Investment Grade bonds. This is similar to historical volume data provided by MSRB.⁶
 - ▶ Providing indicators whether the trade was a customer buy, customer sell or inter-dealer trade.⁷
 - ▶ Providing indicators whether the broker-dealer reporting each transaction was acting as “agent” or “principal.”
 - ▶ Identifying the reporting broker-dealer's MPID (*i.e.*, identifier or corporate name) and/or their contra party (either another broker-dealer's MPID or “C” to denote that the contra party was an undisclosed customer) for each transaction.

3. Should NASD make historic, report-only transaction-level data (or only particular data element(s)) available after certain extended periods of time delay? For example, report-only transaction-level data should only be available at least three months or six months after it was reported to TRACE.

Candidates for Disclosure of Report-Only Data Transaction-Level Data Fields

TRACE Reporting Field	Currently Report-Only Field	Currently Partially Disseminated
Buy/Sell Indicator	✓	
Buyer \$ Commission of Executing Broker	✓	Amount reflected in total price
Buyer Principal/Agent Capacity	✓	
Contra Party ID (MPID or C for "Customer")	✓	
Reported Volume of Transaction (number of bonds multiplied x \$1,000)	✓	Capped at \$1MM or \$5MM
Reporting Party Give-Up (MPID)	✓	
Reporting Party ID (MPID)	✓	
Seller \$ Commission of Executing Broker	✓	Amount reflected in total price
Seller Principal/Agent Capacity	✓	

Endnotes

- 1 See *Notice to Members 03-73* (November 2003) (NASD Announces Online Availability of Comments). Personal identifying information, such as names or email addresses, will not be edited from submissions. Submit only information that you wish to make publicly available.
- 2 Section 19 of the Securities Exchange Act of 1934 (Exchange Act) permits certain limited types of proposed rule changes to take effect upon filing with the SEC. The SEC has the authority to summarily abrogate these types of rule changes within 60 days of filing. See Exchange Act Section 19 and the rules thereunder.
- 3 The TRACE Rules are the Rule 6200 Series.
- 4 The phases culminating in implementation of real-time dissemination of TRACE information occurred on July 1, 2002, with the implementation of SR-NASD-1999-065 (Phase I); March 3, 2003 and April 14, 2003, with the two-part implementation of SR-NASD-2002-174 (and a supplemental rule filing) (Phase II); October 1, 2004 and February 7, 2005, with the two-part implementation of SR-NASD-2004-094 (Phase III); and January 9, 2006, with the implementation of SR-NASD-2005-120 (Phase IV-final phase).
- 5 Dissemination data would be limited to the specific TRACE data fields that NASD currently disseminates to the market, not all the information per transaction that a broker-dealer reports to TRACE, and would be for transactions that were executed between July 1, 2002 to February 6, 2005, reported to TRACE, and not disseminated. It consists of the following information: the TRACE-eligible security identifier (e.g., the TRACE symbol or the CUSIP), the price inclusive of any mark-up, mark-down, or commission; the yield; the time of execution; and if the transaction was executed on a day other than when the information is being disseminated, the actual day of execution of the transaction. Quantity is reported as the par value of the trade, subject to certain limits. If a transaction is in an Investment-Grade TRACE-eligible security and exceeds \$5 million, the quantity disseminated is \$5 followed by an "MM+," indicating that the volume figure is capped. If a transaction is in a Non-Investment-Grade TRACE-eligible security and exceeds \$1 million, the quantity disseminated is \$1, followed by "MM+." (Information on Rule 144A transactions would not be included in dissemination data because such transactions have never been subject to dissemination.)
- 6 See MSRB Notice 2004-39 (November 23, 2004).
- 7 NASD recently published *Notice to Members 06-22* (May 2006), requesting comment on whether NASD should include in the transaction information that is disseminated real-time symbols indicating if the member reporting the transaction in a TRACE-eligible security was a buyer (B) or a seller (S) and if the counterparty was a customer (C) or a dealer (D). In this *Notice*, NASD is requesting comment on whether historic TRACE transaction-level data, if made available to the public, should include such designations.

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Notice to Members

JUNE 2006

SUGGESTED ROUTING

Legal & Compliance
Operations
Senior Management

KEY TOPICS

Blue Sheets

ACTION REQUESTED

Intermarket Surveillance Group¹

Frequently Asked Questions regarding Electronic Blue Sheet Submissions; Remediation Dates Extended

Executive Summary

This *Notice to Members* presents responses to questions from firms concerning Electronic Blue Sheet (EBS) submissions. This information should assist members who are conducting a validation of all required EBS data to ensure that EBS submissions are consistent with current standards and accurately reflect members' books and records.

In addition, the ISG grants two extensions of time for remediation, one deadline that applies to the Account Type Identifier and the Exchange Code fields, and another that applies to all other EBS fields.

The following self-regulatory organizations (SROs), acting jointly as members of the Intermarket Surveillance Group (ISG), prepared this *Notice*:

- ◆ American Stock Exchange LLC (AMEX)
- ◆ Boston Stock Exchange, Inc. (BSE)
- ◆ Chicago Board Options Exchange, Inc. (CBOE)
- ◆ Chicago Stock Exchange, Inc. (CHX)
- ◆ International Securities Exchange (ISE)
- ◆ NASD Inc. (NASD)
- ◆ NASDAQ Stock Market LLC (NASDAQ)
- ◆ National Stock Exchange (NSX)
- ◆ New York Stock Exchange, LLC (NYSE)
- ◆ NYSE Arca (NYSEArca)
- ◆ Philadelphia Stock Exchange, Inc. (PHLX)

Questions/Further Information

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

SRO	Individual	Telephone No.	Email
AMEX	Robert Ulmer	(212) 306-1283	<i>robert.ulmer@nasd.com</i>
BSE	Bruce Goodhue	(617) 235-2022	<i>bruce.goodhue@bostonstock.com</i>
CBOE	Pat Sizemore	(312) 786-7752	<i>sizemore@cboe.com</i>
CHX	Marguerite Donovan	(312) 663-2548	<i>mdonovan@chx.com</i>
ISE	Willie Wong	(212) 897-8126	<i>wwong@iseoptions.com</i>
NASD	Rose Braisted	(240) 386-4987	<i>rose.braisted@nasd.com</i>
NASDAQ	John Zecca	(301) 978-8498	<i>john.zecca@nasdaq.com</i>
NSX	Nicole Guiffra	(312) 786-8809	<i>guiffra@nsx.com</i>
NYSE	John Kroog	(212) 656-6532	<i>jkroog@nyse.com</i>
NYSEArca	John Chapin	(312) 442-7790	<i>jchapin@nyse.com</i>
PHLX	Christopher Swisher	(215) 496-5680	<i>chris.swisher@phlx.com</i>

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

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

ISG Regulatory Memorandum, ISG 2006-02

On September 7, 2005, SROs, acting jointly as members of the Intermarket Surveillance Group, issued ISG Regulatory Memorandum 2005-01 (the "2005-01 ISG Notice") concerning the automated submission of trading information via the Electronic Blue Sheet System. The 2005-01 ISG Notice reiterated requirements for accurate and timely EBS reporting. The 2005-01 ISG Notice also required that by no later than March 31, 2006, members and member organizations conduct and complete a validation of certain required EBS data to ensure that EBS transmissions are consistent with current standards and accurately reflect members' books and records. Attachment A of the 2005-01 ISG Notice, *Record Layout for Submission of Trading Information*, indicated those layout records that required validation.

Recently, the SROs and the Securities Industry Association (SIA) engaged in a series of discussions with respect to the EBS requirements. This Regulatory Memorandum addresses specific questions raised in those discussions. The responses reflect a consensus of the ISG members.

With regard to the Account Type Identifier and the Exchange Code fields, members and member organizations will be given a remediation extension until December 31, 2006. Members and member organizations are not required to remediate historical data for these two fields for trade dates on or before **December 31, 2006**. All members and member organizations that are correcting inconsistencies in these two fields shall provide written confirmation by electronic mail to their designated SRO that remediation has been completed on or before December 31, 2006.

With regard to all other EBS fields, members and member organizations will be given a remediation extension until **September 30, 2006**. Members and member organizations are not required to remediate historical data for trade dates on or before September 30, 2006. All members and member organizations that are correcting inconsistencies in any other EBS fields shall provide written confirmation by electronic mail to their designated SRO that remediation has been completed on or before September 30, 2006.

Frequently Asked Questions²

Electronic Blue Sheet System

Field Name: **Opposing Broker Number**

Question 1: If the executing broker does not give the clearing firm the opposing broker information, can the clearing firm leave the opposing broker field blank, or is the clearing firm obligated to obtain and report that information?

Answer If the clearing firm has the information related to the opposing broker, then it should report the information. If the clearing firm does not have the information, then the field may be left blank.

Question 2: If a foreign affiliate does not reveal the opposing broker in a trade involving foreign securities executed in a foreign market, is it acceptable to leave this field blank?

Answer Yes, it is acceptable to leave this field blank if the foreign affiliate does not provide information regarding the opposing broker on the trade.

Question 3: For "anonymous" trading exchanges, the exchange trading system does not identify the contra-broker. Should firms report the omnibus clearing number associated with the exchange in the opposing broker field?

Answer Yes. However, if the market or exchange does not provide the opposing broker, it is acceptable to leave the field blank.

Question 4: How do firms report the opposing broker for an average price trade?

Answer For individual market executions, the specific opposing broker should be reported for each trade. For the allocation trades into an average price recipient account, firms may leave the opposing broker field blank.

Question 5: Suppose a firm executes a trade with a contra-party that does not have a National Securities Clearing Corp. (NSCC) number, but the firm clears its trades with another firm that does have an NSCC number. In the opposing broker field, should firms report the NSCC number for the clearing firm of the opposing broker or the market participant identifier (MPID) of the executing broker?

Answer The NSCC number for the clearing firm for the opposing broker is preferable, but the MPID of the clearing firm would be an acceptable alternative.

Question 6: For odd-lot transactions executed on the NYSE, the exchange trading system does not provide the exchange mnemonic of the contra-broker. Odd lots are cleared through the specialist.

For EBS reporting purposes should firms:

1. Leave the opposing broker field blank, to be consistent with the information that the NYSE provides from its front office systems?
2. Report the NYSE/AMEX omnibus clearing number associated with normal trades done through the specialists (0787 for NYSE or 0620 for AMEX)? or
3. Derive the NSCC number of the individual specialist firm based on the security?

Answer In this scenario, the firm should know the opposing broker, so the firm must report it.

Field Name: **File Creation Date**

Question 7: Is "file creation date" a required field?

Answer Yes. This information should be inputted for the file creation date field.

Field Name: **CUSIP Number**

Question 8: Since foreign securities do not have U.S. CUSIP numbers, what should firms report for foreign trades in the CUSIP field?

Answer In the case of foreign securities, firms should use foreign identification numbers, such as the International Securities Identification Number (ISIN), the CUSIP International Numbering System (CINS) number or the identification code issued by the Stock Exchange Daily Official List (SEDOL).

Field Name: **Ticker Symbol**

Question 9: How should securities without U.S. symbols be handled? Are they out of scope for EBS requests?

Answer Non-U.S. securities are not out of the scope of EBS requests. When the U.S. security is traded in a non-U.S. market, the ISG wants to see the U.S. symbol. When the U.S. security is an American Depository Receipt (ADR) or American Depository Share (ADS) and the ISG participant is also interested in the home country or "Ordinary" shares, the ISG participant will send two distinct EBS requests, one for the ADR or ADS and one for the Ordinary shares. In this event, the firm should report the Ordinary symbol and the corresponding non-U.S. identification number.

Question 10: Since there is no OPRA ticker symbol for foreign options, does that mean they are out of scope?

Answer No. Foreign ISG members could request information through the ISG. Therefore, foreign securities could be requested and therefore EBS must be reported.

Question 11: Firms are still not clear when and if foreign transactions should be reported.

Answer See Questions 9 and 10 above.

Question 12: By specifying a ticker symbol as a required field, does this mean that only securities with U.S. ticker symbols will be requested on an EBS report?

Answer See Questions 9 and 10 above.

Question 13: Do firms need to maintain EBS data for securities not listed on U.S. markets?

Answer Yes.

Field Name: Settlement Date

Question 14: For “when issued” trades, should firms leave the settlement date blank, or should firms report the corrected settlement date of the transaction once it is established?

Answer If firms do not know the settlement date, the field should be blank.

Field Name: Quantity

Question 15: The EBS file format accepts only whole numbers. How do firms report fractional shares, for example, for international securities?

Answer It is acceptable for submitting firms to truncate to the whole share any quantities that are in fractional shares. For example, 100.5 shares may be reported as 100 shares.

Field Name: Price

Question 16: For trades executed in a foreign currency, what exchange rate should be used to translate the trade price into U.S. dollars? Is it acceptable to use the noon buying rate used by the Federal Reserve?

Answer The use of the Federal Reserve noon buying rate is acceptable. The firm may use an alternative foreign exchange rate, as long as any such exchange rate used is applied consistently in all EBS reporting by the firm.

Field Name: Exchange Code

Question 17: The NASD ADF requires a "Q" code. What is the NASD ADF?

Answer The NASD ADF is the "Alternative Display Facility." For more information, go to www.nasdaqtrader.com or www.nasd.com.

Question 18: If the NASD ADF is not an execution venue, but only a display tool, when would it ever produce a trade execution that would be reported through the EBS?

Answer Currently, there will be no occasion to report "Q" for NASD ADF trades through the EBS. However, this code is reserved for future use in the event that the NASD ADF ever executes trades.

Question 19: What code should be assigned to electronic communications network (ECN) trades: "Z" or "O"?

Answer ECN trades should all be coded as "Z."

Question 20: How should trades executed on the INET ATS, Inc. (INET) ECN and Brass ECN (BRUT) be reported on the EBS after they have become part of NASDAQ and after NASDAQ has become an exchange?

Answer After the conversion of INET and BRUT from independent ECNs to components of the NASDAQ trading system, they should be reported as "R." Prior to this conversion, these ECNs should be reported as "Z." After NASDAQ has become an exchange, trades on the exchange should be reported as "R". Trades reported on the Trade Reporting Facility (TRF) should be reported as "S".

Question 21: What code should be assigned to Third Market trades of listed securities executed on an exchange: "Z" or "S"?

Answer Third Market trades should all be coded as "S" for OTC.

Question 22: Are the following applications of the exchange code correct?

- Broker-to-broker transactions cleared through NASDAQ Market Center or TRACS: "S"
- Listed securities executed OTC but not on SuperMontage (Third Market): "S"
- Non-listed securities executed on an ECN: "Z"
- Listed securities executed on an ECN: "Z"
- Non-listed securities executed on SuperMontage: "R"
- OTC Bulletin Board transactions: "S"
- Pink Sheets transactions: "S"

Answer The applications described above are correct.

Question 23: What exchange code should be assigned to trades posted to the recipient of average price trades?

Answer The exchange code should be left blank for the recipient of the average price trades.

Field Name: Broker-Dealer Code

Question 24: Firms understand that if a transaction was done for another broker-dealer, the broker-dealer code should be "1," to indicate "yes." What does "done for" mean? Does it mean executed, cleared or both?

Answer Both clearing and executing brokers are responsible for submitting this code on their EBS submissions. "Done for" can mean either execution or clearing, depending on the role that the submitting broker-dealer played in the transaction.

Question 25: How should firms report the broker-dealer code if an executing broker-dealer executes and clears a customer trade? Firms believe that the executing broker should report a "1" if the customer is a broker-dealer (or it is a customer of another broker-dealer) and a "0" if the customer is not a broker-dealer. Is this correct?

Answer Yes.

Question 26: What do clearing brokers report for trades that are cleared for their correspondents (that is, their introducing brokers and executing brokers)? Firms believe that clearing brokers should report "1" for these trades since they are "done for" another broker-dealer. Is this correct?

Answer Yes.

Question 27: What are the acceptable broker-dealer codes? Are they "1" and "2," or are they "0" and "1"?

Answer The correct answers are "0" for "no" and "1" for "yes."

Question 28: If an account is a disclosed account for the benefit of an underlying client (e.g., XYZ broker-dealer FBO John Doe), should this be coded as "broker-dealer," or is the broker-dealer code limited to proprietary accounts of broker-dealer clients?

Answer This trade would be coded "1" for "yes," as this is a trade for another broker-dealer. The designation of a trade as a "broker-dealer" trade is not limited to proprietary trades of broker-dealers. The "broker-dealer" designation also includes non-proprietary trades done for another broker-dealer.

Question 29: Should firms code a "flip," or a trade in an omnibus account, as "broker-dealer"?

Answer Yes. Both the executing broker and the clearing broker would report these transaction types as "1" for "yes."

Question 30: When a member firm is the executing broker and its trades settle at a prime broker, should these trades have a value of "0" for "no" or "1" for "yes"?

Answer Trades executed by an executing broker that will be delivered to a prime broker should be designated according to the broker-dealer status of the executing broker's customer.

The executing broker should input a "1" for "yes" in the broker-dealer code field on its EBS submission, signifying that the account belongs to another broker-dealer, and input the NSCC clearing number of the prime broker in the prime broker field.

The prime broker would input a "0" for "no" in the broker-dealer code field on its EBS submission, signifying that the account is not one of another broker-dealer, and its own NSCC clearing number in the prime broker field.

Question 31: What code should be used when a broker-dealer trades for its own account?

Answer Proprietary trades by broker-dealers are always coded as "0." Trades are only coded as "1" if they are done for *another* broker-dealer. Note that clearing brokers that execute for their own accounts would also code these trades as "0."

Question 32: Should trades done for foreign affiliates be marked as broker-dealer trades?

Answer Trades done for foreign affiliates would be categorized as correspondent or omnibus trades. Therefore, as noted in Question 29, they would be coded "1."

Question 33: Should prime broker trades being reported by the prime broker be marked as broker-dealer trades?

Answer Trades that are reported by a prime broker should be coded "0," as these trades can only be for non-broker-dealer customers.

Field Name: Solicited Code

Question 34: How should firms report trades from a "non-retail" environment? Is it permissible to default to "unsolicited" in the absence of information to the contrary?

Answer It is acceptable to leave the field blank if a submitting firm does not know the solicited/unsolicited status of the trade.

Field Name: Branch Office/Registered Representative Number

Question 35: Should the Branch Office value on the EBS match the NYSE EFP branch codes?

Answer No.

Question 36: When reporting the registered representative number for institutional business, can firms use a generic number for trades handled by a specific trading desk, such as the program trading desk, or must firms report the registered representative number of the individual sales trader who handled the order?

Answer While it is preferable that firms report the registered representative number assigned to the individual trader, it is acceptable for the registered representative number to be the number assigned to a trading desk.

Question 37: Should the registered representative number be associated with individual trades or to all trades for a particular account?

Answer It is preferable that firms report the registered representative number of the individual trader associated with the individual trade in order to provide the most granularity as to who handled the order or trade. However, it is acceptable to report the registered representative number associated with an account if the registered representative number of the trader is not available for the trade.

Field Name: **Date Account Opened**

Question 38: Is "date account opened" a required field for proprietary accounts?

Answer The information should be reported if it is known. Otherwise, the field may be left blank.

Field Name: **Short Name Field**

Question 39: How should the short name field be handled for non-individual accounts, such as corporate accounts, hedge funds and firm accounts?

Answer If a firm has the information readily available, then it is preferable that the firm includes as much of the account name as possible.

Question 40: Since this field is not listed as one requiring validation, is it required on all transactions submitted through the EBS?

Answer If a firm has the information readily available, then it is preferable that the firm includes the information. Otherwise, the field may be left blank.

Field Name: **Employer Name**

Question 41: Is "employer name" currently a required field?

Answer If the firm has the information readily available, then it is preferable that the firm includes the information.

Field Names: **TIN 1 Indicator and TIN 2 Indicator**

Question 42: What do firms report if the customer is a foreign broker-dealer and has no tax identification number (TIN)?

Answer The field should be left blank.

Question 43: Do firms report the TIN for firm accounts? Do average price accounts require a TIN?

Answer For average price accounts, the field should be left blank. For other firm accounts, report the company's TIN.

Field Name: Name & Address Lines 1-6

Question 44: What account information should the firm submit for processing accounts? For example, what information should the firm report for an allocation/average price account?

Answer The ISG has previously indicated that the account name of proprietary accounts should **not** be a cryptic code or reference number. Instead, the account name should make clear the nature of the account with all relevant information, including, without limitation, if it is a processing account or an allocation/average price account or otherwise.

Question 45: According to SEC Rule 17a-25, submitting firms do not need to give account name and address information for proprietary accounts. However, firms understand that this information would now be required for proprietary accounts. Which view is the correct one?

Answer The account name and address information should be provided for proprietary accounts.

Question 46: For trades that are sent to a prime broker, is it acceptable to use the address of the prime broker receiving the trade or must the address of the account's beneficial owner be used?

Answer It is acceptable to use the address of the prime broker.

Field Name: Account Type Identifiers

Question 47: Are firms required to submit all possible account type identifiers according to all of the different exchanges and their unique sets of codes, or may firms limit their submission to only those account type identifiers listed in Attachment B of the 2005-01 ISG Notice?

Answer Firms only need to report those account type identifiers that are listed in Attachment B of the 2005-01 ISG Notice or any future changes that may be made by members of the ISG.

Question 48: How should firm report the account type identifiers when trades from multiple customers are averaged together and each has a different account type code? For example, suppose an introducing broker has several clients for whom he acts as a money manager. Some of the clients are individuals and others are institutions. The introducing broker has a trading account with his executing broker to handle the order flow. The introducing broker sends a single order to his executing broker for the accounts of several different customers. The executing broker routes the order to the NYSE for execution. What is the correct account type identifier?

Answer In the example presented above, with individual and institutional orders aggregated together, the correct account type identifier is "A."

Question 49: Can firms leave the account type identifier field blank for executions processed through the average price account?

Answer Firms should provide the account type on the individual executions in an average price/processing account. Clearing brokers should pass through to an average price account any account type identifier codes that they have been given by their executing and introducing brokers. However, if a clearing broker is not given the information, then this field may be left blank.

Question 50: Do firms need to submit account type identifiers for short sale trades executed into an average price account, or is this information only required for trades executed directly into customer accounts?

Answer Firms are required to submit account type identifiers for short sale trades executed in an average price account.

Question 51: Previous guidance specified unique account identifier codes for NASD EBS requests. The most current guidance from the 2005-01 ISG Notice makes no mention of the NASD codes previously in use.

Should firms continue to use the previously announced NASD codes even though they were not mentioned in the latest guidance, or should firms assume these are obsolete and use only the codes specifically mentioned in the 2005-01 ISG Notice? If so, then is there any additional guidance on how firms should fit the NYSE originated codes in the 2005-01 ISG Notice to NASDAQ transactions?

Answer For trades that are executed on NASDAQ, it is acceptable to use the basic "A" and "P" codes for "agency" and "proprietary." NASD will accept the additional codes from the 2005-01 ISG Notice, but these codes are not required. AMEX trades should make use of the full set of NYSE-originated codes listed in the 2005-01 ISG Notice.

Question 52: Firms are unsure when to use the options code "P" and when to use options code "F." Options code "P" is for "Registered Trader Market Maker Transaction Regardless of the Clearing Number" and options code "F" is for non-program proprietary trades. What is the definition of a registered trader market maker? Are there any limits on whether these trades should be principal or agency trades?

Answer The "F" code applies to a clearing broker's proprietary option trades. The "P" code is for a trade done by a Primary Market Maker (PMM). A PMM may also be called a Designated Primary Market Maker (DPM) or Lead Market Maker (LMM) depending on the Exchange. The PMM is a market maker that has additional responsibilities similar to a specialist on an equity exchange. The "M" code is for a market maker that does not have these additional responsibilities. The "S" code is for an equity specialist executing option trades for their own account. With respect to the AMEX, the "S" code will also be used for the options' specialist executing trades in its specialty options.

Question 53: The new guidance from the 2005-01 ISG Notice specifies separate codes for specialists and for competing market makers. Firms understand that specialist codes should apply to designated specialists that trade listed stock on the exchange floor. Furthermore, firms understand that competing market maker codes apply to both Third Market OTC Market Makers who trade listed stock OTC/NASDAQ, and NASDAQ Market Makers who trade NASDAQ stock on the NASDAQ market. Is this interpretation correct?

Answer Yes.

Question 54: Many of the account type identifiers require firms to designate an account as a "member" or a "non-member." Firms understand that trades should use a "member" account identifier code if the account executing the trade is a member of the same exchange where the stock is listed. Is this interpretation correct?

Answer In connection with this question, the ISG was asked to consider the following two scenarios.

Under the first scenario, an introducing broker has a customer who is a member of the NYSE, but not a member of the AMEX. The introducing broker sends two orders on behalf of its customer in NYSE-listed securities to its executing broker. When the introducing broker sends these orders, it does not know where they will be executed. The executing broker routes one of the orders to the NYSE and the other to the AMEX.

In addition, when the introducing broker delivers the orders to the executing broker, the executing broker knows the membership status of the account. When the executing broker routes the order, it knows the execution venue of the trade and the listing origin of the security.

In this scenario, if member and non-member trades are aggregated together, then the aggregated trade should default to a non-member "A" code.

Under the second scenario, an introducing broker has a customer who is a member of the NYSE. The introducing broker sends an order on behalf of its customer in NYSE-listed securities to its executing broker. When the introducing broker sends this order, it does not know where the order will be executed. In this case, the executing broker routes this order to an ECN.

In this scenario, the membership status for a given trade is based on the membership of the account and the venue of execution.

Question 55: How should a firm assign the account type identifier to a trade if the trade can be categorized in more than one way?

Answer In connection with this question, the ISG was asked to consider the following two scenarios.

The first scenario involves a program trade that is also a proprietary market maker trade. The correct account type identifier depends on the composition of the program. If the program contains any exchange-traded stocks, then the NYSE program trading account type identifier codes should be used. If the program does not contain any exchange-traded stocks, then the P/A NASDAQ codes should be used.

The second scenario involves a program trade with some component trades that are short sale exempt. In this case, the program trades' account type identifiers are the correct ones to use, and not the short exempt identifiers.

Question 56: How should the status of a "registered trader" be ascertained? Firms understand that the definition of a "registered trader" (the "G" code) includes "upstairs broker-dealers doing proprietary trades through an affiliated floor broker." Is this correct?

Answer No. The "G" code is for trades done by a registered equity trader on the floor of the exchange.

Field Name: Prime Broker

Question 57: What clearing number should be included in the prime broker field? What should be reported if the submitting firm acted as prime broker?

Answer An executing broker should report the NSCC clearing number of the prime broker. For the same trade, a prime broker should report its own NSCC clearing number. If an executing broker also acts as the prime broker, then it should report its own NSCC clearing number.

Field Name: Average Price Account

Question 58: If a client order is facilitated through an "Average Price Facilitation Account," but the resulting execution of the order is filled through single execution, should the transaction be reported as "average price"?

Answer Yes.

Question 59: How should firms handle allocated trades that are derived from underlying trades with mixed characteristics? For example, how should an aggregated trade be coded if it is derived from underlying trades with different account type codes or exchange codes?

Answer For the individual market executions (*i.e.*, the underlying trades), the specific opposing broker, exchange code and account type identifier should be reported for each trade. However, these fields may be left blank for the allocation trades into an average price recipient account.

Question 60: Multiple executions of an order for a customer can be rolled up such that a customer receives one confirmation indicating an average price. For example, suppose a customer enters an order for 200 IBM that is filled in two lots of 100. Instead of receiving two separate confirmations, the customer receives one confirmation at an average price. The individual execution lots are reported on the EBS submission. Do these trades need to be reflected on the EBS as an average price trade as well?

Answer No.

Question 61: How should fair price trades/allocations be reported on the EBS? Is it acceptable to treat fair price trades like average price trades in terms of reporting the execution and the allocation, and for applying the average price codes of "1" (average/fair price trade itself) and "2" (executions that make-up average/fair price trade)?

Or for fair price trades/allocations, should only the execution be reported (without the specific account holder information)?

Or for fair price trades/allocations, should only the allocations be reported (with the specific account holder information)?

Answer Fair price trades can be coded with the same methodology as average price trades in order to identify cases where both an execution and an allocation are provided on the EBS for double counting purposes. However, if a firm processes fair price trades such that only the execution or allocation is provided on the EBS, then it would be acceptable to report it without an average price indicator.

Question 62: A customer sells long and short throughout the day. The trades are appropriately identified for the street side fills as long sales and short sales. The customer's transactions are averaged out at the end of the day. What should be reflected in the Buy/Sell field for the account that received the average price in this mixed capacity scenario?

Answer In this mixed capacity scenario, the Buy/Sell field should reflect a long sale for the account that received the average price.

Field Name: Depository Institution Identifier

Question 63: What is a Depository Institution Identifier?

Answer The Depository Institution Identifier is the identifier number assigned by the depository institution. (See *NASD Notice to Members 01-60*.)

Other Topics

Field Validation

Question 64: Is there a general guideline as to when a firm may leave a particular EBS field blank?

Answer The general guideline is that a firm should report data if it has the data in its possession. If that data is unattainable, then that EBS field may be left blank.

Question 65: What is the difference between required validation fields and fields where validation is not required?

Answer A non-validated field does not necessarily indicate that the information is optional to report. To the extent that information in these fields has been provided in the past, then it is expected that the firm continue to supply the information.

For example, the Net Amount field is not a required field for validation and the firm may or may not provide the information. However, the Requesting Organization Number is also not a required field for validation, but the information is necessary for the submission of the EBS.

Question 66: What is required to be reported to the ISG if a firm finds in its validation process a discrepancy between the requirements and how or what the firm has been submitting?

Answer

- If a firm discovers an error in its EBS process, then it should immediately self-report gaps as follows:
- If the firm is a member of only one SRO, report to that SRO;
- If the firm is a member of multiple SROs including the NYSE, report to the NYSE; or* If the firm is a member of multiple SROs and is not a NYSE member, report to NASD.

Question 67: When a firm is acting as a clearing broker for transactions that are executed away from it, the data attributes are outside the clearing broker's sphere of control and are passed to it by the introducing broker or the executing broker. Is it sufficient to validate that the information is correctly passed to the firm's EBS and consistent with information on the clearing firm's books and records?

Answer A firm should report information that it has available. It should also make a reasonable effort to ensure that the information it reports is accurate. If a firm discovers that the information that it received from a client that the firm is depending upon to make an EBS report is inaccurate, the firm should refer the client to that client's Designated Examining Authority. See Question 66.

Scope of products/transactions that are reportable through EBS

Question 68: Aside from common shares and exchange-traded options, there are many other security types that are priced based on the underlying value of corporate equity or debt. Are any of these other securities and derivatives reportable through EBS, or are EBS submissions limited to common shares and exchange-traded options?

Answer All ISG SROs may make EBS requests for any securities traded. This may include bonds (reporting face value amounts), foreign stocks (reporting foreign ticker/foreign identification number), domestic stock (reporting domestic ticker and CUSIP), fixed income securities traded over the counter (such as corporate and municipal bonds, and U.S. treasury securities), exchange-traded options (listed) and structured products.

Question 69: How should listed bonds be reported through the EBS?

Answer The reportable “quantity” should be the face value of the bonds, the “net amount” should be the net proceeds and the “symbol” should be the symbol for the bond on the marketplace where the bond was traded. However, if the bond trades on more than one marketplace, then provide the symbol of the marketplace requesting the EBS.

Question 70: Is the scope of foreign securities reportable through EBS isolated to only common stock/shares traded in foreign markets that have U.S. equivalents? Does the scope of foreign securities reportable through EBS include foreign bonds, foreign stock options, foreign index options, etc.?

Answer EBS requests will be for specific securities as indicated by a ticker symbol or security identification number, including ISINs, CINS or SEDOLs. Therefore, firms will not be responsible for reporting related ADRs, preferreds or any other related classes of securities requested for an EBS report, unless that other class is specifically requested. This is true for requests of both domestic and foreign securities.

Question 71: Are fractional share purchases associated with equity dividend reinvestment plans required to be shown on an EBS?

Answer No. Only whole number of shares are reportable. See Question 15, above.

Question 72: Should clearing member trade agreement (CMTA) trades be included in the executing firm's EBS submission? Should CMTA trades be included in the clearing firm's EBS submission? Or both?

Answer CMTA trades should be included in the firm's EBS submission. Executing firms that do option trades and then CMTA the trade for clearance will be expected to know the trade details for an EBS submission. Each firm has to provide the information the firm knows.

Question 73: Are firms required to report pre-settlement trade cancels/corrects through the EBS? Is it acceptable to report, for a cancel/correct, only the adjusted trade without reference to any cancels, or nothing in the case of a straight cancel?

Answer The firm's EBS submission should reflect the corrected settlement date transaction information, since this is the information that is recorded on the firm's books and records and accurately reflects the transactions. Therefore, pre-settlement date adjustments do not need to be separately included on the firm's EBS submission. However, a firm may include pre-settlement trade adjustments if it prefers.

Information Confidentiality

Question 74: Does a clearing firm have to share the results of its EBS audit with its introducing firms? What is a clearing firm's responsibility with respect to the sharing of results?

Answer The ISG leaves this to the firms' discretion.

Question 75: Is an executing firm required to pass on to its clearing firm all of the information that a clearing firm will require to submit its own EBS report?

Answer Yes. The ISG requires that executing firms pass to their clearing brokers all of the information that the clearing brokers will need to make their EBS submissions correct with respect to the fields that require validation. Additionally, the ISG would prefer that executing firms forward any other information that the clearing firm may require to make their submission complete.

Information Retention Time

Question 76: The 2005-01 ISG Notice indicated that member organizations are required to maintain EBS information for the time set forth in SEC Rule 17a-4(b). That rule states that records should be preserved for three years. However, from time to time, EBS requests are made for data that is older than three years. Is the firm obligated to answer EBS requests for periods exceeding the requirements of 17a-4(b)?

Answer Firms should maintain certain transaction information for six years and other information for three years. However, they only need to keep information in an "easily accessible" place for two years. If an EBS request is received for a period more than two years in the past, and that submission will take longer than 10 days to deliver, the submitting firm should contact its SRO on a case-by-case basis to discuss a reasonable timeframe for responding to the request.

Executing Versus Clearing Broker Responsibilities

Question 77: Is it acceptable for the executing broker on CMTAs and give-ups not to report these transactions since they are not processed on that firm's books and records and the executing broker does not have any account information to report in their EBS submission? For these trade types, the clearing broker has all of the required information for the EBS report, including the account name and account address.

Answer Executing brokers should report give-ups and CMTA-out trades. See Question 72 above.

Question 78: For step-outs and flip-outs, does the executing broker report only the execution with the street, or should the executing broker also report the clearing transaction with the clearing broker?

Consider this example: an executing broker executes a buy trade for a customer. After execution, the executing broker gives this customer trade to its clearing broker through a "correspondent flip-out." This flip-out to the clearing broker appears as a sell trade and is a separate transaction in the books and records of the executing broker, distinct from the buy trade done in the open market.

The clearing broker receives this trade as a "flip-in" and processes it through the settlement cycle. The clearing broker reflects this flip-in as a buy trade.

Answer Step-outs and flip-outs should be reported. An executing firm should report both its market executions and its clearing transactions to its clearing broker.

A clearing broker should report those clearing transactions it receives from its executing clients.

Question 79: For transactions in which the firm is acting only as the clearing broker, as with prime brokerage, step-ins or flip-ins, clearing typically occurs on an aggregated basis and not at the individual execution level. Is it acceptable to report these transactions in the aggregated form in which they were cleared? If so, what is the appropriate account type indicator and exchange code to be used for aggregated trades?

Answer Prime brokers and clearing brokers should report in their EBS submission transactions showing the trade data that they were given. For aggregated trades, if the underlying transactions are of different types, then the clearing broker or prime broker should leave those fields blank. See Question 75.

Endnotes

- 1 This ISG Notice 2006-02 was prepared by the following self-regulatory organizations as members of the ISG: American Stock Exchange LLC (AMEX), Boston Stock Exchange, Inc. (BSE), Chicago Board Options Exchange, Inc. (CBOE), Chicago Stock Exchange, Inc. (CHX), International Securities Exchange (ISE), NASD Inc. (NASD), NASDAQ Stock Market (NASDAQ), National Stock Exchange (NSX), New York Stock Exchange LLC (NYSE), NYSE Arca (NYSEArca) and Philadelphia Stock Exchange, Inc. (PHLX).
- 2 It should be noted that the SIA did not raise any questions for the following fields: Submitting Broker Number, Requesting Organization Number, Submitting Broker Number, Trade Date, Net Amount, Buy/Sell Code, State Code, Zip Code/Country Code and Account Number.

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Disciplinary and Other NASD Actions

REPORTED FOR JUNE

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 May 2006.

Firm Expelled, Individuals Sanctioned

Donner Corporation International nka National Capital Securities, Inc. (CRD #37702, Oklahoma City, Oklahoma), Jeffrey Lyle Baclet (CRD #2022409, Registered Principal, Santa Ana, California), Paul Alan Runyon (CRD #3159920, Registered Principal, Lake Forest, California) and Vincent Michael Uberti (CRD #2618595, Registered Principal, Santa Ana, California).

The firm was expelled from NASD membership, and Baclet and Uberti were barred from association with any NASD member in any capacity. Runyon was fined \$20,000, suspended from association with any NASD member in any capacity for six months, and must requalify by exam as a general securities representative and a general securities principal. The sanctions were imposed by the National Adjudicatory Council (NAC) following appeal of an Office of Hearing Officers (OHO) decision. The sanctions were based on findings that the firm, Baclet and Uberti issued research reports on reporting companies that failed to disclose material information and contained misleading, exaggerated and false statements. The findings stated that the firm, Baclet and Uberti intentionally or recklessly failed to disclose material information on research reports issued to the public, and failed to disclose that the firm had received compensation for preparing and disseminating them. The findings also stated that the firm and Baclet failed to obtain signed approval of research reports prior to their dissemination. Moreover, NASD found that the firm and Baclet failed to establish, maintain and enforce adequate written supervisory procedures reasonably designed to achieve compliance with applicable securities laws and NASD rules concerning research reports. Furthermore, NASD found that Uberti and Runyon fraudulently failed to disclose material negative financial information, and included exaggerated and misleading information in their research reports.

Donner Corporation International, Baclet, Uberti and Runyon have appealed this decision to the SEC, and the sanctions, except for the bar and expulsion, are not in effect pending consideration of the appeal. (NASD Case #CAF020048)

Firm Fined, Individual Sanctioned

Bullaro Securities Corp. (CRD #28042 Astoria, New York) and Sal Stephen Bullaro (CRD #2022687, Registered Principal, Forest Hills, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000 jointly and severally with Bullaro, and Bullaro was suspended from association with any NASD member in any financial and operations principal capacity for 30 days. Without admitting or denying the findings, the firm and Bullaro consented to the described sanctions and to the entry of findings that the firm permitted Bullaro—the firm’s president and sole executive officer, Chief Compliance Officer and Financial and Operations Principal—to conduct securities business while his securities registration was inactive due to his failure to timely satisfy the Continuing Education/Regulatory Element requirement. The findings stated that the firm, acting through Bullaro, failed to include in its trial balances any of the firm’s proprietary positions and related haircut charges associated with its substantial American Stock Exchange floor business that resulted in its net capital computations being inaccurate.

Bullaro’s suspension began on May 15, 2006, and concluded at the close of business on June 13, 2006. (NASD Case #ELI20040026-01)

Firms and Individuals Fined

Montecito Advisors, Inc. (CRD #104004, Santa Barbara, California) and Elie Michel Genadry (CRD #721443, Registered Principal, Montecito, California) submitted a Letter of Acceptance, Waiver and Consent in which they were censured and fined \$27,500, jointly and severally. The firm was also required to certify to NASD that it has made a thorough review of the trading that occurred at the firm during the relevant period to detect any and all instances of its customers evading mutual fund block letter restrictions, and has disclosed all transactions that contravened such block letter restrictions to NASD. In addition, the firm was required to review its procedures regarding market timing and have systems and procedures in place that are reasonably designed to ensure that block letter restrictions are enforced. Without admitting or denying the findings, the firm and Genadry consented to the described sanctions and to the entry of findings that the firm, acting through Genadry, failed to create

and maintain memoranda records that reflected all information to purchase or sell mutual fund shares where customers entered mutual fund orders directly through electronic access to the clearing firm’s order entry platforms. The findings stated that the firm, acting through Genadry, failed to establish, maintain or enforce a supervisory system and written procedures that were reasonably designed to detect and prevent market timing activities that contravened applicable mutual fund prospectus terms in accounts the firm’s clients owned or controlled. (NASD Case #E0220030940-01)

Philadelphia Brokerage Corporation (CRD #25534, Wayne, Pennsylvania), Robert Albert Fisk (CRD #1302491, Registered Principal, Thornton, Pennsylvania), and Brinton Wesley Frith (CRD #2308800, Registered Principal, Princeton, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which they were censured. In addition, the firm and Fisk were fined \$15,000, jointly and severally, and the firm and Frith were fined \$10,000, jointly and severally. Without admitting or denying the findings, the firm, Fisk and Frith consented to the described sanctions and to the entry of findings that the firm, acting through Frith, utilized the instrumentalities of interstate commerce, or the mails, to effect transactions in non-exempt securities when it failed to maintain the minimum required net capital. The findings stated that the firm, acting through Frith, prepared inaccurate month-end net capital computations and filed inaccurate quarterly Financial and Operational Combined Uniform Single (FOCUS) reports. The findings also stated that the firm, acting as a placement agent for the distribution of securities, deposited the funds it received from securities purchasers into a separate bank account it owned and controlled rather than handling the funds as required under the provisions of SEC Rule 15c2-4 applicable to the respective offerings. The findings also included that in one contingent offering, the firm released funds to the issuer before the amount required to satisfy the offering minimum had been received. NASD found that the firm, acting through Fisk, failed to establish and enforce written supervisory procedures reasonably designed to achieve compliance with applicable rules and regulatory requirements pertaining to the firm’s participation in best efforts and contingent securities offerings. (NASD Case #E9A2003016102)

Firms Fined

Ameriprise Financial Services, Inc. (CRD #6363, Minneapolis, Minnesota) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to establish and implement adequate procedures reasonably designed to prevent the prohibited disclosure of a Suspicious Activity Report (SAR) in connection with voluntary information sharing under the Bank Secrecy Act and the regulations promulgated thereunder. (NASD Case #20050009019-01)

Brockington Securities, Inc. (CRD #37438, Ronkonkoma, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$15,000 and required to revise its written supervisory procedures with respect to trade reporting. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that the firm failed, within 90 seconds after execution, to transmit and report last sale reports of transactions in OTC equity securities through the NASDAQ Market Center. The findings stated that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws, regulations and NASD rules concerning trade reporting. (NASD Case #20050000764-01)

Cantor Fitzgerald & Co. (CRD #134, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report the correct symbol indicating whether a transaction was a "buy," "sell," "sell short," "sell short exempt" or "cross" for transactions in eligible securities to NASDAQ. The findings stated that the firm erroneously reported last sale reports of transactions in eligible securities through NASDAQ that should not have been reported. (NASD Case #20050030368-01)

Capital Institutional Services, Inc. (CRD #7551, Dallas, Texas) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the findings, the firm consented to the described sanctions and to

the entry of findings that it failed to report, or to accurately report, corporate bond transactions to the Trade Reporting and Compliance Engine (TRACE). The findings stated that the firm failed to accurately report municipal securities transactions to the MSRB. (NASD Case #E062005004301)

Centaurus Financial, Inc. (CRD #30833, Orange, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it paid commissions to an individual in connection with public customer equity transactions during a time period in which the individual was suspended from associating with the firm. The findings stated that the firm's supervisory system failed to provide for reasonable follow up and review to ensure that an individual would not receive compensation for customer equity transactions during his or her suspension. (NASD case #E022004017602)

C.E. Unterberg, Towbin, LLC (CRD #24790, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report transactions in TRACE-eligible securities executed on a business day during TRACE system hours to TRACE within 45 minutes of the execution time. The findings stated that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning TRACE reporting. (NASD Case #20050001510-01)

E*Trade Securities LLC (CRD #29106, 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 findings, the firm consented to the described sanction and to the entry of findings that it reported its municipal securities transactions manually, and as a result of the inadvertent transposition of information when the trade reports were entered, transactions were reported inaccurately, in that the purchaser was reported as the seller and the seller was reported as the purchaser. The findings stated that the firm reported "test" trade transactions to the MSRB trade reporting system as actual transactions. (NASD Case #E1020040486-01)

Edgetrade Inc. (CRD #42071, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$13,000 and required to revise its written supervisory procedures with respect to the Order Audit Trail SystemSM (OATSSM). Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it transmitted reports to OATS that contained inaccurate time stamps. The findings stated that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning OATS. **(NASD Case #20050000210-01)**

Fixed Income Securities, LP (CRD #46727, Monument, Colorado) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$23,750. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it permitted associated persons to engage in securities activities while their registration statuses were inactive due to their failure to complete the regulatory continuing education requirement. The findings stated that the firm failed to report, and to timely report, customer complaints to NASD. The findings also stated that the firm failed to amend, and to timely amend, Uniform Application for Securities Industry Registration or Transfer Forms (Forms U4). NASD found that the firm failed to establish and implement a Customer Identification Program for investment advisors accounts and with certain other non-investment advisor customer accounts. **(NASD Case #E3A20040016-01)**

IDB Capital Corp. (CRD #106032, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report transactions in TRACE-eligible securities executed on a business day during TRACE system hours to TRACE within 45 minutes of execution time. The findings stated that the firm reported transactions to TRACE that were part of a primary distribution by an issuer and were exempt from TRACE reporting. The findings also stated that the firm failed to report the correct trade execution time for transactions in TRACE-eligible securities to TRACE. The findings also included that the firm's supervisory system failed to provide for supervision reasonably designed to

achieve compliance with applicable securities laws, regulations and NASD rules concerning TRACE reporting. **(NASD Case #20050001789-01)**

Interactive Brokers LLC (CRD #36418, Greenwich, Connecticut) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$95,000 and required to revise its written supervisory procedures with respect to short interest reporting. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report its NASDAQ short interest positions to NASD. The findings stated that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning short interest reporting. **(NASD Case #20042000025-01)**

Johnson Rice & Company L.L.C. (CRD #19524, New Orleans, Louisiana) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$30,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it submitted a draft of a research report interspersed with the firm's opinions, estimates and conclusions to the company that was the subject of the report, and failed to provide evidence that the draft report had been provided to legal or compliance personnel before it was submitted to the subject company. The findings stated that the firm terminated its research coverage of a subject company and failed to make a final research report of that subject company available. The findings also stated that the firm issued research reports for subject companies and failed to disclose that one household member of a firm research analyst had a financial interest in the subject firm's securities. NASD found that the firm issued research reports that failed to disclose that the firm expected to receive or intended to seek compensation for investment banking services from the subject company in the three months following issuance of the research reports, and did participate in the company's secondary securities offerings within three months after publication. In addition, the findings stated that the firm failed to disclose that it was making a market in the subject company's securities in a research report at the time it was published. NASD also found that the firm failed to indicate the specific page of the research report that contained the required

disclosures, and the reference the firm provided to the location of the disclosures was not printed in a font larger than the body text of the research report, as NASD Rule 2711 requires. (NASD Case #E052005004702)

Merrill Lynch, Pierce, Fenner & Smith Incorporated (CRD #7691, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$37,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit last sale reports of transactions in NASDAQ securities and OTC equity securities through NASDAQ and to designate some of the reports as late. The findings stated that the firm failed to accept or decline eligible securities transactions in NASDAQ within 20 minutes after execution. (NASD Case #20050000655-01)

NatCity Investments, Inc. (CRD #17490, Cleveland, Ohio) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$123,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it filed Uniform Termination Notices for Securities Industry Registration (Forms U5) late to NASD. The findings stated that the firm failed to timely amend Forms U4 to disclose customer complaints. The findings also stated that the firm failed to maintain a system to supervise the activities of each registered representative and associated person that was reasonably designed to achieve compliance with applicable securities laws and regulations to ensure the timely filing of Forms U5 for individuals whose registrations were terminated, or the timely amending of Forms U4 for individuals with customer complaints. (NASD Case # E8A2005014401)

National Planning Corporation (CRD #29604, Santa Monica, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$315,000 and required to create a list of clients who, during a specific time period, purchased \$50,000 or more Class B shares in any single fund family, which shall be aggregated by household and fund family to determine if the \$50,000 threshold was met, and Class C shares when aggregated by household and fund family, total \$500,000 or more and involve payment of a front-end load, or \$1 million or more where no front-end load was paid. The firm was also required to offer

any client who made a qualifying purchase and still holds all or any portion of such shares the option of converting Class B and/or Class C shares into Class A shares in such a manner that each client is placed in substantially the same financial position that they would have been had they purchased Class A shares instead of Class B and/or Class C shares, and it may remove qualifying purchases as long as it provides NASD with quantitative proof that they could not materially benefit from having the particular transaction converted to Class A shares. Further, the firm was required to file a report with NASD identifying the qualifying purchases, transactions removed from the list of qualifying purchases, transactions for which clients received a letter offering conversion, transactions for which clients received a cash payment, how the firm created and staffed a response center to field and respond to client inquiries, each client who had a qualifying purchase and contacted the firm concerning remediation, and transactions for which the client accepted the firm's offer of conversion and/or cash. The firm was also required to retain an independent examiner to examine the firm's performance of its obligations and compliance with these undertakings.

Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that, in connection with its recommendations that clients purchase Class B and Class C shares, it did not consider, or did not adequately disclose at the point of sale on a consistent basis, that an equal investment in Class A shares would generally have been more advantageous for certain clients. The findings stated that the firm's supervisory and compliance policies and procedures were not reasonably established, maintained and/or enforced so that the firm, at the point of each sale, provided adequate disclosure of, or consideration to, on a consistent basis, the benefits of the various mutual fund share classes as they applied to individual clients. (NASD Case #E0220030119-01)

Research Capital USA Inc., (CRD #39670, Toronto, Canada) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$20,000, of which \$5,000 was imposed jointly and severally with an individual. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to implement and enforce its Customer Identification Program, failed to establish an

independent testing function to review and assess the adequacy of and level of compliance with its own anti-money laundering (AML) compliance program, and failed to conduct AML training. The findings stated that the firm, acting through an individual, failed to conduct required annual compliance meetings with each of its registered representatives, and failed to enforce its written supervisory procedure requiring their attendance. The findings also stated that the firm failed to have a written needs analysis and a written training plan in order to achieve compliance with the Firm Element of the Continuing Education Rule. **(NASD Case #E112005001102)**

Securities America, Inc. (CRD #10205, Omaha, Nebraska) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report the correct price for certain transactions to the MSRB. The findings stated that the firm failed to enforce its written supervisory procedures that specified all municipal securities transactions would be approved, evidenced by initials or signature on all appropriate documents. **(NASD Case #20050020101-01)**

Seton Securities Group, Inc. (CRD #18044, Union Beach, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it reported municipal securities transactions to the MSRB late, with the incorrect execution time and an inaccurate CUSIP number. The findings stated that the order tickets for municipal securities transactions the firm executed contained only one time stamp—the execution time. The findings also stated that order tickets for equity transactions the firm executed contained an incorrect account number or an incorrect number of shares, did not disclose the contra broker and did not indicate it was a short sale. **(NASD Case #E9B2005018502)**

Tradition Asiel Securities Inc., (CRD #28269, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$30,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to develop

and implement an AML program reasonably designed to achieve and monitor its compliance with the requirements of the Bank Secrecy Act (BSA), and the implementing regulations promulgated thereunder by the Department of the Treasury. The findings stated that the firm reported corporate bond transactions to TRACE that were late, failed to have the “sell side” and “buy side” of the trade, and contained inaccurate Contra MPID symbols. The findings also stated that the firm reported municipal securities transactions to the MSRB that contained the wrong capacity code, an incorrect seller or broker symbol, price or commission, and incorrectly reported a trade as a customer trade when it was actually a dealer trade. **(NASD Case #E102004041201)**

Tradition Asiel Securities, Inc. (CRD #28269, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$35,000 and required to revise its written supervisory procedures with respect to trade reporting. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit last sale reports of transactions in NASDAQ securities through NASDAQ. The findings stated that the firm’s supervisory system failed to provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws, regulations and NASD rules concerning trade reporting. The findings also stated that the firm failed to accept or decline transactions in eligible securities through NASDAQ within 20 minutes after execution when the firm, as the Order Entry Identifier (OEID), had an obligation to accept or decline. **(NASD Case #20050002778-01)**

Wien Securities, Inc. nka Hudson Securities, Inc. (CRD #10467, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$72,500, ordered to pay \$444, plus interest, in restitution to public customers and revise its written supervisory procedures with respect to crossing, anti-competitive practices and SEC Rule 11Ac1-1—the 1% rule. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that its supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules

concerning crossing, anti-competitive practices and the SEC Rule 11Ac1-1—the 1% rule, and failed to enforce a system for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning SEC Rule 11Ac1-6, best execution, SEC Rule 11Ac1-5, trade reporting, trading in front of customers, record keeping and OATS clock synchronization.

The findings stated that the firm failed to report the correct symbol indicating whether transactions in eligible securities were “buy,” “sell,” “sell short,” “sell short exempt” or “cross” to NASDAQ. The findings also stated that the firm failed, within 90 seconds after execution, to transmit last sale reports of transactions in NASDAQ securities through NASDAQ, and reported last sale reports of transactions in NASDAQ, eligible and OTC equity securities that it was not required to report. The findings also included that the firm failed to report the identification of the Order Entry firm in transactions in eligible securities to NASDAQ, and failed to report the correct symbol indicating whether the firm executed transactions in eligible securities in a principal or agency capacity. NASD found that the firm failed to report the correct execution time for a transaction in an eligible security to NASDAQ, and failed to report last sale reports of transactions in OTC equity securities. NASD also found that the firm failed, when it acted as principal for its own account, to provide written notification disclosing to its customer the correct reported trade price and to provide written notification disclosing its correct capacity in the transaction. In addition, NASD determined 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 resultant price to its customer was as favorable as possible under prevailing market conditions. Moreover, NASD found that the firm transmitted reports to OATS that contained inaccurate Routed Order IDs, an inaccurate share amount or inaccurate order cancellation times. Furthermore, NASD found that the firm failed to show the correct entry time on brokerage order memoranda and to show the terms and conditions on the memorandum of one brokerage order. Lastly, 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 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 the relation to the size associated with the firm’s bid or offer in each such security. (NASD Case #20042000085-01)

Individuals Barred or Suspended

Joseph Abbondante (CRD #1879052, Registered Representative, Freehold, New Jersey) was barred from association with any NASD member in any capacity and required to pay \$276,265, plus interest, in restitution to public customers. The SEC sustained the National Adjudicatory Council’s decision following an appeal. The sanctions were based on findings that Abbondante participated in private securities transactions without providing prior written notice to, and receiving prior written approval from, his member firm; acted recklessly by making material misrepresentations and omitted material facts in the sale of securities to public customers; engaged in outside business activities without providing prompt written notice to his member firm; and assisted with the preparation of false account statements.

Abbondante has appealed this decision to the U.S. Court of Appeals, and the sanctions, other than the bar, are not in effect pending review. (NASD Case #C10020090/C1020020090)

LaMarr Andrew Anthony (CRD #3171951, Registered Representative, Cleveland Heights, Ohio) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the findings, Anthony consented to the described sanctions and to the entry of findings that he borrowed money from a public customer in violation of his member firm’s written procedures and NASD rules.

Anthony’s suspension began on June 5, 2006, and will conclude at the close of business on June 16, 2006. (NASD Case #2005001868501)

Donovan Archer (CRD #4781588, Registered Representative, Joshua Tree, California) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Archer consented to the described sanction and to the

entry of findings that, while employed as a teller with a bank, he deposited checks totaling \$23,000 into his personal checking account knowing that there were insufficient funds in the drawer's account to cover these checks. The findings stated that Archer overrode the bank hold on the funds through the use of another bank employee's computer terminal and immediately thereafter, made withdrawals from his account, thereby misappropriating \$23,000 of the bank's funds. (NASD Case #20050024933-01)

Jeffery Benjamin (CRD #2851516, Registered Representative, Rochester, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Benjamin consented to the described sanction and to the entry of findings that he failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #2005002311901)

Cindy Sue Barnhart (CRD #3071033, Registered Representative, Pennellville, New York) submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Barnhart consented to the described sanction and to the entry of findings that she issued loans to herself, totaling \$3,700, on whole life insurance policies a public customer held, without the customer's knowledge, authorization or consent. The findings stated that Barnhart forged the customer's signature on each of the loan checks and converted the funds for her own use and benefit. (NASD Case #2006004393001)

Thomas Henry Bruderman, Jr. (CRD #2398783, Registered Representative, Boston, Massachusetts) 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, Bruderman consented to the described sanction and to the entry of findings that he failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #FPI060003/EAF0401430001)

Jason M. Capodanno (CRD #4543985, Registered Representative, Winchester, 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 findings, Capodanno consented to the described

sanction and to the entry of findings that he received \$48,053.08 from public customers for investment purposes and converted the funds for his own use and benefit. (NASD Case#2005003578901)

Charles Michael Chiodo, Jr. (CRD #3276739, Registered Representative, Trabuco Canyon, California) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Chiodo consented to the described sanction and to the entry of findings that he engaged in outside business activities and failed to provide prompt written notice to his member firm. The findings stated that Chiodo failed to respond to NASD requests for information. (NASD Case #2005000887902)

Taek H. Chyung (CRD #2862236, Registered Representative, Pittsburgh, Pennsylvania) was barred from association with any NASD member in any capacity. The sanction was based on findings that Chyung participated in a private securities transaction without providing prior written notice to, or receiving approval from, his member firm. The findings stated that Chyung failed to respond to NASD requests for information. (NASD Case #2005000924401)

Manuel Marcelo Corsino (CRD #4758336, Associated Person, Hayward, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that Corsino deliberately falsified the results of his Series 7 qualifications examination in an effort to mislead his firm about his qualifications to serve as a registered representative. (NASD Case #E012004022101)

Scott Curtis (CRD #1311358, Registered Principal, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Curtis consented to the described sanction and to the entry of findings that he failed to provide testimony as NASD requested. (NASD Case #20050012141-01)

Harold Wilkinson Dunkel (CRD #2675334, Registered Representative, Norfolk, Virginia) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Dunkel

reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Dunkel consented to the described sanctions and to the entry of findings that, in connection with executed purchases or switches of mutual funds that had been authorized by public customers, he signed the customers' names to certain disclosure documents without their authorization or consent.

Dunkel's suspension began on May 1, 2006, and will conclude on July 31, 2006. (NASD Case #2005000632401)

Reyheena Maria Eidarous (CRD #4219599, Registered Principal, Laguna Hills, California) submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$15,000 and suspended from association with any NASD member in a financial and operations principal capacity for 15 business days. Without admitting or denying the findings, Eidarous consented to the described sanctions and to the entry of findings that, acting on behalf of her member firm, she conducted a securities business while failing to maintain the minimum net capital required by SEC Rule 15c3-1.

Eidarous' suspension began on June 5, 2006, and will conclude at the close of business on June 23, 2006. (NASD Case #20050011549-02)

Kenneth Leonard Elminowski (CRD #4868449, Registered Representative, Buffalo, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. The fine must be paid before Elminowski reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Elminowski consented to the described sanctions and to the entry of findings that he affixed a copy of a public customer's signature on an Investment Services Account form without the customer's permission or knowledge.

Elminowski's suspension began on May 1, 2006, and will conclude at the close of business on June 29, 2006. (NASD Case #2005003522901)

Jeffrey Marc Esposito, Sr. (CRD #2683912, Registered Principal, Dallas, Texas) was ordered to pay \$77,000, plus interest, in restitution, and was barred from association with any NASD member in any capacity. The sanctions were based on findings that Esposito directly or indirectly, in connection with the offer or sale of securities, by the use of means or instrumentalities of interstate commerce or of the mails, employed devices, schemes or artifices to defraud; made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon persons. The findings stated that Esposito failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #EAF0400220004)

Johnny Phillip Figliolini, Jr. (CRD #1058617, Registered Principal, Wainscott, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Figliolini permitted a statutory disqualified individual to be associated with an NASD member firm. (NASD Case #E9B2003039303)

Louis Joseph Galeotafiore, Jr. (CRD #216688, Registered Principal, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which, in light of his financial status, he was fined \$5,000 and suspended from association with any NASD member in a general securities principal capacity for 18 months. Without admitting or denying the findings, Geleotafiore consented to the described sanctions and to the entry of findings that he failed to supervise the sales practices of registered representatives located at his branch, and failed to establish, maintain and enforce written supervisory procedures and supervisory systems reasonably designed to ensure that the brokers under his supervision complied with federal securities laws and NASD rules in the conduct of their sales practices, and to prevent them from making baseless recommendations and employing fraudulent sales practices to solicit customers to purchase shares of securities.

Galeotafiore's suspension began on June 5, 2006, and will conclude at the close of business on December 4, 2007. (NASD Case #20050001275-01)

Kenneth Joseph Gilmore (CRD #1047301, Registered Principal, Long Hill, New Jersey) submitted an Offer of Settlement in which he was fined \$40,000, suspended from association with any NASD member in any capacity for six months, barred from association with any NASD member in any principal or supervisory capacity, and required to sell his ownership interest in his firm within six months. Without admitting or denying the allegations, Gilmore consented to the described sanctions and to the entry of findings that he violated an NASD suspension order by engaging in securities activities during his suspension. The finding stated that Gilmore attempted to conceal his active role at the firm from NASD, therefore violating the suspension order.

Gilmore's suspension began on May 1, 2006, and will conclude at the close of business on October 31, 2006. (NASD Case #C9B20050022/E102003130805)

Gary Wayne Hardy (CRD #1298371, Registered Principal, Chandler, Arizona) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Hardy consented to the described sanction and to the entry of findings that he received approximately \$420,000 from public customers for investments purposes, and without the customers' knowledge or consent, deposited the funds in a bank account that he controlled, thereby misusing and converting the funds for his own use and benefit. (NASD Case #2005002188401/20050024315)

Paul Martin Hoag (CRD #2217083, Registered Representative, Holland, Ohio) was barred from association with any NASD in any capacity. The sanction was based on findings that Hoag failed to respond to NASD requests for information and documents. The findings stated that Hoag engaged in outside business activities, for compensation, without providing his member firm with prompt written notice. (NASD Case #E8A2004101701)

Bei Min Hong (CRD #4681161, Associated Person, Brooklyn, New York) submitted an Offer of Settlement in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hong consented to the described sanction and to the entry of findings that

she willfully failed to disclose material information on her Form U4. The findings stated that Hong failed to respond to NASD requests for information. (NASD Case #20050024340-01)

Paul Howard Hughes (CRD #252636, Registered Representative, Kenmore, 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 findings, Hughes consented to the described sanction and to the entry of findings that, in his capacity as a trustee of a public customer trust, he opened an account in the name of the trust, took loans for himself from the trust account, and as a result, the assets of the trust account were substantially depleted. The findings stated that in order to distribute the income or principal of the trust account to the customer, Hughes made quarterly distributions totaling \$11,727.42 from the trust account to the customer's bank account without the customer's knowledge, authorization or consent, thereby making improper use of customer funds. The findings also stated that Hughes drew checks totaling approximately \$9,582 from the trust account to pay for personal expenses without the customer's knowledge, authorization or consent. During the same time period, Hughes deposited approximately \$9,014.70 of his own funds into the trust account. Hughes thereby misused \$9,014.70 in customer funds without the customer's knowledge, authorization or consent, and did not account for approximately \$567.30 in customer funds, which Hughes thereby converted for his own use and benefit. NASD found that Hughes affixed, or caused to be affixed, a customer's signature to letters purporting to authorize transfers totaling \$5,858.16 from the customer's trust account to the customer's bank account without the customer's knowledge, authorization or consent. (NASD Case #E3B20040207)

Shiv U. Idnani (CRD #2229229, Registered Representative, Ossining, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Idnani consented to the described sanction and to the entry of findings that he failed to completely respond to NASD requests for documents. (NASD Case #2005001142201)

Lisa Marie Jalomo (CRD #1431206, Registered Principal, San Antonio, Texas) was barred from association with any NASD member in any capacity. The sanction was based on findings that Jalomo instructed an employee at her member firm to sign, on behalf of the firm, an incomplete Request for Verification of Deposit Form. The findings stated that Jalomo completed the form with false information that overstated the value of her personal account with the firm, and transmitted the form to a mortgage broker in connection with her pending application for a home mortgage loan. (NASD Case #E062004037101)

Robert Wade Johnson (CRD #2966137, Registered Representative, Englewood, Colorado) was barred from association with any NASD member in any capacity. The sanction was based on findings that Johnson received checks totaling \$157,000 from a public customer to be invested, and instead, cashed the checks, received the proceeds and was unable to provide any evidence or documentation showing that he actually invested any of the customer's funds. The findings stated that Johnson failed to completely respond to NASD requests for information and failed to fully respond to questions during an on-the-record interview. (NASD Case #E3A2004027901)

William Joseph Julian (CRD #2797249, Registered Representative, Huntington, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Julian prepared a falsified account statement for a public customer that misrepresented the account's net worth and securities positions for the purpose of misleading the customer as to the actual value of the investments. (NASD Case #CLI20030464-01/ELI20030464-01)

Young Hui Lee (CRD #1727174, Registered Representative, Buena Park, California) 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 Lee reassociates with any NASD member following the suspension, or before she requests relief from any statutory disqualification. Without admitting or denying the findings, Lee consented to the described sanctions and to the entry of findings that, without a public customer's knowledge or consent, she signed the customer's name to a policy change form after determining that the customer had signed the wrong form.

Lee's suspension began on May 15, 2006, and will conclude at the close of business on July 13, 2006. (NASD Case #20050019366-01)

George Emmanuel Leventis (CRD #2583180, Registered Representative, Staten Island, New York) was barred from association with any NASD member in any capacity and ordered to pay \$196,000, plus interest, in restitution to public customers. The sanctions were based on findings that Leventis made numerous misrepresentations, including baseless price predictions of future performance, and failed to disclose material facts to public customers in connection with the offer and sale of a security. (NASD Case #EAF0400220003)

Eric Spencer Martin (CRD #1023908, Registered Principal, Trucksville, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 business days. The fine must be paid before Martin reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Martin consented to the described sanctions and to the entry of findings that he engaged in outside business activities for compensation without providing his member firm with prior written notification.

Martin's suspension began on May 15, 2006, and will conclude at the close of business on June 26, 2006. (NASD Case #2005002541201)

Bernardo Misseri (CRD #2713297, Registered Representative, Staten Island, New York) submitted an Offer of Settlement in which he was fined \$15,000 and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Misseri consented to the described sanctions and to the entry of findings that he effected private securities transactions and failed to provide written notification to, or obtain written approval from, his member firm. The findings stated that Misseri engaged in an undisclosed outside business activity without providing prior written notification to his member firm.

Misseri's suspension began on May 15, 2006, and will conclude at the close of business on May 14, 2008. (NASD Case #E102003213801)

Marcus Keith Monett (CRD #3086654, Registered Representative, Glen Allen, Virginia) was barred from association with any NASD member in any capacity. The sanction was based on findings that Monett failed to timely respond to NASD requests for information, or to respond at all. (NASD Case #20050013871-01)

San Sana Neal (CRD #4870917, Associated Person, Beaverton, Oregon) was barred from association with any NASD member in any capacity. The sanction was based on findings that Neal willfully failed to disclose material information on his Form U4. (NASD Case #E3B20040218-01)

Kevin W. Parsells (CRD #4210163, Registered Representative, Holmdel, New Jersey) submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for five months and ordered to pay a public customer \$29,846.26 in restitution. In light of Parsells' financial status, no fine has been imposed. Without admitting or denying the allegations, Parsells consented to the described sanctions and to the entry of findings that he effected, or caused to be effected, transactions in a public customer's account without the customer's prior knowledge, authorization or consent.

Parsells' suspension began on June 5, 2006, and will conclude on November 4, 2006. (NASD Case #CL120050007)

John Bailey Partain (CRD #4610449, Registered Representative, Philadelphia, Pennsylvania) was barred from association with any NASD member in any capacity. The sanction was based on findings that Partain effected electronic transfers totaling \$6,000 out of public customers' bank accounts, transferred the funds to his personal bank account without the customers' authorization or consent, and converted the funds for his own purposes. The findings stated that Partain failed to respond to NASD requests for information. (NASD Case #2005000961201)

Royce Joseph Raymond (CRD #1574917, Registered Principal, Baraboo, 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 findings, Raymond consented to the described sanction and to the entry of findings that he participated in private

securities transactions without providing his member firm with prior written notices, and without receiving written acknowledgement of those notices from his member firm. (NASD Case #20050009640)

Jack Lee Rhoades (CRD #2327718, Registered Representative, Goshen, Indiana) was barred from association with any NASD member in any capacity. The sanction was based on findings that Rhoades failed to respond to NASD requests for information. The findings stated that Rhoades engaged in a check kiting scheme in which he wrote checks totaling \$40,100 on a bank account that exceeded the funds available in the account. (NASD Case #E8A2004076501)

Anthony Michael Rodman (CRD #1079010, Registered Representative, Marietta, 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 findings, Rodman consented to the described sanction and to the entry of findings that he received \$400,000 from a public customer to invest in a purported hedge fund but transferred, or caused to be transferred, approximately \$88,270.29 into a bank account that he controlled, and disbursed the funds for non-investment related purposes without the customer's knowledge, authorization or consent. The findings stated that Rodman engaged in private securities transactions without prior written notice to his member firm describing the securities, his role therein, and whether he received, or might receive, selling compensation in connection with the transactions. The findings also stated that Rodman failed to fully respond to NASD requests for information and documents. (NASD Case #2005001663701)

Steven Lawrence Schlesinger (CRD #502499, Registered Principal, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Schlesinger consented to the described sanction and to the entry of findings that he purchased a municipal bond and engaged in a fraudulent and manipulative scheme in which he orchestrated pre-arranged non-bona fide sales and purchases of the bond by setting a same-day settlement when he sold the bond, and an extended settlement date when he repurchased the bond. The findings stated that

Schlesinger promised a profit to contra parties of the transactions and assured them they were exposed to no risk of loss, although he knew the prices he predicted did not reflect the actual market value of the bond. The findings also stated that Schlesinger knew that the purchases and sales of the bond he arranged caused the publication and distribution of reports that were fictitious and in furtherance of his fraudulent, deceptive and manipulative purpose. The findings also included that Schlesinger made false and misleading statements under oath during an NASD interview. **(NASD Case #20050003239-02)**

Andrew Paul Schneider (CRD #2907279, Registered Representative, West Palm Beach, Florida) was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. The NAC imposed the sanctions following appeal of an OHO decision. The sanctions were based on findings that Schneider engaged in outside business activities without providing prompt written notice to his member firm.

Schneider's suspension began on April 17, 2006, and will conclude at the close of business on June 15, 2006. **(NASD Case #E1020021320/C1020030088)**

Michael James Shumaker (CRD #4364346, Registered Representative, Orlando, Florida) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000, ordered to pay \$215,000, plus interest, in restitution to public customers and suspended from association with any NASD member in any capacity for six months. The fine and restitution amounts must be paid before Shumaker reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Shumaker consented to the described sanctions and to the entry of findings that he recommended and effected securities transactions in public customers' accounts without having a reasonable basis for believing that the recommendations and resultant transactions were suitable for them based on their financial situations and needs. The findings stated that Shumaker participated in private securities transactions without providing prior written notice to, or receiving approval from, his member firm.

Shumaker's suspension began on May 15, 2006, and will conclude at the close of business on November 14, 2006. **(NASD Case #2005000278901)**

Everett Paul Simpson (CRD #4898659, Registered Representative, Ellenboro, North Carolina) 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 Simpson reassociates with any NASD member following the suspension, or prior to requesting relief from any statutory disqualification. Without admitting or denying the findings, Simpson consented to the described sanctions and to the entry of findings that he signed a public customer's signature on a switch letter and submitted it to his member firm without the customer's prior knowledge or consent.

Simpson's suspension began on June 5, 2006, and will conclude at the close of business on August 3, 2006. **(NASD Case #2006003833001)**

Charles Robert Snyder (CRD #429761, Registered Principal, South Glastonbury, Connecticut) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$25,000, ordered to pay \$23,678, plus interest, in restitution to the public customers and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the findings, Snyder consented to the described sanctions and to the entry of findings that he recommended a securities transaction to public customers without having reasonable grounds for believing that the recommendations and the resulting transactions were suitable based on the customers' financial situation, needs and objectives.

Snyder's suspension began on June 5, 2006, and will conclude on September 4, 2006. **(NASD Case #E112004042001)**

Epko Anthony Steele (CRD #2611651, Registered Representative, Laurelton, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Steele pled guilty to participating in a scheme to defraud mortgage lenders, in that he received \$15,000 for assisting an impostor with obtaining a fraudulent mortgage when he knew that the impostor was not an authentic purchaser of the property. **(NASD Case #ELI20040286-02)**

Leif Christian Strahan (CRD #4596849, Registered Representative, Fort Collins, Colorado) 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 findings, Strahan consented to the described sanction and to the entry of findings that he obtained authorization from a public customer to withdraw \$750 from the customer's account to pay for legal and/or accounting advice he had recommended, and instead, without the customer's knowledge or consent, deposited the funds into his personal bank account and used the funds for his own benefit. (NASD Case #2005001461501)

Todd Russell Taskey (CRD #1700482, Registered Representative, Potomac, 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 findings, Taskey consented to the described sanction and to the entry of findings that he willfully failed to disclose material facts on his Form U4. (NASD Case #2005003668101)

Lorentzo Theofanidis (CRD #3248705, Registered Representative, Warren, 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 20 business days. Without admitting or denying the findings, Theofanidis consented to the described sanctions and to the entry of findings that he executed common stock transactions in a public customer's account without the customer's prior knowledge, authorization or consent.

Theofanidis' suspension began on May 15, 2006, and concluded at the close of business on June 12, 2006. (NASD Case #2005003610001)

Maritsa Electra Varvitsiotes (CRD #1339252, Registered Representative, Southold, New York) submitted an Offer of Settlement in which she was suspended from association with any NASD member in any capacity for 15 business days. In light of Varvitsiotes' financial status, no monetary sanction has been imposed. Without admitting or denying the allegations, Varvitsiotes consented to the described sanction and to the entry of findings that she engaged in a pattern of excessive trading in a public customer's discretionary account that was unsuitable based on the customer's investment experience, financial situation, needs and investment objectives.

Varvitsiotes' suspension began on May 15, 2006, and concluded at the close of business on June 5, 2006. (NASD Case #E1020010426-04)

Donatas Belys Vildzius (CRD #2202883, Registered Representative, Oxford, Connecticut) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$9,000, ordered to pay \$16,000 in restitution to a public customer and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before Vildzius reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification, and Vildzius must be current with his restitution payments at the time of application for reassociation. Without admitting or denying the findings, Vildzius consented to the described sanctions and to the entry of findings that he exercised discretion in a public customer's account without the customer's prior written authorization. The findings stated that Vildzius engaged in unsuitable and/or excessive trading in the customer's account.

Vildzius' suspension began on May 1, 2006, and concluded at the close of business on May 30, 2006. (NASD Case #E112003069901)

Decisions Issued

The following decision has been issued by the Office of Hearing Officers, and has been appealed to or called to review by the NAC as of May 5, 2006. The NAC may increase, decrease, modify or reverse the imposed sanctions. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notice to Members*.

Ralph Merhi (CRD# 3094962, Registered Principal, Boca Raton, Florida) was barred from association with any NASD member in any capacity. The sanction was based on the findings that Merhi engaged in excessive trading and exercised discretion in a public customer's account without obtaining the customer's written authorization, and without having his member firm approve the account as discretionary.

Merhi has appealed this decision to the NAC and the sanctions are not in effect pending review. (NASD Case #E072004044201)

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.

Henry Carl Barefield (CRD #4075146, Registered Principal, Chicago, Illinois) was named as a respondent in an NASD complaint alleging that he received \$23,000 from public customers to invest in mutual funds, failed to follow the customers' instructions, deposited the funds in his own account and used the funds for some purpose other than to benefit the customers—all without their knowledge or consent. The complaint alleges that Barefield affixed, or caused to be affixed, a public customer's signature to distribution forms that requested the distribution of \$40,690 from the customer's accounts, without the customer's knowledge and consent, directed the proceeds checks to be mailed to Barefield's home address, and deposited the proceeds checks into his personal bank account. The complaint also alleges that Barefield received \$4,000 from a public customer for deposit in her annuity account and, instead, deposited the check in his personal bank account without the customer's knowledge or consent. The complaint further alleges that Barefield failed to respond to NASD requests for information and documents. (NASD Case #2005000934401)

Robert Parry Gormly, Jr. (CRD #1768255, Registered Principal, Flower Mound, Texas) was named in an NASD complaint alleging that he recommended and effected securities transactions in public customers' accounts without having a reasonable basis for believing that the transactions were suitable based on the customers' financial situation and needs. The complaint also alleges that Gormly recommended to customers that they designate their risk tolerance as "aggressive" on account application forms when he knew that this did not represent their actual tolerance for risk. (NASD Case #2005001520701)

Neal Anthony Impellizeri (CRD #1195207, Registered Principal, Plandome, New York), Michael Raymond Gimeli (CRD #2197242, Registered Representative, Babylon, New York), and Steven Richard Jaloza (CRD #1320831, Registered Representative, Muttontown, New York) were named as respondents in an NASD complaint alleging that they, in connection with the purchase or sale of securities, and by the use of means or instrumentalities of interstate commerce, or by the mails, directly or indirectly, knowingly or recklessly employed devices, schemes or artifices to defraud; made untrue statements of material facts or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and engaged in acts, practices or courses of business that operated or would operate as a fraud or deceit upon any person. The complaint also alleges that Impellizeri, Gimeli and Jaloza made baseless stock purchasing recommendations to public customers, and failed to inform the customers that they had a financial interest in promoting the sale of the stocks. The complaint further alleges that Impellizeri executed unauthorized transactions to purchase a security in a public customer's account. (NASD Case #2005000127502)

Emil Brian Panzarino Jr. (CRD #2540399, Registered Representative, Staten Island, New York) was named as a respondent in an NASD complaint alleging that he received \$877 from a public customer to pay the premium on the customer's insurance policy, and instead, he kept the funds for his own use and benefit without the customer's knowledge or authorization. The complaint also alleges that Panzarino failed to appear for an on-the-record interview. (NASD Case #ELI20040386-01)

Philip Leighton Regano (CRD #1187182, Registered Representative, Boardman, Ohio) was named as a respondent in an NASD complaint alleging that he received \$619,584.87 from public customers to purchase interests in fixed annuities, but failed to follow the customers' instructions, used the funds for some purpose other than the benefit of the customers and created fictitious statements showing that the funds were used for their intended purpose. The complaint alleges that Regano engaged in private securities transactions for compensation, and failed to provide prior written notice to or obtain written approval from his member firm. (NASD Case #E8A2004059501)

Firms Suspended for Failure to Supply Financial Information

The following firms were suspended from membership with NASD for failing 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.)

CMG Institutional Trading LLC
Chicago, Illinois
(April 19, 2006)

Doral Securities, Inc.
San Juan, Puerto Rico
(May 15, 2006)

Oxford Capital Securities
New York, New York
(May 15, 2006)

Rutberg & Company, LLC
San Francisco, California
(April 19, 2006 to May 17, 2006)

Zoo Financial Group, LLC
Tampa, Florida
(April 19, 2006)

Individuals Barred Pursuant to NASD Rule 9552(h)

Raffi Michael Boghosian
Rockville, Maryland
(May 30, 2006)

Ronald Raymond Cournoyer
Warwick, Rhode Island
(May 15, 2006)

Lorin Terese Diaz
Franklin Square, New York
(May 30, 2006)

Jason Ronald Ingram
Woodland, California
(May 30, 2006)

Adam John Korejsza
Farmington Hills, Michigan
(May 24, 2006)

Michael Visconti
College Point, New York
(April 25, 2006)

Ernest James Waslkowski
Carfield Heights, Ohio
(May 1, 2006)

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.)

Kevin Erik Adams
Fresno, California
(May 15, 2006)

Gilbert Cadavillo Cabusas
Bairwood, New York
(May 22, 2006)

Jerry Chu
Menlo Park, California
(May 31, 2006)

Donovan Britt Craig
Atlanta, Georgia
(May 1, 2006)

Daniel Lee Rodger
Dallas, Texas
(May 1, 2006)

Bryan Keith Smith
Palatka, Florida
(May 22, 2006)

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.)

William Pang Chien
Plantation, Florida
(May 25, 2006)

Timothy Crawford, Jr.
Houston, Texas
(May 17, 2006)

Victor David Greco aka Victor Dwojacki
Hoffman Estates, Illinois & Houston, Texas
(April 26, 2006 to May 15, 2006)

Glenn Allen Howard
Tigard, Oregon
(May 4, 2006)

Jason John Konior
New York, New York
(May 30, 2006)

Dennis Liu
Alhambra, California
(May 4, 2006)

David Ernest Locklear
Canton, Michigan
(May 3, 2006)

Larry Allen Trailor
Long Beach, California
(May 4, 2006)

NASD Suspends Broker for 90 Days, Imposes Fine and Disgorgement Totaling \$400,000 for Short Sale Violations

Broker Deceived Firm by Executing Short Sales, Marked Long, in Personal Accounts

Steven W. Norin, a broker who is currently registered with Citigroup Global Markets Inc. of New York, has been suspended for 90 days and will pay \$400,000 to settle charges that he engaged in a pattern of improper short sales in his personal accounts.

NASD found that from March 2003 through November 2004, Norin executed 100 short sales in 22 different securities and improperly marked them as "long." NASD found that Norin wanted to sell certain securities in his personal accounts short because he believed they were overpriced; when he discovered that there was no available inventory or borrowable stock, he improperly marked the orders long in the firm's order entry system to defeat the system's ability to prevent improper short sales.

NASD determined that in 70 of the improper short sales, Norin made profits totaling \$298,547. In the other 30 sales, Norin lost money, for a net loss of \$2,788 over the course of the 20-month period of misconduct. NASD is requiring Norin to disgorge the profits he derived from the profitable improper short sales and to pay, in addition, a fine of over \$100,000.

In settling this matter, Norin neither admitted or denied the charges, but consented to the entry of NASD's findings that in the 100 instances he improperly marked short sales long, he failed to affirmatively determine that there was stock available to fill the orders, caused his firm to fail to report the transactions to NASDAQ with the required short sale modifier, and intentionally circumvented the locate requirements of his firm's trading systems to avoid detection.

Texas Brokerage Firm Salomon Grey Financial Expelled for Widespread Violations of NASD Rules

Firm's Owner, Kyle Browning Rowe, Permanently Barred

NASD has expelled Dallas-based brokerage firm Salomon Grey Financial Corporation from the securities industry and barred its owner and former president, Kyle Browning Rowe, over charges of extensive supervisory failures, anti-money laundering violations, email retention violations, customer complaint reporting violations and unauthorized searches of NASD's Central Registration Depository (CRD).

"Any one of these violations is serious and would pose a substantial risk to the firm's customers—and anti-money laundering rule violations could compromise our national interest in preventing financial institutions from being exploited for money laundering and terrorist financing," said James Shorris, NASD Executive Vice President and Head of Enforcement. "In this unusual case, the occurrence of all of these violations in a single firm calls for the most severe sanction: expulsion."

At its peak, Salomon Grey operated as many as 14 registered branch offices located throughout the United States, with a concentration of offices in California, New York and Florida. Most of the branch offices were independently owned and operated by brokers who worked in the offices. The firm had numerous registered representatives, including several with extensive disciplinary histories.

NASD found that during the period from approximately January 2000 to March 2005, Salomon Grey's supervisory system was inadequate to supervise its dispersed group of offices and high-risk brokers. Among the firm's supervisory system deficiencies:

- The firm permitted the brokers in each branch office to hire branch managers, resulting in situations where the branch managers were charged with supervising the very brokers who hired them and had the effective ability to fire them.
- The firm permitted brokers with extensive disciplinary histories and ongoing regulatory actions against them (including a broker who was appealing an SEC-imposed bar from the securities industry) to serve as supervisors.

- The firm failed to adequately respond to "red flags" of ongoing misconduct by several of its brokers, which led to customer harm. For example, the firm ignored ongoing warning signs of unauthorized trading by brokers who had been previously disciplined for unauthorized trading; who were the subjects of ongoing regulatory investigations for, among other things, unauthorized trading; and who were the subjects of customer complaints alleging unauthorized trading.
- The firm failed to impose and/or enforce heightened supervisory measures against brokers with disciplinary histories and ongoing customer complaints, and failed to take meaningful disciplinary action against representatives and supervisors who failed to comply with or enforce purported heightened supervisory measures.
- The firm employed unqualified supervisory and compliance staff.

NASD also found that during the period from April 2002 to March 2005, Salomon Grey had an inadequate AML program. Among other things, the firm's program was not approved in writing by senior management and did not identify an AML Compliance Office, did not provide for ongoing training of appropriate personnel or independent testing, did not contain a written customer identification program, and had inadequate policies and procedures regarding the detecting and reporting of suspicious activity.

NASD further found that from January 2003 through March 2005, Salomon Grey conducted unauthorized searches of CRD by failing to obtain and/or retain the required written consent in connection with pre-hire registration searches of at least 39 individuals. The firm had inadequate supervisory procedures regarding this aspect of its business.

Finally, NASD found that from January 2000 through May 2004, Salomon Grey and Rowe failed to maintain electronic communications in violation of the books and records provisions of the federal securities laws and NASD rules; from May 2004 through March 2005, failed to enforce the provisions in its written supervisory procedures that prohibited the use of non-corporate email accounts for securities-related communications by associated persons; from October 2001 to March 2004, failed to report, or to timely report, customer complaints

pursuant to NASD Rule 3070; from September 2001 to April 2003, failed to amend, or to timely amend, Forms U4 and/or U5 to disclose customer complaints; and failed to establish and maintain a supervisory system and procedures that were reasonably designed to detect and prevent these violations.

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