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Notice to Members

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Disciplinary and Other NASD Actions



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Notice to Members

APRIL 2007

SUGGESTED ROUTING

Legal & Compliance

Regulatory

Senior Management

Financial and Operational Principals
(FINOPs)

KEY TOPICS

SEC Rule 15c3-1 (Net Capital Rule)

SEC Rule 15c3-3
(Customer Protection Rule)

SEC Rule 17a-5 (Reports to Be Made
by Certain Brokers and Dealers)

GUIDANCE

Frequently Asked NASD Financial and Operational Questions

Executive Summary

NASD is issuing this *Notice to Members (NTM)* to provide member firms with answers to many of the frequently asked questions NASD receives on financial and operational issues. Much of the information is also available on NASD's Web site at www.nasd.com or through a firm's NASD Liaison. Additionally, NASD's Weekly Update emails sent to the Executive Representative of each NASD member firm contain valuable information about important topics of interest to NASD members, including select financial and operational information.

Questions/Further Information

Questions concerning this *Notice* may be directed to Susan M. DeMando, Associate Vice President and Director, Financial Operations, Department of Member Regulation, at (202) 728-8411.

SEC's Net Capital Rule (SEC Rule 15c3-1)

- QA-1. Are members required to maintain an appropriate amount of net capital only as of the close of each business day?
- A. No. SEC Rule 15c3-1(a), which governs net capital requirements, requires a broker or dealer to maintain its required net capital continuously.¹ Broker-dealers must be able to demonstrate moment-to-moment compliance with SEC Rule 15c3-1 (the Net Capital Rule). While perpetual computations are not required, broker-dealers must be able to demonstrate compliance with the Net Capital Rule consistent with the firm's business activities as of the date and time of the computation when requested to do so by any of its regulators.

QA2. What is the net capital treatment for unmet maintenance margin calls for “pattern day traders”?²

A. When a “pattern day trader” fails to meet special maintenance margin calls, as required (*i.e.*, within five business days from the date the margin deficiency occurs), on the sixth business day only, a member is required to deduct from net capital the amount of unmet maintenance margin calls for its pattern day traders.³ The application of such charges is provided for in SEC Rule 15c3-1(c)(2)(xii) (*Deduction From Net Worth For Certain Undermargined Accounts*).⁴

QA-3. Do unmet minimum equity requirements for customers meeting the definition of “pattern day traders” have any impact on a firm’s net capital?

A. No. The minimum equity requirement for the accounts of customers meeting the definition of “pattern day trader” is \$25,000. This minimum equity must be deposited in the customer’s account before he or she may day trade and must be maintained in the customer’s account at all times. Unlike unmet maintenance margin calls, broker-dealers are not subject to any additional net capital deductions if a pattern day trader does not meet the minimum equity requirement. However, once the customer’s minimum equity has declined below \$25,000, the firm can no longer permit day trading in that customer’s account until such time as the account meets the \$25,000 minimum equity requirement.

QA-4. What is the net capital treatment for payment for order flow fees receivable?

A. Payment for order flow fees receivables are deemed to be unsecured receivables. As a result, these receivables must be treated as non-allowable assets pursuant to SEC Rule 15c3-1(c)(2)(iv) (*Assets Not Readily Convertible Into Cash*).⁵

QA-5. When a broker-dealer enters into a reverse repurchase agreement (the purchase of securities with an agreement to sell them on a future, specified date) for its own account with a non-affiliated entity, is the contract value permitted to be treated as an allowable asset for net capital purposes?

A. A broker-dealer should treat the entire amount of the reverse repurchase agreement contract as a non-allowable asset unless the securities subject to a reverse repurchase agreement are in the possession or control of the broker-dealer and are outside the control of the counterparty.⁶ To the extent the broker-dealer has possession and control of the securities subject to the reverse repurchase agreement, the broker-dealer generally must deduct from net capital the amount of the reverse repurchase agreement deficit (which is the difference between the contract price for resale of the securities and the market value of the securities (if less than the contract price)).⁷

The broker-dealer may reduce the reverse repurchase deficit by any margin or other deposits held by the broker-dealer on account of the reverse repurchase agreement; any excess market value of the securities over the contract price for resale of those securities held by the broker-dealer under any other reverse repurchase agreement with the same party; the difference between the contract price for resale and the market value of securities subject to repurchase agreements with the same party (if the market value of the securities is less than the contract price); and calls for margin, marks to market or other required deposits that are outstanding one business day or less.⁸ In addition, members should remember that, to the extent a broker-dealer engages in reverse repurchase agreements, it must maintain additional net capital in accordance with SEC Rule 15c3-1(a)(9).

QA-6. If a broker-dealer has been the subject of an adverse arbitration award, when should the award be deducted from the firm's net capital?

- A. A broker-dealer that is the subject of an adverse award in an arbitration proceeding should, for net capital purposes, deduct the award at the time the award is made, even though the appeal process has not been exhausted and no judgment has been rendered, because grounds for revision on appeal are very limited. In addition, the award would be included in Aggregate Indebtedness, as there is no exclusion for adverse arbitration awards under SEC Rule 15c3-1(c)(1).⁹

QA-7. When does the undue concentration haircut apply to equity securities?

- A. An undue concentration haircut applies to equity securities upon the initial recognition of the securities as an asset. If, however, the broker-dealer acquired the securities in connection with its capacity as an underwriter in the distribution of the securities, the undue concentration charge is applied on the eleventh business day following the date that the securities are first available for sale.¹⁰

QA-8. What documentation is a broker-dealer required to maintain with respect to capital contributions or distributions?

- A. At a minimum, broker-dealers are required to record the date(s) and amount(s) of all capital contributions or distributions on their general ledger, and have readily available bank statements and other documentation supporting the transfer of assets that describe the source and purpose of the infusion or distribution. The main purpose of this requirement is to assist the SEC and the firm's designated examining authority (DEA) in determining if a capital withdrawal is a reportable event under SEC Rule 15c3-1(e). All capital infusions and distributions must be reflected in the quarterly Statement of Changes in Ownership Equity section of the FOCUS II or IIA Reports. All agreements between broker-dealers and their investors should be in writing.

QA-9. The definition of “dealer” for purposes of determining a firm’s minimum net capital requirements includes “any broker or dealer that effects more than 10 transactions in any one calendar year for its own investment account.”¹¹ Are corrections, cancellations and errors included in determining the 10-transactions total?

A. Corrections, cancellations and errors *generally are not* included in the 10-transactions limitation described under Dealers in SEC Rule 15c3-1(a)(2)(iii)(B). However, because there have been instances, for example, where broker-dealers have attempted to circumvent the dealer requirement of the net capital rule by trading in their error account, as opposed to the error account containing legitimate corrections, the 10-transactions total must be determined on a case-by-case basis.

QA-10: Do proprietary transactions involving the sale of shares of one mutual fund and the purchase of shares of another mutual fund that are part of the same fund family count toward the “more than 10 transactions in any one calendar year” that would make a firm a “dealer” (and impose a \$100,000 net capital requirement) under the net capital rule?

A. Yes. Transactions involving mutual funds (excluding money market mutual funds) within the same family of funds count toward the 10-transactions limitation described under *Dealers* in SEC Rule 15c3-1(a)(2)(iii)(B). A sale and a purchase count as two transactions.¹²

QA-11: Should monthly investments into a mutual fund by a member firm be counted in determining the “more than 10 transactions in any one calendar year” that would make a firm a “dealer” under the net capital rule?

A. In general, yes. However, SEC staff has advised that a *single monthly investment of \$1,000 or less* into a proprietary mutual fund account does not have to be counted in determining whether a firm has exceeded the 10-transactions limitation described under *Dealers* in SEC Rule 15c3-1(a)(2)(iii)(B).¹³

QA-12: If a broker-dealer guarantees an obligation of a subsidiary or an affiliate, what is the impact to the broker-dealer’s net capital?

A. Where the broker-dealer is guaranteeing the financial obligations of a subsidiary or an affiliate, it must consolidate into a single computation all assets and liabilities of the guaranteed entity (Paragraph (a) of Appendix C of the Net Capital Rule). If the broker-dealer is guaranteeing a particular obligation or set of financial obligations of a subsidiary or affiliate, the broker-dealer needs to deduct the notional value of the guarantee when computing its net capital, in accordance with paragraph (d) of same appendix.

QA-13. For net capital purposes, what is the proper treatment of an amount offered by a broker-dealer to settle a formal disciplinary action with NASD?

- A. The broker-dealer must record the loss and related liability when the offer is accepted by NASD's Office of Disciplinary Affairs or is otherwise deemed final under NASD's *Code of Procedure*.

QA-14. *NASD NTM 03-47*¹⁴ provides guidelines for firms to follow when calculating refunds to customers and accounting for their anticipated refund liabilities. Firms determined their probable or estimated liability based upon currently available information in accordance with generally accepted accounting principles. Firms needed to reflect the balance of the breakpoint refund liability and fund such balances (by segregating funds in a reserve bank account or a "(k)(2)(i)" account) until they believed that all customers who did not receive applicable breakpoint discounts had been compensated, or until the time limit for customers to present claims had expired in accordance with applicable law. Since three years have passed since the issuance of the *Notice*, assuming a firm has satisfactorily communicated to its customers the possibility of the overcharge, at what point may a firm discontinue reserving for possible refunds?

- A. The current absence of customers' claims does not on its own support removal of the liability. Prior to reducing or removing this liability, a firm should determine, to the satisfaction of (1) those responsible for the financial management of, and reporting for, the firm and (2) the firm's outside auditors, that such a reduction of the current balance/value, with respect to the firm's securities business and operating practices, is accurate. Firms reducing or removing the liability should maintain workpapers and make such documentation available to NASD staff for review, if requested. Also, firms that reduce or remove the liability may not rely on the reduction/removal as a justification for failing to compensate a customer upon presentation of a bona fide claim, simply because the claim was presented after the reduction/removal of the liability/funds segregation.

Financial Reporting

QB-1. What is the filing due date for a broker-dealer's annual audited financial statements?

- A. Pursuant to SEC Rule 17a-5(d)(5), the annual audit report shall be filed not more than sixty (60) days from the broker-dealer's fiscal year end. SEC Rule 17a-5(d)(6) further states that one copy of the annual audit report shall be filed at the regional or district office of the Commission for the region or district in which the broker or dealer has its principal place of business and the principal office of the designated examining authority for said broker or dealer. Two copies of the annual audit report must be filed at the Commission's principal office in Washington, DC. Copies must also be provided to all self-regulatory organizations of which the broker or dealer is a member.

QB-2. What address should a broker-dealer use to submit its annual audited financial statements to the principal office of NASD?

- A. The annual audit must be filed in hard copy with the NASD Systems Support Department at 9509 Key West Avenue, Rockville, MD 20850. Copies of the annual audited financial statements must also be submitted to the SEC in Washington, DC, and to the appropriate Regional/District Office of the SEC.¹⁵

QB-3. Is my broker-dealer required to have its annual audit prepared by an accounting firm registered with the Public Company Accounting Oversight Board (PCAOB)?

- A. On December 12, 2006, the SEC extended the deadline by which non-public broker-dealers must file financial statements that have been certified by a registered public accounting firm. As a result, all non-public broker-dealers may file with the SEC a balance sheet and income statement and may send to their customers a balance sheet that has been certified by an independent public accountant, instead of by a registered public accounting firm, for fiscal years ending before January 1, 2009.¹⁶

QB-4. What is an oath or affirmation that is attached to the annual audit report?¹⁷

- A. As described in SEC Rule 17a-5(e)(2), the oath or affirmation attached to the annual audit report is an acknowledgement by the broker-dealer that to the best knowledge and belief of the person making such oath or affirmation: (1) the financial statements and schedules are true and correct, and (2) neither the broker or dealer, nor any partner, officer or director, as the case may be, has any proprietary interest in any account classified solely as that of a customer. The oath or affirmation must be made by a person authorized to administer such oaths or affirmations. If the broker or dealer is a sole proprietorship, the oath or affirmation must be made by the proprietor; if a partnership, by a general partner; and if a corporation, by a duly authorized officer.

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- QB-5. When and where should a request for an extension of time for filing a FOCUS II/IIA Report, including Schedule I, or an annual audit be sent?**
- A. A member firm must submit its written request for an extension to its local NASD District Office. Such requests must be received by the local NASD District Office no later than three business days prior to the required filing date for each such FOCUS Report or annual audit. Extensions will only be granted for delays outside the control of the member, e.g. technical difficulties, third-party contractor delays, and auditor delays.¹⁸
- QB-6. Is there a late fee if a FOCUS II/IIA Report, including Schedule I, or annual audit is received by NASD after the due date (or the revised due date, if the firm requested and was granted an extension)?**
- A. Yes. An administrative fee of \$100 for late filings will be imposed for each day that each report was late. The fee will be assessed for a period not to exceed 10 business days.¹⁹ Additionally, a member firm could be subject to formal or informal disciplinary proceedings and fines depending on the circumstances.²⁰
- QB-7. Does NASD recommend specific independent public accountants, service bureaus, clearing firms, consulting firms or law firms?**
- A. No. NASD does not recommend or endorse individuals or entities that provide professional services.
- QB-8. What are the appropriate fields on the FOCUS II and IIA Reports to reflect haircut deductions pursuant to SEC Rule 15c3-1(c)(2)(iv)(J) (*All Other Securities*)?**
- A. Haircut deductions pursuant to SEC Rule 15c3-1(c)(2)(iv)(J) must be reflected in field 3720 for FOCUS II fliers and field 3734 for FOCUS IIA fliers in the Computation of Net Capital sections.
- QB-9. Who should a broker-dealer contact regarding technical problems in submitting a FOCUS Report and/or the annual Schedule I?**
- A. Members should contact the NASD Technical Help Desk at (800) 321-6273.

Miscellaneous

QC-1. Where may a firm locate interpretative issues relating to financial and operational matters?

- A. NASD provides guidance on NASD and SEC rule interpretations on its Web site through the Publications and Guidance > Rules and Interpretations path, which may be directly accessed at www.nasd.com/RulesRegulation/PublicationsGuidance/index.htm. Additionally, NASD routinely sponsors educational programs, webcasts and compliance conferences that are announced on the NASD Web site. As previously noted, NASD also issues weekly update emails to all NASD executive representatives. NASD encourages member firms to use these resources.

QC-2. Where can a firm locate contact information for NASD and SEC offices?

- A. The addresses, telephone numbers and facsimile numbers for NASD and SEC offices are at www.nasd.com/ContactUs/index.htm and www.sec.gov/contact.shtml.

QC-3. How can a member firm remit payment for its CRD/IARD account?

- A. Payments can be made through Electronic Payment via Web CRD/IARD E-Pay, Wire Transfer or check. Checks must be made payable to "NASD." Please include the firm's CRD number on the check.²¹

Endnotes

- 1 See NASD Interpretation of Financial Operational Rules, Net Capital Rule, SEC Rule 15c3-1, *Minimum Net Capital Requirement, "Moment-to-Moment Net Capital Requirement,"* available at: www.nasd.com/finops/moment
- 2 NASD Rule 2520(f)(8)(B)(ii) defines the term "pattern day trader" as "any customer who executes four or more day trades within five business days. However, if the number of day trades is 6% or less of total trades for the five business day period, the customer will not be considered a pattern day trader..."
- 3 See NASD Rule 2520(f)(8)(C).
- 4 SEC Rule 15c3-1(c)(2)(xii) reads as follows: "Deducting the amount of cash required in each customer's or non-customer's account to meet the maintenance margin requirements of the Examining Authority for the broker or dealer, after application of calls for margin, marks to the market or other required deposits which are outstanding five business days or less."
- 5 See *NASD Regulatory & Compliance Alert*, April 1995.
- 6 See SEC Letter to Chicago Board Options Exchange (CBOE), August 21, 1981.
- 7 See SEC Rule 15c3-1(c)(2)(iv)(F)(2)(i). With respect to reverse repurchase agreements with Government Securities Clearing Corporation (GSCC); see also SEC Letter to GSCC, April 1998.
- 8 See SEC Rule 15c3-1(c)(2)(iv)(F)(2)(ii).
- 9 See also *Fox & Co., Inc.*, Exchange Act Release No. 52697, 2005 SEC LEXIS 2822 (October 28, 2005) at www.sec.gov/litigation/opinions/34-52697.pdf.
- 10 See SEC Rule 15c3-1(c)(2)(vi)(M)(1).
- 11 See SEC Rule 15c3-1(a)(2)(iii)(B).
- 12 See *NASD NTM 93-30* (NASD Provides SEC-Approved Clarifications and Interpretations to Recent Net Capital Rule Amendments).
- 13 See *NASD NTM 93-46* (SEC Provides Additional Clarifications and Interpretations to Recent Net Capital Rule Amendments).
- 14 Styled *Refunds to Customers Who Did Not Receive Appropriate Breakpoint Discounts in Connection with the Purchase of Class A Shares of Front-End Load Mutual Funds and the Capital Treatment of Refund Liability.*
- 15 See www.sec.gov/contact/addresses.htm.
- 16 See SEC Order at www.sec.gov/rules/other/2006/34-54920.pdf.
- 17 See www.sec.gov/about/forms/formx-17a-5_3.pdf.
- 18 See *NASD NTM 01-54* (Minor Violations of Rules and Late Fees).
- 19 See NASD By-Laws, Schedule A, Section 4(g).
- 20 See NASD Rule 9216 and *NASD NTM 01-54* (Minor Violations of Rules and Late Fees).
- 21 See www.nasd.com/crd/payments.

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Legal & Compliance
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KEY TOPICS

Anti-Money Laundering

INFORMATIONAL

Anti-Money Laundering

NASD and NYSE Joint Release Regarding Special Measures against Specified Banks Pursuant to Section 311 of the USA PATRIOT Act

Executive Summary

This is to inform members¹ that the Financial Crimes Enforcement Network (FinCEN) has issued a final rule imposing a special measure,² effective **April 18, 2007**, against Banco Delta Asia SARL, including its subsidiaries Delta Asia Credit Limited and Delta Asia Insurance Limited (Banco Delta Asia or bank).³ Banco Delta Asia is a commercial bank in Macau, Special Administrative Region, China. This measure is comparable to that imposed against the Latvian bank VEF Banka and its subsidiaries, including Veiksmes lizings.⁴

Questions/Further Information

NASD: Patricia Albrecht, Assistant General Counsel, OGC, at (202) 728-8026.

NYSE: Stephen Kasprzak at 212-656-5226 or Cory Figman at (212) 656-4893.

Background

The factors described in USA PATRIOT Act Section 311 (Section 311) are considered in determining whether reasonable grounds exist to conclude there is a primary money laundering concern. In addition, Section 311 provides various options to effectively target specific money laundering and terrorist financing concerns. The Director is required by the Bank Secrecy Act to consult with the Secretary of State and the Attorney General prior to finding that reasonable grounds exist for concluding that a foreign financial institution is of primary money laundering concern. Furthermore, in determining that an institution is of primary money laundering concern, Section 311 requires the Director to consider relevant

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information, including: (1) whether the institution is used to promote or facilitate money laundering in or through the jurisdiction; (2) if the institution is used for a legitimate business purpose in its jurisdiction; and (3) whether the action contemplated to be taken will fulfill the purposes of the Bank Secrecy Act and will prevent the financial institution from engaging in international money laundering and other financial crimes.

Appropriate special measures to address the money laundering risks must be applied if it is determined that reasonable grounds exist for concluding that a foreign financial institution is of primary money laundering concern. According to Section 311, the appropriate federal agencies and parties must be consulted and the following factors must be considered when imposing special measures:⁵ (1) whether other nations or multilateral groups have taken similar action; (2) if any special measure being imposed would create a significant competitive disadvantage for financial institutions organized or licensed in the United States; (3) the extent of any significant adverse systemic impact on the international payment, clearance and settlement system, or on the legitimate business activities of the institution; and (4) what effect there would be on the national security and foreign policy of the United States.

Discussion

FinCEN has issued a final rule that imposes special measures against Banco Delta Asia and its subsidiaries (the Specified Banks) in response to findings that the Specified Banks are financial institutions of primary money laundering concern. Under the special measures, covered financial institutions, which include broker-dealers, are subject to the following requirements with respect to the Specified Banks:

Prohibition of the Direct Use of Correspondent Accounts by the Specified Banks

Covered financial institutions are prohibited from opening or maintaining a correspondent account⁶ in the United States for, or on behalf of, the Specified Banks. This prohibition requires all covered financial institutions to review their account records to ensure that they maintain no accounts directly for, or on behalf of, the Specified Banks.

Due Diligence to Prevent Indirect Use

As a corollary to the prohibition on the opening or maintaining of correspondent accounts directly for the Specified Banks, each covered financial institution is required to apply due diligence to its correspondent accounts that is reasonably designed to guard against their indirect use by the Specified Banks. At a minimum, such due diligence must include two elements:

1) Notification to Correspondent Accountholders

A covered financial institution must notify its correspondent accountholders that their account(s) may not be used to provide the Specified Banks with access to the covered financial institution. The purpose of the notice requirement is to help ensure that the Specified Banks are denied access to the United States financial system, as well as to increase awareness within the international financial community of the risks and deficiencies of the Specified Banks. However, the final rules emphasize that FinCEN is not requiring or expecting financial institutions to obtain a certification from their correspondent accountholders that indirect use will not be provided.

Although FinCEN makes clear that covered financial institutions have flexibility in choosing their method of notification, sample notification language which may be used for this purpose is provided, as follows:

"Notice: Pursuant to U.S. regulations issued under section 311 of the USA PATRIOT Act, 31 CFR 103.192, we are prohibited from opening or maintaining a correspondent account for, or on behalf of, [the Specified Banks]. The regulations also require us to notify you that your correspondent account with our financial institution may not be used to provide [the Specified Banks] with access to our financial institution. If we become aware that [the Specified Banks] are indirectly using the correspondent account you hold at our financial institution, we will be required to take appropriate steps to prevent such access, including terminating your account."

Methods of compliance with the notice requirement could include, for example, transmitting a one-time notice by mail, fax or email, or including such information in the next regularly occurring transmittal from the covered financial institution to its correspondent accountholders. Each covered financial institution must document its compliance with the requirement that it notify its correspondent accountholders that the accounts may not be used to provide the Specified Banks with access to the covered financial institution.

2) Identification of Indirect Use

A covered financial institution must take reasonable steps in order to identify any indirect use of its correspondent accounts by the Specified Banks, to the extent that such indirect use can be determined from transactional records maintained by the covered financial institution in the normal course of business. A covered financial institution must take a risk-based approach when deciding what, if any, additional due diligence measures it should adopt to guard against the indirect use of correspondent accounts by the Specified Banks, based on risk factors such as the type of services offered by, and geographic locations of, its correspondents. Unlike the duties imposed under the one-time notification requirement, covered financial institutions have an ongoing obligation to take reasonable steps to identify all correspondent account services they may directly or indirectly provide to the Specified Banks.

Members are urged to consult the following links for further details:

- ▶ www.fincen.gov/bda_final_rule.pdf (for additional information regarding the final rule issued against Banco Delta Asia and its subsidiaries);
- ▶ www.fincen.gov/vef_final_rule_070706.pdf; and
- ▶ www.fincen.gov/reg_section311.html (for information on all special measures issued by FinCEN and to sign up for email notifications when Section 311 special measures are updated).

Endnotes

- 1 For purposes of this joint release, the term “member” refers to NYSE member organizations and NASD members.
- 2 The rule was issued pursuant to the authority contained in 31 U.S.C. 5318A. Section 311 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) added Section 5318A to the Bank Secrecy Act and granted the Secretary of the Treasury, in consultation with the Departments of Justice and State and appropriate federal financial regulators, the authority, after finding that reasonable grounds exist for concluding that a foreign jurisdiction, foreign financial institution, international class of transactions or type of account is of “primary money laundering concern,” to require domestic financial institutions and domestic financial agencies to take certain “special measures” against the primary money laundering concern.
- 3 See 72 FR 12730 (March 19, 2007).
- 4 See 71 FR 39554 (July 13, 2006) available at www.fincen.gov/vef_final_rule_070706.pdf.
- 5 See 31 U.S.C. 5318(c)(1).
- 6 For purposes of these final rules, a “correspondent account” is defined as an account established to receive deposits from, or make payments or other disbursements on behalf of, a foreign bank, or handle other financial transactions related to the foreign bank (see 31 U.S.C. 5318A(e)(1)(B) as implemented in 31 C.F.R. 103.175(d)(1)(ii)).

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SUGGESTED ROUTING

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KEY TOPICS

Debt Securities
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Transaction Reporting

GUIDANCE

Transaction Reporting

SEC Approves Amendments to TRACE Reporting Exempting Trades in TRACE-Eligible Securities Conducted on a Facility of, and Reported to, the New York Stock Exchange; **Effective Date: January 9, 2007**

Executive Summary

On November 16, 2006, the Securities and Exchange Commission approved an amendment to Rule 6230 (Transaction Reporting). Effective January 9, 2007, these amendments provide, on a pilot basis, a reporting exemption for corporate debt securities subject to both NASD's and NYSE's trade reporting requirements. The rules, as amended, are set forth in Attachment A.

Questions/Further Information

Questions concerning this *Notice* should be directed to Elliot Levine, Chief Counsel, Transparency Services, Markets, Services and Information, at (202) 728-8405; Ola Persson, Director, TRACE Data, Transparency Services, at (212) 858-4796; and James L. Eastman, Assistant General Counsel, Office of General Counsel, at (202) 728-6961.

Background and Discussion

On November 16, 2006, the SEC approved on an accelerated basis an amendment to Rule 6230(e) to exempt from Trade Reporting and Compliance Engine (TRACE) requirements, for a pilot period of two years, transactions in TRACE-eligible securities *executed* on a facility of the New York Stock Exchange (NYSE) in accordance with NYSE Rules 1400 and 1401.¹ The pilot period began January 9, 2007.²

To qualify for this new exemption, Rule 6230(e)(4), the transaction must be reported to NYSE pursuant to applicable NYSE trade reporting rules and disseminated publicly by NYSE. A transaction in a TRACE-eligible security executed on and reported to an exchange *other than* NYSE that is disseminated publicly still would qualify for an exemption from reporting under Rule 6230(e)(2). However, as was the case prior to the recent amendments, the exemption in Rule 6230(e)(2) is limited to transactions in securities that are *listed* on a national securities exchange.

NASD amended Rule 6230 to address concerns regarding duplicative trade reporting of corporate debt securities subject to both NASD's and NYSE's trade reporting requirements.

Endnotes

- 1 See Securities Exchange Act Release No. 54768 (November 16, 2006), 71 FR 67673 (November 22, 2006) (SR-NASD-2006-110). The SEC also approved technical changes to NASD Rule 6210 to remove references to "NASDAQ" and the "Nasdaq Stock Market, Inc." and to remove references to "NASDAQ" in NASD Rule 6230 to reflect The NASDAQ Stock Market LLC's registration as a national securities exchange.
- 2 Unlike virtually every *Notice to Members* pertaining to a rule change that has a prospective effective date in order to allow member firms time to comply, the effective date of this Transaction Reporting rule change (SEC Release No. 54768) was scheduled to become effective upon either (1) SEC approval of the rule change or (2) execution by NASD and NYSE of a data sharing agreement addressing data related to the transactions covered by the rule change—whichever came later. The effective date of the NASD and NYSE data sharing agreement was the later of these two dates and, therefore, triggered the rule's effectiveness, even though it pre-dates this Notice. The first transactions covered by the rule change—and not subject to TRACE reporting—occurred the week of April 23, 2007.

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ATTACHMENT A

New language is underlined; deletions are in brackets

6200. TRADE REPORTING AND COMPLIANCE ENGINE (TRACE)

* * * * *

6210. Definitions

The terms used in this Rule 6200 Series shall have the same meaning as those defined in NASD's By-Laws and Rules unless otherwise specified.

(a) No Change.

(b) No Change.

(c) The term "reportable TRACE transaction" shall mean any secondary market transaction in a TRACE-eligible security except transactions in TRACE-eligible securities that are listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, when such transactions are executed on, and reported to the exchange and the transaction information is disseminated publicly[, or transactions in TRACE-eligible securities that are listed and quoted on the Nasdaq Stock Market, Inc. (Nasdaq), when such transactions are reported to Nasdaq and the transaction information is disseminated publicly].

(d)-(j) No Change.

* * * * *

6230. Transaction Reporting

(a) through (d) No Change.

(e) Transactions Exempt from Reporting

The following types of transactions shall not be reported:

(1) Transactions that are part of a primary distribution by an issuer.

(2) Transactions in TRACE-eligible securities that are listed on a national securities exchange, when such transactions are executed on and reported to the exchange and the transaction information is disseminated publicly[, and transactions in TRACE-eligible securities that are listed and quoted on Nasdaq, when such transactions are reported to Nasdaq and the transaction information is disseminated publicly].

(3) Transactions where the buyer and the seller have agreed to trade at a price substantially unrelated to the current market for the TRACE-eligible security (e.g., to allow the seller to make a gift).

(4) For the duration of a two-year pilot program, effective upon the later of either: 1) approval of this rule by the Commission, or 2) execution by NASD and the New York Stock Exchange ("NYSE") of a data sharing agreement addressing data related to transactions covered by this Rule, transactions in TRACE-eligible securities that are executed on a facility of NYSE in accordance with NYSE Rules 1400 and 1401 and reported to NYSE in accordance with NYSE's applicable trade reporting rules and disseminated publicly by NYSE.

(f) No Change.

Notice to Members

APRIL 2007

SUGGESTED ROUTING

Internal Audit
Legal & Compliance
Operations
Senior Management
Systems
Trading

KEY TOPICS

IM-2110-2
Limit Orders
Limit Order Protection
Manning Rule
Rule 6541

GUIDANCE

Trading Ahead of Customer Limit Orders

SEC Approves Amendments to Expand IM-2110-2 to Include OTC Equity Securities; **Effective Date: July 26, 2007**

Executive Summary

On February 26, 2007, the Securities and Exchange Commission (SEC) approved amendments to Interpretive Material (IM) 2110-2, Trading Ahead of Customer Limit Order, to apply to over-the-counter (OTC) equity securities.¹ The amendments also modify the minimum price-improvement standards set forth in IM-2110-2 with respect to both NMS stocks and OTC equity securities. IM-2110-2, as amended, is set forth in Attachment A of this *Notice*. The amendments become effective on July 26, 2007.

Questions/Further Information

Questions regarding this *Notice* may be directed to the Market Regulation Legal Section at (240) 386-5126, or the Office of General Counsel at (202) 728-8071.

Background and Discussion

IM-2110-2 generally prohibits a member from trading for its own account in an NMS stock² at a price that is equal to or better than an unexecuted customer limit order in that security, unless the member immediately thereafter executes the customer limit order at the price at which it traded for its own account or a better price.³ The legal underpinnings for IM-2110-2 are a member's basic fiduciary obligations and the requirement that it must, in the conduct of its business, "observe high standards of commercial honor and just and equitable principles of trade."⁴

Currently, the requirements in IM-2110-2 apply only to NMS stocks. However, Rule 6541 (Limit Order Protection), which is similar but not identical to IM-2110-2, applies the general principles of IM-2110-2 to a subset of OTC equity securities—those that are quoted on the OTC Bulletin Board (OTCBB). On February 26, 2007, the SEC approved amendments that expand the scope of IM-2110-2 to apply to all OTC equity securities and delete Rule 6541, as those requirements are now subsumed in IM-2110-2.⁵

Members should be aware that the limit order protection requirements under IM-2110-2 differ from those under Rule 6541 in several ways.⁶ Upon implementation of the amendments described in this *Notice*, members must comply with the requirements of IM-2110-2 for those limit orders previously covered by Rule 6541.

First, both IM-2110-2 and Rule 6541 provide that a member is not deemed to have traded ahead of a customer limit order if the member provides a contemporaneous execution of the customer's order. Rule 6541 currently provides a maximum time limit of five minutes, within which an execution of a customer order will be deemed contemporaneous with an execution for a member firm's account. IM-2110-2 prescribes a shorter maximum time limit (as soon as possible, but absent reasonable and documented justification, within one minute) within which an execution of a customer order will be deemed contemporaneous with an execution for the firm's account.⁷ In addition, Rule 6541 requires that the customer limit order be executed at the limit price, while IM-2110-2 requires that the customer limit order be executed at the price of the firm's execution if better than the limit price. Accordingly, upon implementation of the amendments, members must comply with the IM-2110-2 standard for all securities.

Second, IM-2110-2 contains a higher dollar value threshold for the order size at which firms may negotiate terms and conditions to permit them to continue to trade along side of, or ahead of, the limit order, if the customer agrees. Rule 6541 requires that an order be 10,000 shares or more and greater than \$20,000 in value, while IM-2110-2 requires that an order be 10,000 shares or more and greater than \$100,000 in value. Upon implementation of the amendments, members must comply with the higher dollar value threshold for all securities.

Third, IM-2110-2 applies from 9:30 a.m. to 6:30 p.m. Eastern Time (ET),⁸ whereas Rule 6541 currently applies only during the normal market hours of 9:30 a.m. to 4:00 p.m. ET.

Finally, IM-2110-2 and Rule 6541 contain different standards relating to the minimum level of price improvement that a member must provide to trade ahead of an unexecuted customer limit order.⁹ Rule 6541 requires that for customer limit orders priced at or inside the current inside spread, the minimum price improvement must be a minimum of the lesser of \$.01 or one-half (1/2) of the current inside spread. IM-2110-2 currently requires a minimum price improvement of a \$.01 for limit orders priced at or inside the best inside market. For customer limit orders priced outside the best inside market, IM-2110-2 currently requires minimum price improvement at a price at least equal to the next superior minimum quotation increment, while Rule 6541 does not set a minimum price level (although it does require price improvement in such circumstances).

The amendments revise the price-improvement standards for both NMS stocks and OTC equity securities, making them uniform depending on the price of the customer limit order and whether it is priced inside or outside the best inside market. Specifically, for customer limit orders priced greater than or equal to \$1.00 that are at or inside the best inside market, the minimum amount of price improvement required is \$0.01. For customer limit orders priced less than \$1.00 that are at or inside the best inside market, the minimum amount of price improvement required is the lesser of \$0.01 or one-half (1/2) of the current inside spread. For customer limit orders priced outside the best inside market, the member is required to execute the incoming order at a price at or inside the best inside market for the security. Lastly, for customer limit orders in securities for which there is no published inside market, the minimum amount of price improvement required is \$0.01.

NASD is providing 90 days from publication of this *Notice* for implementation to provide members with adequate time to comply with the amended requirements. As such, the amendments become effective July 26, 2007.

Endnotes

- 1 See Securities Exchange Act Release No. 55351 (February 26, 2007), 72 FR 9810 (March 5, 2007) (order approving SR-NASD-2005-146).
- 2 IM-2110-2 currently uses the term “exchange-listed security.” The amendments to IM-2110-2 replace the term “exchange-listed security” with the term “NMS stock,” consistent with the terminology used in Regulation NMS. See SEC Rule 600(b)(47) of Regulation NMS.
- 3 For example, if a member buys 100 shares of a security at \$10 per share when holding customer limit orders in the same security to buy at \$10.01 per share equaling, in aggregate, 1,000 shares, the member is required to fill 100 shares of the customer limit order at \$10 per share.
- 4 See NASD Rule 2110. See *also* NASD Rule 2320(a).
- 5 For purposes of the amendments, OTC equity securities are defined as any non-exchange-listed security and certain exchange-listed securities that do not otherwise qualify for real-time trade reporting. This definition does not include options.
- 6 For a more expansive discussion of the differences between IM-2110-2 and Rule 6541, members also should review the rule filing, SR-NASD-2005-146. See Securities Exchange Act Release No. 55351 (February 26, 2007), 72 FR 9810 (March 5, 2007) (order approving SR-NASD-2005-146).
- 7 See *Notices to Members 95-67* (August 1995) and *98-78* (September 1998).
- 8 A member may generally limit the life of a customer limit order to the period of 9:30 a.m. to 4 p.m. ET. If a customer does not formally assent to processing of the customer’s limit order(s) during the extended hours period commencing after the normal close of the market, limit order protection will not apply to that customer’s order. See footnote 1 to IM-2110-2.
- 9 In connection with the approval of the amendments to IM-2110-2, the price-improvement standards, which previously were operating on a pilot basis, became permanent.

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ATTACHMENT A

Below is the text of the rule change. New language is underlined; deletions are in brackets.

IM-2110-2. Trading Ahead of Customer Limit Order

(a) General Application

To continue to ensure investor protection and enhance market quality, NASD's Board of Governors is issuing an interpretation to NASD Rules dealing with member firms' treatment of their customer limit orders in NMS stocks and OTC equity[exchange-listed] securities. This interpretation, which is applicable from 9:30 a.m. to 6:30 p.m. Eastern Time, will require members to handle their customer limit orders with all due care so that members do not "trade ahead" of those limit orders. Thus, members that handle customer limit orders, whether received from their own customers or from another member, are prohibited from trading at prices equal or superior to that of the limit order without executing the limit order. In the interests of investor protection, NASD is eliminating the so-called disclosure "safe harbor" previously established for members that fully disclosed to their customers the practice of trading ahead of a customer limit order by a market-making firm.¹ For purposes of this interpretation, (1) "NMS stock" shall have the meaning set forth in SEC Rule 600(b)(47) of Regulation NMS and (2) "OTC equity security" shall have the meaning set forth in Rule 6610(d).

Rule 2110 states that:

A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.

Rule 2320, the Best Execution Rule, states that:

In any transaction for or with a customer, a member and persons associated with a member shall use reasonable diligence to ascertain the best inter-dealer market for the subject security and buy or sell in such a market so that the resultant price to the customer is as favorable as possible to the customer under prevailing market conditions.

Interpretation

The following interpretation of Rule 2110 has been approved by the Board:

A member firm that accepts and holds an unexecuted limit order from its customer (whether its own customer or a customer of another member) in an NMS stock or OTC equity[exchange-listed] security and that continues to trade the subject security for its own account at prices that would satisfy the customer's limit order, without executing that limit order, shall be deemed to have acted in a manner inconsistent with just and equitable principles of trade, in violation of Rule 2110, provided that a member firm may negotiate specific terms and conditions applicable to the acceptance of limit orders only with respect to limit orders that are: (a) for customer accounts that meet the definition of an "institutional account" as that term is defined in Rule 3110(c)(4); or (b) 10,000 shares or more, unless such orders are less than \$100,000 in value. In the event that a member trades ahead of an unexecuted customer limit order at a price that is better than the unexecuted limit order, such member is required to execute the limit order at the price received by the member or better. Nothing in this interpretation, however, requires members to accept limit orders from any customer.

By rescinding the safe harbor position and adopting this interpretation, NASD wishes to emphasize that members may not trade ahead of their customer limit orders even if the member had in the past fully disclosed the practice to its customers prior to accepting limit orders. NASD believes that, pursuant to Rule 2110, members accepting and holding unexecuted customer limit orders owe certain duties to their customers and the customers of other member firms that may not be overcome or cured with disclosure of trading practices that include trading ahead of the customer's order. The terms and conditions under which institutional account or appropriately sized customer limit orders are accepted must be made clear to customers at the time the order is accepted by the firm so that trading ahead in the firm's market-making capacity does not occur.

[As outlined in NASD Notice to Members 97-57, the minimum amount of price improvement necessary in order for a member to execute an incoming order on a proprietary basis when holding an unexecuted limit order for a Nasdaq security trading in fractions, and not be required to execute the held limit order, is as follows:]

- [If actual spread is greater than 1/16 of a point, a firm must price improve an incoming order by at least a 1/16. For stocks priced under \$10 (which are quoted in 1/32 increments), the firm must price improve by at least 1/64.]
- [If actual spread is the minimum quotation increment, a firm must price improve an incoming order by one-half the minimum quotation increment.]

[For Nasdaq securities authorized for trading in decimals pursuant to the Decimals Implementation Plan For the Equities and Options Markets, t]The minimum amount of price improvement necessary in order for a member to execute an incoming order on a proprietary basis [in a security trading in decimals] when holding an unexecuted limit order in that same security, and not be required to execute the held limit order, is as follows:

1) For customer limit orders priced greater than or equal to \$1.00 that are at or inside the best inside market [displayed in Nasdaq], the minimum amount of price improvement required is \$0.01; [and]

2) For customer limit orders priced less than \$1.00 that are at or inside the best inside market, the minimum amount of price improvement required is the lesser of \$0.01 or one-half (1/2) of the current inside spread;

3) For customer limit orders priced outside the best inside market [displayed in Nasdaq], the member must price improve the incoming order by executing the incoming order at a price at or inside the best inside market for the security; and[at least equal to the next superior minimum quotation increment in Nasdaq (currently \$0.01)]

4) For customer limit orders in securities for which there is no published inside market, the minimum amount of price improvement required is \$0.01.

NASD also wishes to emphasize that all members accepting customer limit orders owe those customers duties of "best execution" regardless of whether the orders are executed through the member or sent to another member for execution. As set out above, the Best Execution Rule requires members to use reasonable diligence to ascertain the best inter-dealer market for the security and buy or sell in such a market so that the price to the customer is as favorable as possible under prevailing market conditions. NASD emphasizes that order entry firms should continue to monitor routinely the handling of their customers' limit orders regarding the quality of the execution received.

(b) through (c) No change.

1 For purposes of the operation of certain [Nasdaq] transaction and quotation reporting systems and facilities during the period from 4 p.m. to 6:30 p.m. Eastern Time, members may generally limit the life of a customer limit order to the period of 9:30 a.m. to 4 p.m. Eastern Time. If a customer does not formally assent ("opt-in") to processing of the customer's limit order(s) during the extended hours period commencing after the normal close of the [Nasdaq] market, limit order protection will not apply to that customer's order(s).

* * * * *

6541. [Limit Order Protection]Reserved.

[(a) Members shall be prohibited from “trading ahead” of customer limit orders that a member accepts in securities quoted on the OTCBB. Members handling customer limit orders, whether received from their own customers or from another member, are prohibited from trading at prices equal or superior to that of the customer limit order without executing the limit order. Members are under no obligation to accept limit orders from any customer.]

[(b) Members may avoid the obligation specified in paragraph (a) through the provision of price improvement. If a customer limit order is priced at or inside the current inside spread, however, the price improvement must be for a minimum of the lesser of \$0.01 or one-half (1/2) of the current inside spread. For purposes of this rule, the inside spread shall be defined as the difference between the best reasonably available bid and offer in the subject security.]

[(c) Notwithstanding subparagraph (a) of this rule, a member may negotiate specific terms and conditions applicable to the acceptance of limit orders only with respect to such orders that are:]

[(1) for customer accounts that meet the definition of an “institutional account” as that term is defined in Rule 3110(c)(4); or]

[(2) for 10,000 shares or more, and greater than \$20,000 in value.]

[(d) Contemporaneous trades]

[A member that trades through a held limit order must execute such limit order contemporaneously, or as soon as practicable, but in no case later than five minutes after the member has traded at a price more favorable than the customer’s price.]

[(e) Application]

[(1) This rule shall apply, regardless of whether the subject security is additionally quoted in a separate quotation medium.]

[(2) This rule shall apply from 9:30 a.m. to 4:00 p.m. Eastern Time.]

Disciplinary and Other NASD Actions

REPORTED FOR APRIL

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 February 2007.

Firms and Individuals Fined

VanhedgePoint Securities, LLC (CRD #133097, New York, New York) and Geoffrey Michael Tudisco (CRD #3076410, Registered Principal, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which they were censured and fined \$17,500, jointly and severally. The firm was fined an additional \$500. Without admitting or denying the findings, the firm and Tudisco consented to the described sanctions and to the entry of findings that the firm, acting through Tudisco, underwent material changes in its business operations without first receiving NASD approval. The findings stated that the firm did not seek approval from NASD for its omnibus broker-dealer and options business until later. The findings also stated that the firm, acting through Tudisco, engaged in a securities business while failing to maintain sufficient net capital and that the firm failed to maintain a general ledger. **(NASD Case #20060048009-01)**

Wilbanks Securities, Inc. (CRD #40673, Oklahoma City, Oklahoma), Aaron Bronelle Wilbanks (CRD #1983697, Registered Principal, Oklahoma City, Oklahoma) and Randall Lee Wilbanks (CRD #2675482, Registered Principal, Oklahoma City, Oklahoma) submitted a Letter of Acceptance, Waiver and Consent in which they were censured. The firm was fined \$25,000, Randall L. Wilbanks was fined \$25,000, joint and several with the firm, and Aaron Wilbanks was fined \$20,000, joint and several with the firm. Without admitting or denying the findings, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Aaron and Randall Wilbanks, failed to specify a cycle for the inspection of non-branch locations in its written supervisory procedures and to conduct inspections of 55 non-branch locations as NASD Rule 3010 (c)(1)(C) requires. The findings stated that the firm and Randall Wilbanks failed to file quarterly reports with NASD that disclosed information regarding customer complaints. The findings also stated that the respondents failed to preserve its received and sent electronic communications, including inter-office memoranda and communications, in an easily accessible place and to establish, maintain and enforce written supervisory procedures regarding the preservation of electronic mail correspondence. **(NASD Case #E052005008501)**

Firms Fined

Ameritrade, Inc. (CRD #5633, Bellevue, 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 timely report Reportable Order Events (ROEs) to the Order Audit Trail SystemSM (OATSSM). **(NASD Case #20050016221-01)**

Bear, Stearns Securities Corporation (CRD #28432, Brooklyn, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$250,000 and required to revise its written supervisory procedures regarding short interest position reporting. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it submitted inaccurate short interest position data in securities and inaccurately reported, or failed to report, its short interest positions to NASD. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning short interest position reporting. **(NASD Case #20041000025-01)**

Burnham Securities Inc. (CRD #22549, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$17,500 and required to revise its written supervisory procedures with regard to the Trade Reporting and Compliance Engine (TRACE). 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 30 minutes of the execution time. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning TRACE. **(NASD Case #2005001403701)**

Canaccord Adams Inc. (CRD #1020, Boston, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$85,000. Without admitting or denying the findings, the firm consented to the described sanctions

and to the entry of findings that it submitted inaccurate short interest position reports to NASD. The findings stated that the firm erroneously provided written notification disclosing to its customers that transactions were executed at an average price. The findings also stated that when the firm acted as principal for its own account, it failed to provide written notification disclosing to its customers that it was a market maker in each security and failed to provide written notification disclosing to its customers its correct capacity in transactions. The findings also included that the firm made available a report on the covered orders in national market system securities that it received for execution from any person that included incorrect information as to order classification and order execution. NASD found that the firm failed to submit accurate trading information through the submission of electronic blue sheets in response to NASD requests for the information. NASD also found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning short interest reporting and the submission of electronic blue sheet data. **(NASD Case #20041000253-01)**

Cantella & Co., Inc. (CRD #13905, Boston, Massachusetts) submitted an Offer of Settlement in which the firm was censured, fined \$65,000 and required to review its procedures regarding the preservation of electronic communications and reporting obligations for compliance with NASD rules and the federal securities laws and regulations, and to notify NASD, in writing, that it has established systems and procedures reasonably designed to achieve compliance with those rules, laws and regulations. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to timely amend Uniform Applications for Securities Industry Registration or Transfer (Forms U4) and Uniform Termination Notices for Securities Industry Registration (Forms U5). The findings stated that the firm failed to report customer complaints, filed customer complaints late, failed to properly code customer complaints and failed to disclose the disputed amount in a customer complaint. The findings also stated that the firm failed to maintain and preserve all email communications. The findings also included that Cantella reported TRACE-eligible transactions late, failed

to include the appropriate modifier on some late transactions and incorrectly reported the yield for the late TRACE-eligible transactions. NASD also found that the firm did not have written supervisory procedures relating to TRACE reporting. **(NASD Case #E112004003101)**

Carlin Equities, LLC (CRD #31295, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$77,000 and required to revise its written supervisory procedures regarding NASD membership and registration rules 1021 and 1031, NASD Marketplace Rule 2320 (crossing customer orders), NASD Marketplace Rule 6130 (short sale indicator reporting), NASD Conduct Rule 3370 (affirmative determination), NASD Marketplace Rule 6541 (order handling), NASD Conduct Rule 2320 (three quote rule), NASD Marketplace Rule 4632 (third-party trade reporting), SEC Rule 200, NASD Conduct Rule 3110 and NASD Marketplace Rule 6130 (short sales), NASD Marketplace Rule 6955 (OATS), SEC Rules 17a-3 and 17a-4 (books and records), SEC Rule 605 (disclosure of order execution information) and Chinese Walls. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it accepted or effected customer short sale orders in securities and for each order, failed to make/annotate an affirmative determination that the firm would receive delivery of the securities on the customer's behalf or that the firm could borrow the securities on the customer's behalf for delivery by settlement date. The findings stated that the firm reported through the NASDAQ Market Center or the Trade Reporting & Comparison Service (TRACS) a last sale report of a transaction in NASDAQ National Market securities it was not required to report; failed to report last sale reports of transactions in NASDAQ securities; incorrectly designated a last sale report of a transaction in a NASDAQ security as ".PRP"; failed to report the correct symbol indicating whether a transaction was a buy, sell, sell short, sell short exempt or cross for a transaction in an eligible security; reported last sale reports of transactions in OTC equity securities it was not required to report; failed to report last sale reports of transactions in OTC equity securities; and failed to make available reports on the covered orders in national market system securities that it received for execution from any person. The findings also stated that the firm failed to report to the NASDAQ Market Center the

correct symbol indicating whether it executed transactions in eligible securities in a principal or agency capacity; failed to submit required information to OATS; and failed to provide written notification disclosing to its customers that transactions were executed at an average price, the correct capacity in the transactions and that it was a market maker in each security. The findings also included that the firm failed to show the execution time on brokerage order memoranda, failed to document the customer name or account number of brokerage order memoranda and failed to preserve for not less than three years, the first two in an accessible place, a brokerage order memorandum.

NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with securities laws, regulations and NASD rules concerning NASD membership and registration rules 1021 and 1031, NASD Marketplace Rule 2320 (crossing customer orders), NASD Marketplace Rule 6130 (short sale indicator reporting), NASD Conduct Rule 3370 (affirmative determination), NASD Marketplace Rule 6541 (order handling), NASD Conduct Rule 2320 (three quote rule), NASD Marketplace Rule 4632 (third-party trade reporting), SEC Rule 200, NASD Conduct Rule 3110 and NASD Marketplace Rule 6130 (short sales), NASD Marketplace Rule 6955 (OATS), SEC Rules 17a-3 and 17a-4 (books and records), SEC Rule 605 (disclosure of order execution information) and Chinese Walls. NASD also found that the firm failed to enforce its written supervisory procedures concerning NASD Rules 2320, 3350, 3370, 6955 and SEC Rules 202 and 202T. In addition, NASD determined that the firm transmitted Route or Combined Order/Route reports that contained inaccurate, incomplete or improperly formatted data to OATS. Moreover, NASD found that the firm submitted reports with respect to equity securities traded on the NASDAQ Stock Market that were not in the NASD-prescribed electronic form to OATS. The OATS system rejected the reports and notice of such rejection was made available to the firm on the OATS Web site, but the firm did not correct or replace most of the reports. **(NASD Case #20042000248-01)**

Hibernia Southcoast Capital, Inc. nka Capital One Southcoast, Inc. (CRD #44158, New Orleans, Louisiana) 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 include conflict of interest disclosures in research reports as NASD Rule 2711(h) requires. **(NASD Case #2006003763801)**

Hornor, Townsend & Kent, Inc. (CRD #4031, Horsham, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$50,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it violated NASD Conduct Rule 2830 by maintaining programs in which participating mutual fund companies and other financial services companies paid fees and, in return, received preferential treatment from the firm, including exclusive listings on the firm's internal Web site, the use of "blast" emails to the firm's representatives, participation in conference calls and speaking arrangements at various firm meetings. The findings stated that the mutual fund companies paid for their fees by directing a minimum of \$90,790 in brokerage commissions to the firm. The findings also stated that the firm violated NASD's recordkeeping requirements by failing to make and keep adequate records concerning the compensation received from offerors who participated in the shelf space programs. **(NASD Case #E9A2005005701)**

HSBC Securities (USA) Inc. (CRD #19585, 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 trade execution time for TRACE-eligible securities. The findings stated that the firm failed to show the correct execution time on order memoranda in TRACE-eligible securities and failed to report in a timely manner transactions in TRACE-eligible securities executed on a business day during TRACE system hours within 30 minutes of execution. **(NASD Case #20050023706-01)**

Jackson Securities LLC (CRD #19897, Atlanta, Georgia) 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 operated while under its required net capital, filed materially inaccurate Financial and Operational Combined Uniform Single (FOCUS)

reports and filed a materially inaccurate annual audited financial statement. The findings stated that the firm maintained inaccurate trial balances and net capital computations and failed to report municipal securities transactions within the timeframe MSRB Rule G-14 requires. **(NASD Case #2006005614401)**

Pershing Advisor Solutions LLC (CRD #36671, Jersey City, 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 failed to accurately report client cross trades in TRACE-eligible corporate bond transactions. The findings stated that the firm prepared order tickets in TRACE-eligible corporate bond transactions and municipal securities transactions that contained inaccurate and/or missing information relating to trade date, execution time, capacity and other required items. **(NASD Case #2006003831801)**

Pershing LLC (CRD #7560, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$40,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to accurately and/or timely report to the MSRB municipal securities transactions executed for and on behalf of one of its introducing correspondent broker-dealer firms, and failed to accurately and/or timely report TRACE-eligible corporate bond transactions executed for and on behalf of one of its introducing correspondent broker-dealer firms. **(NASD Case #2006003831901)**

Terwin Capital, LLC (CRD #122463, 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 the firm failed to maintain its minimum net capital requirement while conducting a securities business. The findings also stated that the firm's books and records were inaccurate. **(NASD Case #20060064130-01)**

Thornes & Associates, Inc. Investment Securities (CRD #40868, Redlands, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it allowed registered individuals to maintain their registrations as general securities representatives while they were not actively involved in the firm's investment banking or securities business, and were not functioning as the firm's representatives. The findings stated that the firm failed to establish, maintain, and enforce a system of supervisory control and policies, and procedures reasonably designed to achieve compliance with NASD rules to prevent the firm from maintaining the registration of any registered representative not actively involved in the firm's investment banking or securities business, and not functioning as a representative of the firm. (NASD Case #E0220050156-01)

Wachovia Securities, LLC (CRD #19616, Richmond, Virginia) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it received approximately \$33,856.35 in special cash compensation for the sale of a particular mutual fund during an Individual Retirement Account (IRA) promotion that was not available to all firms that distributed the same mutual fund shares. The findings stated that the details of the arrangement, including naming Wachovia, were not disclosed in the fund's prospectuses or Statements of Additional Information. (NASD Case #E8A2003062017)

William Blair & Company LLC (CRD #1252, Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it transmitted reports that contained inaccurate, incomplete or improperly formatted data to OATS, and failed to submit required information regarding one order to OATS. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning SEC Rule 604. The findings also stated that the firm failed to immediately display customer limit orders in NASDAQ securities in its public

quotation when each order was at a price that would have improved the firm's bid or offer and the national best bid or offer for each security, and the size of the order represented more than a *de minimis* change in relation to the size associated with the firm's bid or offer in each security. (NASD Case #20050001403-01)

Individuals Barred or Suspended

David Acosta (CRD #2497744, Registered Principal, Austin, Texas) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000, suspended from association with any NASD member in any capacity for six months and ordered to pay \$26,000, plus interest, in restitution to a public customer. The fine and restitution must be paid before Acosta reassociates with any NASD member firm following the suspension, or before his firm requests relief from any statutory disqualification. Without admitting or denying the findings, Acosta consented to the described sanctions and to the entry of findings that he participated in private securities transactions without requesting or obtaining his member firm's prior written approval.

The suspension in any capacity is in effect from February 20, 2007, through August 19, 2007. (NASD Case #2005003264801)

Richard Joseph Alderman Jr. (CRD #3027749, Registered Representative, Pittsburgh, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Alderman consented to the described sanction and to the entry of findings that he failed to provide any notice to his member firm of his outside employment with another member firm. The findings stated that Alderman also failed to disclose his continuing employment with his member firm to the new firm. The findings also stated that Alderman failed to appear for an NASD on-the-record testimony. (NASD Case #2006005141601)

Kevin Eugene Beamon (CRD# 722656, Registered Representative, Lawrenceville, Georgia) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for four months.

The fine must be paid before Beamon reassociates with any NASD member following the suspension, or before his firm requests relief from any statutory disqualification. Without admitting or denying the findings, Beamon consented to the described sanctions and to the entry of findings that he engaged in outside business activities, for compensation, without providing prompt written notice to, and receiving approval from, his member firm.

The suspension in any capacity is in effect from March 5, 2007, through July 4, 2007. (NASD Case #2005003331601)

John Edward Brigandi (CRD #1388900, Registered Representative, Greenvale, New York) was barred from association with any NASD member in any capacity. The National Adjudicatory Council (NAC) imposed the sanction following appeal of an Office of Hearing Officers (OHO) decision. The sanction was based on findings that Brigandi made unsuitable recommendations to a public customer based on the customer's financial situation, investment objectives and needs. (NASD #C1020040025)

Carolyn Sue Callahan (CRD #4115887, Registered Representative, South Bend, Indiana) was barred from association with any NASD member in any capacity. The sanction was based on findings that Callahan received \$45,000 from a public customer to be invested in mutual funds, forged the funds issuer's endorsement on the checks, deposited the funds in her business checking account and never paid the funds to the issuer, thereby misusing customer funds. (NASD Case #2005000724301)

Thanh Viet Jeremy Cao (CRD #4830211, Registered Representative, Rancho Santa Margarita, California) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Cao reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Cao consented to the described sanctions and to the entry of findings that he failed to provide his member firm with prompt written notice of his outside business activities. The findings stated that Cao participated in private securities transactions

without providing prior written notice to, and receiving prior written approval from, his member firm.

The suspension in any capacity is in effect from February 20, 2007, through February 19, 2008. (NASD Case #20050021917-01)

Charles Albert DaCruz (CRD #2444684, Registered Representative, Williston Park, New York) and Thomas John Linda (CRD #2404854, Registered Representative, Atlanta, Georgia) were barred from association with any NASD member in any capacity. In addition, DaCruz and Linda were ordered to disgorge the financial benefit of their misconduct as fines in the amount of \$67,000 and \$165,000, respectively. The NAC imposed the sanctions following appeal of an OHO decision. The sanctions were based on findings that DaCruz and Linda failed to disclose material information and made baseless price predictions when recommending a security to public customers. (NASD Case #C3A20040001)

Philippe Alfred DeSaint (CRD #4292420, Registered Representative, New York, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that DeSaint falsified documents regarding the price of convertible bonds in an effort to hide the excess market risk created by his losses accumulated from selling 10-year Treasury Note futures. The findings stated that by falsifying documents, DeSaint caused his member firm to fail to preserve accurate books and records in compliance with SEC Rule 17a-4. The findings also stated that DeSaint failed to respond to NASD requests for information. (NASD Case #E102004090301)

Kenneth Duane Feldhacker (CRD #1801281, Registered Representative, Phoenix, Arizona) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Feldhacker consented to the described sanction and to the entry of findings that he opened a joint brokerage account with a public customer without the customer's authorization or consent. The findings stated that Feldhacker forged customers' names on various account documents, and used blank forms the customers signed to withdraw funds from their accounts. The findings also stated that by forging customer signatures, Feldhacker initiated redemptions in

the accounts that belonged to the customers and transferred money from mutual funds, variable and fixed annuities, and/or life insurance accounts to the joint account without the customers' knowledge or consent. The findings also included that Feldhacker made unauthorized and fraudulent withdrawals and transfers from the customers' accounts to the joint account, thereby converting funds in excess of \$250,000 for his own use and benefit. **(NASD Case #2006004151201)**

William Daniel Fleno (CRD #735474, Registered Principal, Bridgewater, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which he was fined and suspended from association with any NASD member in any capacity for four months. In light of Fleno's financial status, the fine imposed was \$5,000. Without admitting or denying the findings, Fleno consented to the described sanctions and to the entry of findings that he aided and abetted a registered representative in his fraudulent and manipulative parking scheme by participating in the non-*bona fide* sale and purchase of municipal bonds. The findings stated that Fleno purchased bonds into his member firm's proprietary account to hold the bonds for several days so the registered representative could purchase them back within several days.

The suspension in any capacity is in effect from March 19, 2007, through July 18, 2007. **(NASD Case #20050003239-04)**

Ricardo Gonzalez (CRD #3204187, Registered Representative, Fort Lauderdale, Florida) 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, Gonzalez consented to the described sanction and to the entry of findings that he forged public customers' signatures on annuity withdrawal request forms, withdrew \$31,200 from their fixed annuity without their knowledge, authorization or consent, and converted the funds to his own use and benefit. The findings stated that Gonzalez failed to respond to NASD requests for information. **(NASD Case #2005001852801)**

Dennis Todd Lloyd Gordon (CRD #1614614, Registered Principal, Rosenberg, Texas) and Sterling Scott Lee (CRD #1848950, Registered Principal, Austin, Texas) were barred from association with any NASD member in any capacity and ordered to pay

\$20,832.40, plus interest, in restitution to public customers. The NAC imposed the sanctions following appeal of an OHO decision. The sanctions were based on findings that Gordon and Lee allowed a statutorily disqualified individual to function as the firm's principal without his properly being registered and failed to disclose the individual's association with the firm on a Uniform Application for Broker-Dealer Registration (Form BD). The sanctions were based on findings that Gordon and Lee caused their firm to charge retail customers fraudulently excessive markups and failed to disclose the markups on customer confirmations.

This decision has been appealed to the SEC. The SEC denied Gordon's request for a stay of the bar. The sanctions, other than the bars, are not in effect pending consideration of the appeal. **(NASD Case #C06040027)**

Thomas Michael Greenjack (CRD #3188356, Registered Representative, Williamstown, 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 three months. Without admitting or denying the findings, Greenjack consented to the described sanctions and to the entry of findings that he falsified an annuity liquidation form in that he took a form a public customer signed and submitted in connection with an earlier withdrawal, altered the withdrawal's date and dollar amount and then submitted the falsified annuity liquidation form to the insurance company for processing.

The suspension in any capacity is in effect from March 19, 2007, through June 18, 2007. **(NASD Case #2006006488001)**

Jimmie Lee Griffith (CRD #2321620, Registered Representative, Richmond, California) was fined \$13,200 and suspended from association with any NASD member in any capacity for three months. The NAC imposed the sanctions following appeal of an OHO decision. The sanctions were based on findings that Griffith effected two unauthorized trades for an account owned by a trust.

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

John D. Helm (CRD #5057124, Registered Representative, Owensboro, Kentucky) was barred from association with any NASD member in any capacity. The sanction was based on findings that Helm failed to respond to NASD requests for information. The findings stated that Helm failed to amend his Form U4 with material information. (NASD Case #2006004264801)

John Joseph Heyrich (CRD #5033079, Associated Person, Brookside, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Heyrich consented to the described sanction and to the entry of findings that he willfully failed to disclose material facts on his member firm's employment application and on his Form U4. (NASD Case #20050030485-01)

Isac Huberman (CRD #251958, Registered Principal, Dallas, Texas) submitted an Offer of Settlement in which he was fined \$15,000 and suspended from association with any NASD member in any principal capacity for six months. Without admitting or denying the allegations, Huberman consented to the described sanctions and to the entry of findings that a member firm, acting through Huberman, failed to establish and maintain a supervisory system, including but not limited to, the establishment and maintenance of written procedures reasonably designed to ensure that the firm and its associated persons complied with NASD's Research Analyst and Research Report Rule. The findings stated that Huberman failed to ensure the timely filing of Forms U5. The findings also stated that Huberman continued to act in a registered capacity even though he became inactive for failing to complete the Regulatory Element of Continuing Education.

The suspension in any principal capacity is in effect from March 5, 2007, through September 4, 2007. (NASD Case #E062004003004)

Bobby Glenn James (CRD #1311728, Registered Representative, Parker, Texas) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the findings, James consented to the described sanctions and to the entry of findings that he effected discretionary transactions in

variable annuity sub-accounts public customers owned without the customers' prior written authorization and his member firm's prior written acceptance of the accounts as discretionary.

The suspension in any capacity was in effect from March 19, 2007, through March 30, 2007. (NASD Case #2005001463701)

Charles Roger Jeffries III (CRD #5151515, Associated Person, Las Vegas, Nevada) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member firm in any capacity for three months. The fine must be paid before Jeffries reassociates with any NASD member following the suspension, or before his firm requests relief from any statutory disqualification. Without admitting or denying the findings, Jeffries consented to the described sanctions and to the entry of findings that he failed to disclose a material fact on his Form U4.

The suspension in any capacity is in effect from February 20, 2007, through May 19, 2007. (NASD Case #20060058564-01)

Larry D. Koets (CRD #1973836, Registered Representative, Springfield, Oregon) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity and ordered to pay a public customer \$37,700 in restitution. Satisfactory proof of payment of restitution must be made before his firm requests relief from any statutory disqualification. Without admitting or denying the findings, Koets consented to the described sanctions and to the entry of findings that he signed a public customer's name to Account Service Request forms and used the forged documents to withdraw approximately \$37,700 from the customer's accounts without her knowledge or authorization. (NASD Case #20050033302-01)

Dickson Virchill Lee (CRD #1612056, Registered Principal, Kent, Washington) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$65,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Lee reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the findings, Lee consented to

the described sanctions and to the entry of findings that a member firm, acting through Lee, failed to record private placement transactions on its books and records. The findings stated that a company, acting through Lee, entered into a written agreement with an unregistered individual and retained him as an independent contractor to offer and sell its securities, and Lee caused the company to pay commissions to the individual, thus dealing with him on terms and conditions different from those it accorded the general public. The findings also stated that Lee knew, or should have known, that the independent contractor effected transactions in securities without registration as a broker or dealer in violation of Section 15(a)(1) of the Securities Exchange Act of 1934. The findings also included that, in connection with his company's offers and sales of securities, Lee caused his company to make untrue statements of material fact and omitted to state material facts necessary in order to make the statements that it made, in light of the circumstances in which they were made, not misleading.

The suspension in any capacity is in effect from March 5, 2007, through March 4, 2008. (NASD Case #E3B2004020501)

Kenneth Eugene Marsh (CRD #2571431, Registered Principal, Coral Springs, Florida) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Marsh consented to the described sanction and to the entry of findings that he engaged in outside business activities without providing his member firm with notice, written or otherwise, and indicated on firm compliance forms that he was not engaged in, and had no intent to engage in, outside business activities. The findings stated that Marsh failed to respond to NASD requests for information. (NASD Case #E062005017501)

John M. Meyers (CRD #2580153, Registered Principal, Coram, New York) and **Brian Craig Klein (CRD #2723977, Registered Representative, Farmingdale, New York)** were barred from association with any NASD member in any capacity. In addition, Meyers was fined \$213,957 and Klein was fined \$174,676. The NAC imposed the sanctions following appeal of a hearing panel decision. The sanctions were based on findings that Meyers and Klein engaged in fraud by recklessly failing to disclose to public customers

potential sales incentives for selling a particular recommended stock. The sanctions were also based on the hearing panel's findings that Meyers and Klein made fraudulent price predictions for the stock in order to induce customers to purchase it. (NASD Case #C3A040023)

Jason Charles Midgley (CRD #4623081, Registered Representative, Boynton Representative, Boynton Beach, Florida) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Midgley consented to the described sanction and to the entry of findings that he participated in private securities transactions without notifying his member firm. The findings stated that Midgley made an unsuitable recommendation to a public customer, failed to respond to NASD requests for information and failed to appear for testimony. (NASD Case #2005002411701)

Long Bao Nguyen (CRD #5049602, Associated Person, Portland, Oregon) submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for eight months. The fine must be paid before Nguyen reassociates with any NASD member following the suspension, or before his firm requests relief from any statutory disqualification. Without admitting or denying the allegations, Nguyen consented to the described sanctions and to the entry of findings that he failed to disclose a material fact on his Form U4. The findings also stated that Nguyen failed to timely respond to NASD requests for information.

The suspension in any capacity is in effect from February 20, 2007, through October 19, 2007. (NASD Case #2005003352701)

Alonzo Russell (CRD #1993366, Registered Principal, Mesa, 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, Russell consented to the described sanction and to the entry of findings that he failed to respond to an NASD request for documents and information. (NASD Case #2006005133901)

Daniel J. Varley (CRD #5063467, Registered Representative, Munhall, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Varley consented to the described sanction and to the entry of findings that he made false entries into his member firm's internal customer relationship system that reflected he had had several contacts with a client regarding the client's preceding purchase of mutual funds through an external wholesaler when, in fact, those contacts had not occurred. The findings stated that, based on the purported contacts, Varley would have been entitled to receive compensation in connection with the purchase if the firm had not discovered that the entries were false. **(NASD Case #2006006237801)**

James Frane Wilkes (CRD #1344175, Registered Representative, Portland, Oregon) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for two months. The fine must be paid before Wilkes reassociates with any NASD member following the suspension, or before his firm requests relief from any statutory disqualification. Without admitting or denying the findings, Wilkes consented to the described sanctions and to the entry of findings that he signed a public customer's name to documents without the customer's knowledge or consent, and submitted them to his member firm for processing.

The suspension in any capacity is in effect from February 20, 2007, through April 19, 2007. **(NASD Case #20060049314-01)**

Complaints Filed

NASD issued the following complaints. Issuance of a disciplinary complaint represents NASD's initiation of a formal proceeding 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 these allegations in the complaint.

Eric Whetham Carlton (CRD #3078425, Registered Supervisor, Laguna Beach, California) was named as a respondent in an NASD complaint alleging that he submitted documents to his member firm and represented the documents to be genuine, when he knew, or should have known, that the signatures were not genuine and/or the documents had been altered. The complaint alleges that by submitting forged and falsified documents to his member firm, Carlton caused the firm's records to be falsified. The complaint also alleges that Carlton misused \$33,000 of public customers' funds by causing unauthorized transfers from the customers' Family Trust Account to other clients' accounts. The complaint further alleges that Carlton engaged in unauthorized trading in the customer's account by purchasing securities without the customer's knowledge, authorization or consent. In addition, the complaint alleges that Carlton forged, or caused to be forged, customers' signatures on a Letter of Authorization that directed the transfer of \$5,250 out of the customers' Family Trust Account. **(NASD Case #2005000726801)**

Lynette Joan Jacobs aka Lynette Davis (CRD #1932387, Registered Representative, New Brunswick, New Jersey) was named as a respondent in an NASD complaint alleging that she misused a public customer's funds in that she received and endorsed an \$8,500 check drawn on the customer's variable annuity account and made it payable to an alias Jacobs used. The complaint alleges that Jacobs and a third party endorsed the check, and deposited it in the third party's personal bank account. The complaint also alleges that Jacobs failed to respond to NASD requests to appear for an on-the-record interview. **(NASD Case #2005001763401)**

William Dennis Mattes Sr. (CRD #3251539, Registered Representative, Wheeling, Illinois) was named as a respondent in an NASD complaint alleging that he converted \$3,900 from a public customer by creating an ATM card and using the card to withdraw \$300 from the customer's checking and savings accounts on numerous occasions, without the customer's knowledge or consent. **(NASD Case #2006005936701)**

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

Amerifinancial dba Fareri Financial Services, Inc.
Boca Raton, Florida
(February 26, 2007)

Essex & York, Inc.
New York, New York
(February 26, 2007)

Milestone Group Management LLC
Lake Success, New York
(February 26, 2007)

Firm Suspended Pursuant to NASD Rule 9553 for Failure to Pay Annual Assessment Fees

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

Black Knight Ventures, Inc.
Tampa, Florida
(October 10, 2006, to February 13, 2007)

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

Gary Steven Artzt
Marbella, Spain
(February 1, 2007)

Dmitry Gorodetsky
Brooklyn, New York
(January 27, 2006, to February 28, 2007)

Kenneth Lee McLaughlin
Akron, Ohio
(February 1, 2007)

Individuals Barred Pursuant to NASD Rule 9552(h)

Shannon Durham
Carrollton, Texas
(February 27, 2007)

John Michael Legreca
Port Charlotte, Florida
(February 16, 2007)

Margie Emilia Minnalez
Seattle, Washington
(February 26, 2007)

Daniel Edward Schott-Bardol
Hickory, North Carolina
(February 22, 2007)

Seth Abraham Strader
Santa Cruz, California
(February 13, 2007)

Timothy Donald Trimmer
North Myrtle Beach, South Carolina
(February 9, 2007)

Omar Rene Valqui
Pembroke Pines, Florida
(February 20, 2007)

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.)

Noel Andrew Dent Jr.
Bronxville, New York
(February 13, 2007)

Gerald Costante Gonzalez
St. Petersburg, Florida
(February 26, 2007)

Neil Curtis Haeger Jr.
West Palm Beach, Florida
(February 5, 2007)

Michael Andre Jones
Topanga, California
(February 6, 2007)

Thomas Spaeth Koon
St. Louis, Missouri
(February 5, 2007)

Michael Kevin McNulty
Levittown, New York
(February 20, 2007)

Individuals Suspended Pursuant to NASD Rule Series 9554 for Failure to Comply with an Arbitration Award or Settlement Agreement

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

Adam R. Ayers
Columbus, Ohio
(December 27, 2006, to February 23, 2007)

Stephen Christopher Hayward
Grand Rapids, Michigan
(February 20, 2007)

Stephen Wilson Horn
Sherman, Texas
(February 20, 2007)

Kevin W. Parsells
Holmdel, New Jersey
(February 26, 2007)

Dennis Alvin Pearson Jr.
San Diego, California
(December 19, 2005, to February 16, 2007)

Richard Walter Simpson
San Diego, California
(December 19, 2005, to February 16, 2007)

George Michael Tamborello
Seaford, New York
(February 13, 2007)

Gregory Owen Trautman
New York, New York
(February 20, 2007)

Samuel Morton Wasserman
Riverdale, New York
(February 20, 2007)

NASD Fines Four Fidelity-Affiliated Broker-Dealers \$3.75 Million for Registration, Supervision and Email Retention Violations

Fidelity Funds Distributor Failed to Supervise for Compliance with Ethics, Conflicts of Interest Policies In Connection With Gifts and Entertainment

NASD has fined four Boston-based Fidelity broker-dealers a total of \$3.75 million for improperly maintaining NASD registrations for 1,100 individuals, failing to assign registered supervisors to 1,000 individuals, failing to retain the email of 1,900 registered individuals, and other electronic recordkeeping failures. NASD also ordered the four broker-dealers to conduct comprehensive audits of the firms' systems, policies and procedures relating to registration and electronic recordkeeping.

NASD further found that, in connection with the receipt of gifts and entertainment, Fidelity Distributors Corporation (FDC), the principal underwriter of the Fidelity family of mutual funds, failed to supervise certain registered individuals for compliance with Fidelity's ethics and conflicts of interest policies applicable to all Fidelity employees. These individuals worked as traders for FMR Co., the investment advisor to the Fidelity family of funds, but were registered with FDC. In addition to FDC, the other firms charged were Fidelity Brokerage Services LLC, the introducing broker-dealer for all of Fidelity's retail customer accounts; Fidelity Investments Institutional Services Company, Inc., which markets non-retirement and retirement plan products and services; and National Financial Services LLC, the clearing broker for FBS and other introducing firms.

"It is inexcusable that four affiliated brokerage firms would fail to comply with essential registration, supervision and email requirements," said James S. Shorris, NASD Executive Vice President and Head of Enforcement. "These failures were especially significant here because they permitted an environment where improperly registered employees of a Fidelity investment advisor were able to engage in conduct that created actual or apparent conflicts of interest involving the employees, Fidelity and its fund customers."

NASD found that broker-dealer FDC permitted certain new employees hired by the investment advisor FMR Co. to “park” NASD licenses they held prior to joining Fidelity—even though they did not perform any functions for the broker-dealer. NASD further found that together, the four Fidelity broker-dealers improperly maintained registrations for 1,100 individuals who did not perform jobs for which an NASD license is required or permitted. By parking and/or improperly maintaining those licenses, the Fidelity broker-dealers effectively gave those individuals the ability to rejoin a brokerage firm at a later time without the re-testing required of those who are unregistered for two or more years. NASD’s qualification and registration requirements are intended to afford reasonable assurance to the investing public that registered individuals maintain and update their knowledge about products and services available to investors, as well as applicable rules, regulations, and policies governing the investment banking and securities business.

In addition, NASD found that the four broker-dealers failed to assign registered supervisors to 1,000 registered individuals. None of the broker-dealers had any mechanism, policy or procedure in place to ensure that registered individuals to whom no registered supervisor was assigned complied with NASD rules. These violations occurred because the Fidelity broker-dealers permitted employees from every aspect of the Fidelity-wide enterprise to maintain registrations if they chose to do so, and they did not assess on an individual basis whether the activities of each individual fell within the “permitted” or “required” categories for NASD registration.

NASD also found that, from 2002 through 2004, at least nine of the FMR Co. investment advisor traders whose licenses were parked at FDC received gifts and entertainment valued at hundreds of thousands of dollars from employees of brokerage firms who sought business from FMR Co. During that time, FDC’s gift policy and Fidelity’s corporate-wide gift policy prohibited employees from giving or receiving gifts with a value of more than \$100 per calendar year from a current or prospective customer. Likewise, Fidelity’s entertainment policy prohibited employees from giving or accepting transportation (other than local ground transportation), lodging or other travel-related expenses to attend an entertainment event with customers without reimbursement from or to the customer for the

expense. Fidelity also maintained a general policy governing professional conduct and conflicts of interest which provided that “Fidelity expects employees to have high standards of performance, integrity, productivity and professionalism.” This general policy also required employees to be familiar with and adhere to the more particular standards set forth in Fidelity’s gift and entertainment policies. NASD found that FDC failed to take any action to identify or examine the nature, frequency, extent and expense of the gifts and entertainment received by the investment advisor traders to determine if the gifts and entertainment were in compliance with Fidelity’s policies.

Examples of gifts provided by brokerage firm employees to the investment advisor traders included: several private chartered flights, including flights provided to an NASD-registered Fidelity trader and his wife for their honeymoon, tickets and lodging at expensive hotels for Wimbledon tennis tournaments, tickets to a Justin Timberlake/Christina Aguilera concert, tickets to the US Open Tennis Tournament, and twenty bottles of expensive wine, including twelve bottles of 1993 Chateau Petrus (Pomerol).

Examples of entertainment provided by brokerage firm employees to the investment advisor traders included: private chartered flights to various destinations including, but not limited to, Palm Beach and Miami Beach, FL, and Nantucket, MA, for overnight and weekend golf outings, a bachelor party for one of the registered investment advisor traders, and tickets to the 2004 Super Bowl. The golf outings included annual, multiple-day golf trips at venues such as Las Vegas, NV, Cabo San Lucas, Mexico, and Arizona. These events included extravagant private accommodations for the investment advisor traders.

NASD also found that, from 2001 through 2004, the Fidelity broker-dealers failed to retain email related to their business as such as required by NASD rules and federal securities laws. Pursuant to a written, corporate-wide policy applicable to each broker-dealer, the Fidelity broker-dealers retained email of only certain registered individuals and failed to keep email of 1,900 other registered individuals—totaling approximately 18 percent of all registered individuals at the time. This group consisted of NASD-registered individuals whom the firms determined were not doing the work of the

broker-dealer. In connection with NASD's recent investigation of gift and entertainment activities by registered individuals, NASD requested that the Fidelity broker-dealers produce email for the investment advisor traders. The Fidelity broker-dealers, however, could not ensure that they had produced all email that should have been retained for these individuals and that they had fully complied with NASD's regulatory requests. In addition, prior to December 2002, the Fidelity broker-dealers recorded over back-up tapes and, from 2001 to August 2003, failed to capture and preserve all Instant Messages and Bloomberg email.

The Fidelity broker-dealers settled the action without admitting or denying the charges, but consented to the entry of NASD's findings.

NASD Charges Two Former Prudential Brokers with Facilitating Hedge Fund Manager's Deceptive Market Timing in Variable Annuities Branch Manager Charged with Supervisory Failures

NASD has charged two Utah brokers, Jeffrey Doerr and David Corn, with facilitating a hedge fund manager's deceptive practices to market time through variable annuities offered by three different life insurance companies. Both Doerr and Corn were registered with Prudential Securities, Inc. (PSI)—now known as Prudential Equity Group—but have since left the firm. NASD also charged the brokers' branch manager, Darrel Trost, with failing to supervise their activities.

"Deceptive market timing violates ethical standards and can harm long-term investors in mutual funds and variable annuities," said James S. Shorris, NASD Executive Vice President and Head of Enforcement. "Brokers who actively facilitate the deceptive market timing conduct of their customers will be held accountable for this kind of misconduct."

In its complaint, NASD alleges that Doerr and Corn actively facilitated market timing activities by their customer—Paul Saunders, a hedge fund manager, registered broker and Chairman, CEO and majority owner of James River Capital Corporation of Richmond, VA. NASD fined Saunders \$2.25 million in October 2006—the largest sanction ever against an individual for deceptive market timing.

NASD alleges that Doerr and Corn assisted Saunders by opening 20 brokerage accounts at PSI for him between 2000 and 2003, in the names of numerous limited partnerships he created that had the same beneficial owners as his market-timing hedge fund. NASD alleges that Doerr and Corn knew or should have known that Saunders would use these accounts to market time variable annuities and that the limited partnerships shared the same beneficial owners.

NASD further alleges that, with Doerr and Corn's assistance, Saunders executed approximately 900 variable annuity sub-account exchanges between October 2001 and September 2003 that violated insurance company restrictions or limitations, earning approximately \$5.2 million in profits. Doerr and Corn each made approximately \$45,000 in commissions from this activity.

In its complaint, NASD alleges that after Saunders began market timing sub-accounts through Doerr and Corn, the brokers received notices from insurance companies attempting to restrict or block Saunders from further market timing. The complaint alleges that after receiving the restriction notices, Doerr and Corn assisted Saunders in evading the insurance company restrictions by engaging in the following deceptive practices, separately or together:

- Opening multiple contracts for Saunders in a variable annuity, in the names of different related limited partnerships, and simultaneously entering trades for Saunders in those annuity contracts.
- Handling Saunders's purchase of new contracts in a variable annuity in the names of other limited partnerships that shared the same beneficial owners as the partnerships that had been restricted or blocked by insurance companies.
- Handling Saunders's purchase of new contracts in the same variable annuity, with Saunders identifying a different annuitant. The brokers knew or should have known that all the annuitants used by Saunders were employees of entities Saunders controlled.
- Submitting applications for Saunders in much smaller dollar amounts after certain insurance companies rejected an annuity contract because it was purchased with a large initial investment.

The complaint alleges that Doerr and Corn used four separate broker identification numbers to help Saunders evade efforts by insurance companies to restrict his market timing activities. After one annuity contract opened with one number was restricted, the brokers would open a new contract with a different number.

NASD also charged Trost with failing to supervise Doerr and Corn. Trost knew or should have known that Saunders opened accounts for limited partnerships that shared common ownership, and that Saunders was engaging in prohibited market timing. He reviewed notices from insurance companies restricting Saunders's market timing, but did not restrict the accounts from continuing that activity. The complaint further alleges that Trost failed to adequately respond to repeated requests by PSI's Compliance Department regarding Saunders' market-timing activities.

NASD also alleges that Doerr, Corn and Trost also separately failed to update each of their Forms U4 for over seven months—and then only at the prompting of NASD staff—to reflect that each was the subject of an investigation that could result in a disciplinary proceeding.

The complaint follows related NASD actions not just against Saunders, but against PSI. On Aug. 28, 2006, NASD, federal and state securities regulators and the Department of Justice announced settlements and \$600 million in monetary sanctions against PSI for misconduct involving improper market timing of mutual funds.

NASD Fines Raymond James Financial Services, Inc. \$2.75 Million for Lax Supervision of Producing Branch Managers

Former Raymond James Branch Manager Donna Vogt Barred for Making Unsuitable Recommendations to Retirees

NASD has fined Raymond James Financial Services, Inc. (RJFS) of St. Petersburg, FL, \$2.75 million for failing to maintain an adequate supervisory system to oversee the sales activities of over 1,000 producing branch managers working in offices throughout the United States.

In a related action, NASD permanently barred one of those branch managers—Donna Vogt, who worked for the firm from her home office in Cambellsport, WI.

Vogt recommended unsuitable mutual fund and variable annuity purchases to elderly or retirement age customers, and made misleading statements to customers in correspondence. RJFS failed to detect these sales practice abuses because of deficiencies in its supervisory system. RJFS also failed to have an adequate system in place to properly supervise sales of variable annuities.

"RJFS's supervisory system was inadequate because it allowed producing branch managers to supervise themselves," said James S. Shorris, NASD's Executive Vice President and Head of Enforcement. "This flawed supervisory system created a situation where the unsuitable sales of variable annuities and risky mutual funds to elderly and risk-averse customers went undetected."

From early 2000 through September 2004, RJFS employed over 1,100 producing registered principals, or branch managers, most of whom worked in small, geographically dispersed offices. These branch managers were allowed to act as the primary supervisors of their own business activities. They approved their own transactions, opened and accepted new accounts, and reviewed their own correspondence. The firm relied on an electronic transaction surveillance system maintained by RJFS's Compliance Department, and a series of exception reports, to flag transactions that required further review. It also assigned supervisory responsibility for these 1,100 branch managers to three sales managers. The activities commonly associated with daily supervision, however, were conducted by the branch managers, who in many cases, in effect, supervised themselves. By permitting these principals to engage in self-supervision, RJFS's supervisory system was not reasonably designed to achieve compliance with securities rules and regulations.

One such producing manager was Donna Vogt, whose sales practice violations went undetected for approximately four years. Vogt was the branch manager and the only registered person working in her office in Wisconsin. She maintained hundreds of customer accounts and sold mainly mutual funds and variable annuities. Many of her customers were of retirement age or older. NASD found that, in determining which products to recommend, Vogt treated her customers as a homogeneous group, regardless of age, financial status, investment experience and objectives. Of her

approximately 700 accounts, more than 90 percent listed their primary investment objective as “growth” and risk tolerance as “medium.” RJFS never questioned the fact that Vogt listed these objectives and strategies for almost all of her customers. In fact, the person who reviewed and accepted the customer account documents was Vogt herself.

NASD found that Vogt recommended unsuitable purchases and concentrations of aggressive mutual funds and variable annuities to at least five customers who were elderly, retired or nearing retirement. These transactions were unsuitable due to the over-concentration in aggressive growth funds, and because access to their funds was limited by the variable annuity surrender charges.

RJFS failed to detect or prevent these unsuitable transactions by Vogt. The firm also failed to prevent Vogt from sending misleading communications to some of her customers, in part because the firm allowed all of its producing branch managers, including Vogt, to review their own incoming and outgoing correspondence.

NASD found additional supervisory deficiencies at RJFS. The firm failed to maintain an adequate system and written procedures to reasonably supervise sales of variable annuities. Branch managers reviewed and endorsed most of their own variable annuity activities. RJFS’s Compliance Department screened variable annuity purchases using only three exception reports. The exception reports did not screen variable annuity transactions for suitability based on customer net worth, annual income, investment experience or concentration of variable annuity holdings as a percentage of net worth. As a result, Vogt’s unsuitable variable annuity recommendations went undetected. In addition, there was no system in place at the firm for reviewing the suitability of variable annuity sub-account transactions recommended by branch managers, nor was there any system for ensuring that a record of sub-account recommendations and transactions was maintained. NASD also found deficiencies in the firm’s branch audit program, and found that RJFS failed to maintain certain books and records.

Neither RJFS nor Vogt admitted or denied the charges, but consented to the entry of NASD’s findings.

NASD Fines Scudder Distributors, Putnam Retail Management, AllianceBernstein for Improper Training and Education Expenditures

Firms Improperly Entertained Brokers, Reimbursed Guest Expenses Under Guise of Education and Training

NASD has fined three distributors—Scudder Distributors, Inc. of Chicago, Putnam Retail Management Limited Partnership of Boston and AllianceBernstein Investments, Inc. of New York—a total of \$700,000 for violations of NASD’s non-cash compensation rules, including improperly providing entertainment and paying for guest expenses at training and education meetings.

NASD imposed a \$425,000 fine against Scudder, which distributes the investment products of Scudder Investments; a \$175,000 fine against Putnam, which distributes its own investment products; and a \$100,000 fine against AllianceBernstein, which distributes the investment products of AllianceBernstein, L.P.

NASD limits the use of compensation—including non-cash compensation such as reimbursement for travel expenses, meals and lodging in connection with training and education meetings—to help ensure the integrity of investment recommendations. NASD rules are designed to prevent point-of-sale incentives from compromising a broker’s objectivity in matching the investment needs of the customer with the appropriate investment product.

NASD found that the three distributors, which rely on retail brokerage firms and their brokers to recommend and sell the investment products they distribute, improperly provided and paid for entertainment and attendees’ spouse and guest expenses in connection with training and education meetings.

“Today’s enforcement action underscores the need for distributors of mutual funds and variable annuities to understand the limits surrounding the use of non-cash compensation.” said James S. Shorris, NASD Executive Vice President and Head of Enforcement. “Non-cash compensation of the sort found in this case is prohibited because it can induce brokers to put their own interests ahead of their clients’ interests.”

Scudder

NASD found that between 2001 through 2004, Scudder provided three types of impermissible non-cash compensation in connection with education and training meetings it sponsored. First, NASD found that Scudder permitted spouses to attend educational events and paid for or reimbursed their expenses, including expensive meals at premier restaurants in New York City. Second, the firm paid for impermissible entertainment at educational events, including "theme" parties such as an elaborate rock-and-roll party in 2002 which involved recreating the "Whiskey-A-Go-Go" bar of the 1970's and bringing in make-up artists to make attendees "look the part." Finally, Scudder paid for additional nights of lodging for selected attendees, without adequately ensuring that the cost of these extended stays was justified by cost savings associated with the extended stay. This included paying for Scudder attendees to engage in activities such as golf, fishing and horseback riding, followed by dinner with live entertainment on a Saturday when there were no scheduled educational or training activities. Scudder also failed to have adequate systems and procedures in place to provide reasonable assurance that it complied with NASD's non-cash compensation rules.

Putnam

NASD found that Putnam violated NASD rules relating to non-cash compensation from 2001 through 2004. During that period, Putnam paid for meals and ground transportation expenses of brokers' spouses and guests in connection with numerous training and education meetings. Putnam also paid for entertainment at training and education meetings for brokers and their guests in connection with two training and education meetings in 2001, including tickets to a Boston Red Sox game in connection with one such meeting. Two of the meetings at which Putnam paid for guest meal expenses occurred in late April 2004, three weeks after Putnam received advice from outside counsel that such payments were contrary to NASD rules. Putnam's compliance materials were updated to reflect this advice, but the firm still paid for guest meal expenses at the two meetings. NASD also found that Putnam failed to have in place systems and procedures reasonably designed to achieve compliance with NASD's non-cash compensation rules.

AllianceBernstein

NASD found that in 2001, AllianceBernstein improperly paid for brokers' guests to attend dinners at prominent New York City restaurants and attend Broadway plays in connection with numerous training and education meetings. AllianceBernstein's improper spending on entertainment occurred at six meetings in 2001, and its improper spending on meals for guests of meeting attendees occurred at 10 other meetings in 2001. NASD also found that the firm failed to have in place systems and procedures reasonably designed to achieve compliance with NASD's non-cash compensation rules.

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

