

MAY 2007

Notices to Members

Notices

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Notice to Members

MAY 2007

SUGGESTED ROUTING

Legal and Compliance
Operations
Senior Management
Service Bureaus/Providers

KEY TOPICS

Form NMA
New Member Applications
Rule 1012
Rule 1013
Standardized Online Application Form

GUIDANCE

New Member Applications

NASD Amends Rules 1012 and 1013 to Require Applicants for Membership to Submit Applications Using Online Form NMA; **Implementation Date: May 7, 2007; Compliance Date: May 31, 2007**

Executive Summary

NASD is issuing this *Notice* to inform members and applicants for membership of amendments to Rules 1012 (General Provisions) and 1013 (New Member Application and Interview) to require that applicants submit Form NMA electronically.

The rule change, which was filed with the Securities and Exchange Commission (SEC), became effective upon filing.¹ The implementation date of the amendment and the date upon which applicants may begin using the online Form NMA to apply for NASD membership is May 7, 2007. **All applicants must begin using the online Form NMA by May 31, 2007.**

Questions/Further Information

Questions regarding this *Notice* may be directed to J. Barron Knight, Special Counsel, Office of Regulation Policy, NASD Department of Member Regulation, at (202) 728-8070.

Background and Discussion

To streamline the membership application process and outline clearly the information that must be submitted with the application, NASD previously amended Rule 1013 (New Member Application and Interview) to require applicants to use a standardized form, Form NMA, to submit their membership applications.² The Form NMA is organized according to the 14 individual standards for membership enumerated in Rule 1014 (Department Decision) and assists applicants in compiling a complete application package by identifying the information and supporting documentation required by Rule 1013. Applicants currently submit Form NMA in hard copy to NASD, along with the required forms and supporting documentation, via hand delivery, courier or first-class mail.

NASD is now implementing Online Form NMA and the new electronic application submission process.³ This new process does not change the information applicants must submit pursuant to Rule 1013 or the standards set forth in Rule 1014 for granting an applicant's membership application.

To effect this change to an electronic application system, NASD has amended Rules 1012 and 1013 to require applicants to file an application in the manner prescribed by NASD and today is prescribing that an application for member be filed electronically.⁴ NASD has also amended Rule 1012(a) (Filing by Applicant or Service by NASD) to reflect that the electronic filing of a new member application will be deemed complete on the date specified on the confirmation page generated by the electronic filing system (EFS).⁵ In addition, NASD has amended Rule 1013(a) to require new member applicants to include the completed online Form NMA as part of the contents of a membership application.⁶ This move away from a paper new member application to an electronic application will further streamline and make the new member application process more efficient.⁷

Form NMA Participant Guide

NASD has published the "New Membership Application Form NMA Participant Guide" (Guide), which applicants can access on NASD's Web site at www.nasd.com/OnlineFormNMA/instructions. The Guide has been developed to provide applicants with detailed instructions necessary to input information and electronic documents into the online Form NMA. The Guide will not instruct, give guidance to or advise the applicant regarding the sufficiency of the information entered into the online Form NMA. Questions regarding technical requirements may be directed to NASD's Gateway Call Center at (301) 590-6500.

Electronic Filing System (EFS)

Applicants can access the online Form NMA and EFS directly at www.nasd.com/OnlineFormNMA. Before entering the EFS, the applicant will have to create an account through the self-registration process. The EFS will allow the applicant to upload documents into the online Form NMA, print out the online Form NMA and save the online Form NMA in draft form and return to it later. The EFS will also allow the applicant to review the completed online Form NMA before it is submitted to ensure completeness and accuracy. The EFS will not allow applicants to submit the online Form NMA until all parts of the application have been completed.

Additional Application Materials

Applicants should be aware that some mandatory items, such as the Form BD, fingerprint cards, new member assessment report and CRD entitlement forms cannot be submitted through EFS. Those items and the membership application fee will still need to be submitted via first class mail, overnight courier or hand delivery.⁸ Information and/or forms for the above-mentioned items can be obtained either through the links in the online Form NMA or on the NASD Web site, as indicated below:

- Form BD: www.nasd.com/CRD/formBD
- New Member Assessment Report: via online Form NMA under Standard 2, Number 7, or at www.nasd.com/becomeamember/assessment
- CRD Entitlement Forms: via online Form NMA under Standard 2, Number 13, or at www.nasd.com/entitlementagree and www.nasd.com/entitlementforms
- Fingerprint cards: via online Form NMA under Standard 2, Number 5, or at www.nasd.com/CRD/e-fingerprint_vendors

After an applicant has completed the online Form NMA and has submitted all the items that can be submitted electronically, EFS will generate a confirmation page that will provide the address of where to submit the membership fees and those items that cannot be submitted electronically. The fees and items must be submitted via first-class mail, overnight courier or hand delivery.

The implementation date of the rule amendment is May 7, 2007. Accordingly, all new membership applications submitted on or after that date can be submitted via the EFS using the online Form NMA. The compliance date is May 31, 2007. Accordingly, all new membership applications submitted on or after May 31 must be submitted via the EFS using the online Form NMA.

Endnotes

- 1 See Securities Exchange Act Release No. 55412 (March 7, 2007), 72 FR 11414 (March 13, 2007) (SR-NASD-2007-015).
- 2 See Securities Exchange Act Release No. 53564 (March 29, 2006), 71 FR 16847 (April 4, 2006) (SR-NASD-2006-038); see also *Notice to Members 06-16* (May 2006).
- 3 See Securities Exchange Act Release No. 53564 (March 29, 2006), 71 FR 16847 (April 4, 2006) (SR-NASD-2006-038).
- 4 See Rule 1012(a)(1) and Rule 1013(a)(1).
- 5 Rule 1012(a)(4)(E).
- 6 Rule 1013(a)(1)(A).
- 7 Cf. Securities Exchange Act Release No. 54654 (October 26, 2006), 71 FR 64326 (November 1, 2006) (SR-NASD-2006-60) (order approving new NASD Rule 3170 (Mandatory Electronic Filing Requirements) giving NASD the authority to require members to file or submit electronically any regulatory notice or other document that a member is required to file with (or otherwise submit to) NASD).
- 8 See Rule 1012(a)(4)(A) through (4)(C).

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ATTACHMENT A

New language is underlined, deletions are in brackets.

* * * * *

1011. Definitions

Unless otherwise provided, terms used in the Rule 1010 Series shall have the meaning as defined in Rule 0120.

(a) through (g) No Change.

(h) "Interested [Association]NASD Staff"

The term "Interested [Association]NASD Staff" means an employee who directly participates in a decision under Rule 1014 or 1017, an employee who directly supervises an employee with respect to such decision, an employee who conducted an investigation or examination of a member that files an application under Rule 1017, the District Director for the relevant district, and the head of the Department.

(i) through (n) No Change.

1012. General Provisions

(a) Filing by Applicant or Service by [the Association]NASD

(1) An Applicant for membership [may]shall file an application in the manner prescribed in Rule 1013.

(2) Except where NASD has otherwise prescribed an electronic or alternative filing process, an Applicant may file an application or any document or information requested under the Rule 1010 Series by first-class mail, overnight courier, or hand delivery. If the Department and the Applicant agree, the Applicant also may file a requested document or information by facsimile.

[(2) The Association](3) NASD shall serve a notice or decision issued under the Rule 1010 Series by first-class mail on the Applicant or its counsel, unless a Rule specifies a different method of service.

~~(3)~~(4) For purposes of the Rule 1010 Series, [S]service by [the Association] NASD or filing by an Applicant shall be deemed complete as follows:

(A) Service or filing by first-class mail shall be deemed complete on the date of postmark;

(B) Service or filing by overnight courier shall be deemed complete on the date of delivery to the overnight courier as specified in the airbill;

(C) Service or filing by hand delivery shall be deemed complete on the date of receipt as evidenced by a date stamp;[and]

(D) Service or filing by facsimile shall be deemed complete on the date specified in the document and on the written confirmation of transmission[.]; and

(E) Filing by an electronic system shall be deemed complete on the date specified on the confirmation page generated by the electronic filing system.

(b) Lapse of Application

(1) No Change.

(2) If an Applicant wishes to continue to seek membership or approval of a change in ownership, control, or business operations, then the Applicant shall be required to submit a new application and fee under Rule 1013 or 1017, respectively. [The Association]NASD shall not refund any fee for a lapsed application.

(c) Ex Parte Communications

(1) The prohibitions against ex parte communications shall become effective when [Association] NASD staff has knowledge that an Applicant intends to file a written request for review by the National Adjudicatory Council under Rule 1015.

(2) Unless on notice and opportunity for an Applicant and Interested [Association]NASD Staff to participate, or to the extent required for the disposition of ex parte matters as authorized by [the]NASD Rules[of the Association]:

(A) an Applicant, a counsel or representative of an Applicant, or an Interested [Association]NASD Staff shall not make or knowingly cause to be made an ex parte communication relevant to the merits of a membership proceeding under the Rule 1010 Series to a Governor, a member of the National Adjudicatory Council or a Subcommittee thereof, or an [Association] NASD employee who is participating or advising in a decision of such a person with respect to that proceeding; and

(B) a Governor, a member of the National Adjudicatory Council or a Subcommittee thereof, or an [Association]NASD employee who is participating or advising in the decision of such a person with respect to a membership proceeding shall not make or knowingly cause to be made to an Applicant, a counsel or representative of the Applicant, or an Interested [Association]NASD Staff an ex parte communication relevant to the merits of that proceeding.

(3) A Governor, a member of the National Adjudicatory Council or a Subcommittee thereof, or an [Association]NASD employee participating or advising in the decision of such a person, who receives, makes, or knowingly causes to be made a communication prohibited by this paragraph shall place in the record of the membership proceeding:

(A) through (C) No Change.

(d) through (e) No Change.

* * * * *

1013. New Member Application and Interview

(a) Filing of Application

(1) ~~[Where]~~How to File

An Applicant for NASD membership shall file its application in the manner prescribed by NASD with the Department of Member Regulation at the district office in the district in which the Applicant intends to have its principal place of business as defined in Rule 1011(l). An Applicant shall submit an application that includes:

~~[(2) Contents]~~

[An Applicant shall submit an application using NASD Form NMA The application shall include:]

(A) Form NMA;

Existing (A) through (R) relabeled (B) through (S).

~~[(3)](2) [Electronic Filings]Uniform Registration Forms~~

Upon approval of the Applicant's NASD Member Firm Account Administrator Entitlement Form, the Applicant shall submit its Forms U4 for each Associated Person who is required to be registered under NASD Rules, any amendments to its Forms BD or U4, and any Form U5 electronically via Web CRD.

~~[(4)](3) Rejection of Application That Is Not Substantially Complete~~

If the Department determines within 30 days after the filing of an application that the application is not substantially complete, the Department may reject the application and deem it not to have been filed. In such case, within the 30 day period, the Department shall serve a written notice on the Applicant of the Department's determination and the reasons therefor. ~~[The Association]~~NASD shall refund the application fee, less \$350, which shall be retained by ~~[the Association]~~NASD as a processing fee. If the Applicant determines to continue to seek membership, the Applicant shall submit a new application and fee under this Rule.

[(5)](4) Request For Additional Documents Or Information

Within 30 days after the filing of an application, the Department shall serve an initial request for any additional information or documents necessary to render a decision on the application. The Department may serve subsequent requests for additional information or documents at any time during the membership application process.

Unless otherwise agreed by the Department and the Applicant, the Applicant shall file any additional information and documents with the Department within 60 days after service of the Department's initial request and 30 days after service of any subsequent request.

(b) No Change.

* * * * *

(b) Not applicable.

(c) Not applicable.

* * * * *

Notice to Members

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SUGGESTED ROUTING

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

KEY TOPICS

Debt Securities
Operations
Rule 6200 Series
TRACE
Transaction Reporting

INFORMATIONAL

Corporate Debt Securities

Reporting of Transactions in TRACE-Eligible Securities With Execution Dates More Than T+365 Days Before Date of Report; **TRACE System Enhancement Effective on June 4, 2007**

Executive Summary

The TRACE System is being enhanced to accept reports of transactions in TRACE-eligible securities in cases where the execution date is more than T+365 days old.¹ With this enhancement, members must report such transactions electronically using the TRACE System and in accordance with the Rule 6200 Series. Also, reports relating to such transactions that **correct** previously reported information are subject to the same requirements.

The effective date of the TRACE System enhancement is June 4, 2007.

Questions/Further Information

Questions concerning this *Notice* should be directed to tracefeedback@nasd.com; Orlando Cortes, Senior Business Analyst, Transparency Services, at (212) 858-5143; Elliot Levine, Chief Counsel, Transparency Services, at (202) 728-8405; or Patrick Geraghty, Director, Market Regulation, at (240) 386-4973.

Background and Discussion

Currently, the TRACE System only accepts transaction reports that are submitted electronically not later than T+365 days after the trade date. In other words, the TRACE System currently accepts transaction reports for trades for up to 365 days after the trade date (the trade date is included in the 366-day period). NASD has now enhanced the TRACE System to accept reports on transactions submitted electronically with execution dates going back to TRACE inception on July 1, 2002. The enhancement will be effective on June 4, 2007.

With the enhancement, when a member (or a service provider) inputs a transaction report that refers to an execution date that occurred more than T+365 days before the report date, the reports will be processed on an As/of basis. Corrections of reports submitted on a prior day will continue to be submitted as Reversal trade reports. As is the case with currently submitted As/of and Reversal trade reports, public transactions older than T+365 days will be eligible for dissemination pursuant to Rule 6250. The enhancement to the TRACE System will be supported in CTCL and TRACE WEB reporting. However, at this time, the Depository Trust Clearing Corporation's (DTCC) Real Time Trade Matching (RTTM) system is not able to accept reports for transactions having trade dates more than T+365 days prior to the report date.²

Endnotes

- 1 "T" means the trade date or the date of execution.
- 2 If members that ordinarily use RTTM to report to TRACE identify transactions executed more than T+365 days from the date the member tries to report the transactions, the member must use one of the alternative reporting methods that will enable the member to make such late reports electronically to the TRACE System.

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SUGGESTED ROUTING

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KEY TOPICS

IM-6660-1
NASD Rule 6660
OTC Equity Securities
Quotations
Trading Halts

GUIDANCE

OTC Equity Trade and Quote Halt Codes

NASD Establishes New OTC Equity Trade and Quote Halt Codes; **Effective Date: May 7, 2007**

Executive Summary

On December 18, 2006, the Securities and Exchange Commission (SEC) approved amendments to NASD Rule 6660 to expand the scope of NASD's authority to initiate trade and quote halts in OTC Equity Securities and new IM-6660-1 to identify certain factors that NASD may consider in determining, in its discretion, whether imposing a trading and quoting halt in an OTC Equity Security is appropriate.¹ The amendments became effective on March 16, 2007.

The purpose of this *Notice* is to provide firms with information on the halt codes NASD will use with respect to its new authority. The new halt codes become effective May 7, 2007.

Questions/Further Information

Questions or comments regarding this *Notice* may be directed to Chris Stone, Associate Chief Counsel, Transparency Services, at (202) 728-8457; or Kosha K. Dalal, Associate General Counsel, Office of General Counsel (OGC), at (202) 728-6903.

Background and Discussion

In February 2007, NASD published *Notice to Members 07-09* announcing SEC approval of NASD Rule 6660 (Trading and Quotation Halts in OTC Equities Securities) and IM-6660-1. Rule 6660 expanded NASD's existing trading halt authority to provide more general trading and quoting halt authority beyond halts related to non-compliance with SEC Rule 10b-17, while limiting such authority to only those extraordinary events that have a material effect on the market for the OTC Equity Security, and have the potential to cause major disruption to the marketplace and/or significant uncertainty in the settlement and clearance process.

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Specifically, under Rule 6660(a)(3), NASD has the authority to impose a trading and quoting halt for material events, where NASD determines, in its discretion, based on the facts and circumstances of the particular event, that halting trading and quoting in the security is the appropriate mechanism to protect investors and ensure a fair and orderly marketplace. In addition, Rule 6660 increased the maximum number of business days that NASD can impose a trading and quoting halt from up to five business days to ten business days. NASD also adopted IM-6660-1 to identify certain factors that NASD may consider in determining, in its discretion, whether halting trading and quoting in an OTC Equity Security under proposed Rule 6660(a)(3) is appropriate.

NASD has developed new halt codes and expanded market originator IDs to correspond to Rule 6660 and to designate whether the specific halt in question is with respect to an issue that is eligible for quotation on the Over-the-Counter Bulletin Board (OTCBB), or is otherwise a non-OTCBB OTC Equity Security—*i.e.*, an American Depositary Receipt (ADR) that trades in the OTC market, securities quoted in quotation mediums other than the OTCBB (*e.g.*, the Pink Sheets) and OTC Equity Securities not otherwise quoted publicly. Announcements regarding trading and quoting halts will continue to be disseminated/published through the BBDS (Bulletin Board Dissemination Service), including through NASDAQ MarketWatch and *OTCBB.com*.

The Market Center ID Originator code of lowercase “u” will be used to denote that the security for which the trading action message is being generated trades over-the-counter and is not quoted on the OTCBB service. The Market Center ID code of uppercase “U” will continue to denote that the security for which the trading action message is being generated is quoted on the OTCBB service.

Market Center Originator ID

Character	Description
U	OTCBB Quoted Issue
u	Over-the-Counter Equity Security (Non-OTCBB Issue)

The new halt codes and the Market Center Originator IDs for both OTCBB and non-OTCBB issues are as follows:

Halt Reason Codes

Code	Reason Description
U1	Halt – Foreign Market/Regulatory Trading is halted because the OTC Equity Security or the security underlying an ADR that is an OTC Equity Security (OTC ADR) is listed on or registered with a foreign securities exchange or market, and the foreign securities exchange, market or regulatory authority overseeing such issuer, exchange or market has halted trading in such security for regulatory reasons because of public interest concerns.
U2	Halt – Component/Derivative of Exchange-Listed Security Trading is halted because the OTC Equity Security or the security underlying an OTC ADR is a derivative or component of a security listed on or registered with a national securities exchange or foreign securities exchange or market (listed security), and the national securities exchange, or foreign securities exchange or market has imposed a trading halt in the listed security.
U3	Halt – Extraordinary Events Trading is halted because NASD has determined that an extraordinary event has occurred or is ongoing that has had a material effect on the market for the OTC Equity Security or has caused or has the potential to cause major disruption to the marketplace and/or significant uncertainty in the settlement and clearance process.

In addition to the changes to BBDS, NASD will update the “Trade Halts” section of *OTCBB.com* to include the new halt reason codes as well as halt announcements.

NASD will support the new halt reason codes and the Market Center Originator ID within the Trading Action messages on BBDS on May 7, 2007.

NASD Contacts

Questions concerning trading and quotation halts in OTC Equity Securities should be directed to NASD Operations at (866) 776-0800.

Endnote

- 1 See Exchange Act Release No. 54952 (December 18, 2006), 71 FR 78242 (December 28, 2006) (File No.2006-039).

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Notice to Members

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SUGGESTED ROUTING

Executive Representative
Legal & Compliance
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Senior Management
Systems
Trading

KEY TOPICS

Alternative Display Facility
ADF Trading Centers
Regulation NMS
SEC Rule 611
Trade Reporting
Trade Reporting Facilities

GUIDANCE

NASD Trade Reporting Requirements Related to Regulation NMS

Effective Dates: Regulation NMS Trading Phase Date (March 5, 2007) for Alternative Display Facility Participants; and Regulation NMS Pilot Stocks Phase Date (Scheduled to Occur July 9, 2007) for NASD Trade Reporting Facility Participants

Executive Summary

NASD is issuing this *Notice* to provide additional guidance to broker-dealer member firms on the proper use of NASD's new transaction reporting modifiers. These trade reporting modifiers were amended and expanded to allow reporting of certain exceptions and exemptions to Rule 611 of Regulation NMS to NASD facilities. The amended trade reporting requirements were effective for Alternative Display Facility (ADF) participants on March 5, 2007, the Regulation NMS Trading Phase Date. They will be operative for each of the NASD Trade Reporting Facilities (the TRFs) on the Regulation NMS Pilot Stocks Phase Date, which is scheduled to occur on July 9, 2007. In addition to this *Notice*, NASD members that are also members of the New York Stock Exchange (NYSE) should review Information Memo 07-44, which is being issued by the NYSE contemporaneously with this *Notice*.

Questions/Further Information

Questions or comments concerning this *Notice* may be directed to Dave Chapman, Deputy Director, Market Regulation, at (240) 386-4995; Lisa Horrigan, Associate General Counsel, Office of General Counsel, at (202) 728-8190; Kathleen A. O'Mara, Associate General Counsel, Office of General Counsel, at (202) 728-8071; Peter D. Santori, Chief Counsel, Market Regulation, at (240) 386-5098; and Chris Stone, Associate Chief Counsel, Transparency Services, at (202) 728-8457.

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Background and Discussion

On June 9, 2005, the Securities and Exchange Commission (SEC) issued its release adopting Regulation NMS.¹ Regulation NMS established substantive rules designed to modernize and strengthen the regulatory structure of the U.S. equities markets. In particular, for purposes of the information provided in this *Notice*, Regulation NMS includes the Order Protection Rule (SEC Rule 611), which requires trading centers to establish, maintain and enforce written policies and procedures reasonably designed to prevent the execution of trades at prices inferior to protected quotations displayed by automated trading centers (commonly referred to as a “trade-through”), subject to applicable exceptions and exemptions.² For quotations to be protected under the rule, a quotation must be immediately and automatically accessible.

On September 28, 2006, the SEC approved amendments to the ADF³ rules to, among other things, align them with Regulation NMS.⁴ NASD issued *Notice to Members 06-67* summarizing the amendments to the ADF rules, which became effective on the Regulation NMS Trading Phase Date, March 5, 2007.⁵ In addition, NASD has adopted substantially similar provisions to the trade reporting rules for each of the TRFs.⁶ Specifically, on January 8, 2007, NASD filed a proposed rule change to make conforming changes consistent with the requirements of Regulation NMS to the rules governing the NASD/NASDAQ TRF and on February 12, 2007, filed a similar proposed rule change relating to the NASD/NSX TRF, the NASD/BSE TRF and the NASD/NYSE TRF.⁷ These proposed rule changes were filed for immediate effectiveness and will be operative on the Regulation NMS Pilot Stocks Phase Date, which is currently scheduled to occur on July 9, 2007.⁸

Among other changes, NASD has adopted new transaction reporting modifiers that require members to indicate in transactions reported to NASD facilities whether the transaction qualified for an exception or exemption to SEC Rule 611 at the time of the trade. This *Notice* covers the proper use of these new transaction reporting modifiers. Note that NASD may, where appropriate, prescribe additional modifiers in the future and will provide at least 30-days advance written notice of any such additional modifiers to ensure that firms have sufficient time to accommodate such changes.

Guidance Regarding the Proper Use of Regulation NMS-Related Trade Modifiers

The Trade Reporting Modifier Chart below demonstrates generally how member firms should use the new trade report modifiers when reporting a transaction that meets a recognized SEC Rule 611 exception or exemption. This chart provides the uniform methodology for reporting trade modifiers; however, the specific data entries used to report trades may vary depending upon the specific platform or system used. Therefore, the chart should be read in conjunction with the applicable system specifications.⁹

The new modifier format allows firms to submit significantly more trade reporting information than permitted under the previous format. Thus, for the most part, firms no longer have to program their systems to prioritize the use of transaction reporting modifiers. That said, members must ensure that they submit the appropriate information in the appropriate field or the subject transaction report will be rejected. In general, the Trade Reporting Modifier Chart specifies the information that is required to be reported for the various SEC Rule 611 exceptions or exemptions. The pertinent trade reporting fields are as follows:

1. **SEC Rule 611 Exception/Exemption Trade-Through Flag:** indicates that a trade-through exception or exemption applies to a reportable transaction; the firm must indicate that in its transaction report by populating the Trade-Through Exception/Exemption Flag;
2. **Trade Modifier Field 1: Settlement Type:** indicates the manner in which a transaction will settle (e.g., regular, cash, next day, etc.);
3. **Trade Modifier Field 2: Reason for SEC Rule 611 Exception or Exemption:** indicates which specific SEC Rule 611 exception or exemption applies to the transaction;
4. **Trade Modifier Field 3: Extended Hours/Sold:** indicates whether the transaction was reported late or executed outside normal market hours, as applicable; and
5. **Trade Modifier Field 4: SRO Required Detail:** identifies additional trade information required pursuant to NASD rules, as applicable (e.g., weighted average price, stopped stock, etc.).

Trade Reporting Modifier Chart

Applicable Regulation NMS Exception/Exemption	Trade Reporting Information to be Entered by Reporting Firm				
	SEC Rule 611 Exception/Exemption Trade-Through Flag	Settlement Type Field 1 ¹⁰	Reason for SEC Rule 611 Exception/Exemption Field 2	Extended Hours/Sold Field 3 ¹¹	SRO Required Detail Field 4 ¹²
SEC Rule 611(b)(1) (Self Help)	If applicable indicate Yes	Enter applicable settlement modifier	Self Help (Note: for SRO audit trail only-will not be disseminated)	Enter modifier if applicable	Enter modifier if applicable
SEC Rule 611(b)(2) (Not Regular Way)	If applicable indicate Yes	Cash, Next Day or Seller	If applicable, enter other SEC Rule 611 exception/exemption modifier for transaction	Enter modifier if applicable	Enter modifier if applicable
SEC Rule 611(b)(4) (Crossed Market)	If applicable indicate Yes	Enter applicable settlement modifier	If applicable, enter other SEC Rule 611 exception/exemption modifier for transaction	Enter modifier if applicable	Enter modifier if applicable
SEC Rule 611(b)(5) (Intermarket Sweep Order (inbound))	If applicable indicate Yes	Enter applicable settlement modifier	Inbound Intermarket Sweep Order (Note: This will be disseminated generically as an ISO)	Enter modifier if applicable	Enter modifier if applicable
SEC Rule 611(b)(6) (Intermarket Sweep Order (outbound))	If applicable indicate Yes	Enter applicable settlement modifier	Outbound Intermarket Sweep Order (Note: This will be disseminated generically as an ISO)	Enter modifier if applicable	Enter modifier if applicable
SEC Rule 611(b)(7) (Benchmark/ Derivatively Priced)	If applicable indicate Yes	Enter applicable settlement modifier	Derivatively Priced	Enter modifier if applicable	Prior Reference Price, Weighted Average Price or other modifier as applicable for transaction
SEC Rule 611(b)(9) (Stopped Stock)	If applicable indicate Yes	Enter applicable settlement modifier	Derivatively Priced	Enter modifier if applicable	Stopped Stock (Note: for SRO audit trail only - this will be disseminated as Weighted Average Price)
SEC Rule 611(d) (Qualified Contingent Trades)	If applicable indicate Yes	Enter applicable settlement modifier	Qualified Contingent Trade (Note: for SRO audit trail only-will not be disseminated)	Enter modifier if applicable	Enter modifier if applicable
SEC Rule 611(d) (Sub-Penny Trade-Throughs)	If applicable indicate Yes	Enter applicable settlement modifier	Sub-Penny Trade Through (Note: for SRO audit trail only-will not be disseminated)	Enter modifier if applicable	Enter modifier if applicable

It should be noted that the exception to Rule 611 for flickering quotations (see SEC Rule 611(b)(8))¹³ is not included in this chart because firms are not required to identify their reliance on that exception for purposes of NASD trade reporting requirements. In addition, the exception for a transaction in a single-priced opening, reopening or closing (see SEC Rule 611(b)(3)) is not included in this chart because NASD staff currently is not aware of a scenario in which the exception would apply to the execution of broker-dealer transactions otherwise than on an exchange (commonly referred to as over-the-counter or OTC trades).¹⁴

Moreover, it should be noted that NASD filed an immediately effective rule change with the SEC to address concerns raised by some firms that they may not be able to implement certain new Regulation NMS modifiers by the applicable effective date.¹⁵ Specifically, the proposed rule change provides NASD with exemptive authority to address implementation issues concerning: (1) the self-help modifier; (2) the qualified contingent trade modifier; (3) the sub-penny modifier; and (4) the modifier used to distinguish between inbound and outbound intermarket sweep orders.

Firms that cannot make the requisite technology changes by the applicable compliance date may request an exemption from NASD in writing. NASD will provide specific procedures and the information required to request such an exemption. It should be noted that any exemption will only be granted for good cause shown, after taking into consideration all relevant factors, and must be consistent with the protection of investors and the public interest. The duration of any exemption will be determined by NASD, but shall not exceed a six-month period.

As is always the case when reporting a transaction, the particular circumstances surrounding the execution of the transaction will determine the information that must be included in the corresponding transaction report. As previously noted, firms should always consult the technical specifications to determine what must be included in a particular transaction report. Additionally, firms should be aware that the specific form and content of a particular transaction report may vary depending on the interface (such as FIX, QIX or CTCL) used to report transactions to NASD. Lastly, NASD reiterates that firms using the trade report modifiers under the amended rules are responsible for determining that the transaction satisfies all requirements of the specific SEC Rule 611 exception or exemption.

Examples

For illustrative purposes, the following are two example trade reports—one where the transaction trades through protected quotations but is entitled to an exception pursuant to SEC Rule 611, and another for a transaction that does not constitute a trade through of a protected quotation.

Example #1: Trade-Through Trade Report Using the Benchmark/Derivatively Priced Exception

Assume that a market-on-open order has been executed and reported at 10:00:00 and it qualifies for a trade-through exception pursuant to SEC Rule 611(b)(7). Assume further that the price of the execution was based on the 9:30:00 market opening price and will settle regular way. The modifiers to be used when reporting the execution are determined through the following analysis:

Field	Value
SEC 611 Exception/Exemption Trade-Through Flag	Yes—the firm has determined that the execution qualifies for a trade-through exception pursuant to SEC Rule 611(b)(7).
Trade Modifier Field 1: Settlement Type	Regular way settlement
Trade Modifier Field 2: SEC Rule 611 Exception/Exemption Reason	Benchmark/Derivatively priced modifier must be used, consistent with SEC Rule 611(b)(7).
Trade Modifier Field 3: Extended Hours/Sold Sales Conditions	None—no modifier should be used in this field because none of the modifiers applies to this transaction.
Trade Modifier Field 4: SRO Required Detail Sales Condition	Prior reference price modifier must be used for this trade, given that the execution of this transaction occurred at 10:00:00 with a price based on the 9:30:00 market opening price.

Example #2: Trade Report of a Transaction that Does Not Constitute a Trade Through of a Protected Quote

Assume an order has been executed at 10:00:00 and the price is based on a weighted average price and would meet the requirements of SEC Rule 611(b)(7). Assume further that the execution did not trade through a protected quote; therefore, no Regulation NMS trade-through exception or exemption is applicable. The execution was reported within 1 second of execution at 10:00:01 and will settle regular way. The modifiers to be used when reporting this execution are determined through the following analysis:

Field	Value
SEC 611 Exception/Exemption Trade-Through Flag	<p>The firm has two reporting options:</p> <ul style="list-style-type: none"> (1) No—the execution did not trade through a protected quote and therefore an exemption or exception did not apply; or (2) Yes—if a valid exception or exemption exists from SEC Rule 611, the firm may identify the transaction as a trade-through exemption or exception, even though the transaction did not trade through a protected quotation. NASD is providing this option in recognition that quotations may move quickly in a Regulation NMS environment and firms may choose to operate in accordance with a trade-through exception or exemption, even when a trade-through did not actually occur.
Trade Modifier Field 1: Settlement Type	Regular way settlement
Trade Modifier Field 2: Rule 611 Exception/Exemption Reason	<p>Consistent with what is entered in the “SEC Rule 611 Exception/Exemption Trade-Through Flag” column, this can be reported as follows:</p> <ul style="list-style-type: none"> (1) None—if the firm did not mark the trade-through flag; or (2) Benchmark/Derivatively priced modifier—if the firm is entitled to an exception in accordance with SEC Rule 611(b)(7) and determined to mark the trade-through exception or exemption flag.
Trade Modifier Field 3: Extended Hours/Sold Sales Conditions	None. The extended hours/sold conditions do not apply to this transaction.
Trade Modifier Field 4: SRO Detail Sales Condition	The weighted average price code must be used.

Questions and Answers Relating to Amendments to NASD Rules and Trade Reporting with New Regulation NMS Modifiers

General Questions about Trade Reporting Modifiers

Q1: What is the purpose of the new Regulation NMS-related trade reporting modifier requirements?

A1: The purpose of the new Regulation NMS-related trade reporting modifier requirements is two-fold. First, the new requirements ensure that NASD obtains necessary regulatory information about the application of an exception or exemption to the Order Protection Rule with respect to a particular OTC trade. Second, certain information relating to the application of an exception or exemption to the Order Protection Rule will be provided to the SIP, which will disseminate that information to the tape.

Q2: Will any of the trade reporting modifiers that are currently used change in terms of meaning or value?

A2: For the most part, the modifiers used today will not change. For example, the prior reference price (.PRP) modifier will continue to be used to identify transactions executed at a price different from the current market when the price is based on a prior reference point in time and is not reported within 90 seconds of that prior reference point. However, there have been some minor modifications to certain trade report modifiers consistent with Regulation NMS. For example, firms previously used one identifier (.W) to identify stopped stock, exchange-for physicals, volume-weighted average-price trades, or another special pricing formula. Going forward, the .W modifier will no longer be used for stopped stock transactions. Instead, NASD has created a new, separate modifier for such transactions.¹⁶

Q3: Does the new modifier format allow for combinations of modifiers, where appropriate?

A3: Yes. For example, a firm will now be able to report that a transaction is both a weighted average price (.W) and extended hours (.T) transaction. In the past, when both the .W and .T modifiers applied to a particular transaction, firms were instructed to use the .W modifier rather than the .T modifier.¹⁷ Under the new modifier format, both modifiers can be accommodated on the transaction report and must be used if applicable.

Q4: Is there a correlation between the Regulation NMS modifiers found in Field 1 through Field 4 (i.e., what is reported in Field 2 for a particular transaction dictates what must be reported in Field 4 for the same transaction)?

A4: No. While there is generally no direct correlation or interrelationship between the separate columns, NASD expects that certain combinations of modifiers will occur frequently as the result of normal trading patterns. The facts and circumstances of the particular trade dictate the appropriate modifier that must be reported in each field. Accordingly, the reporting firm must include in the transaction report all of the information that is pertinent to a particular transaction. To determine what modifiers must be included in a particular transaction report, firms should analyze each column individually in the Trade Reporting Modifier Chart to determine what, if any, modifier is applicable for the transaction that is being reported.

Q5: Can the Trade Reporting Modifier Chart be used to report trades that do not constitute a trade through of a protected quote?

A5: Yes, as illustrated in Example 2 on page 7, the chart should be used in determining how to report such trades. As noted above, the facts and the circumstances of the particular trade dictate the appropriate modifier that must be included in the corresponding transaction report. Accordingly, the reporting firm should attach all the information that is pertinent to a particular transaction.

Q6: When reporting a trade as an ISO, is it permissible to use the Rule 611 exception/exemption trade-through flag even if the transaction does not result in a trade through of a protected quotation?

A6: Yes. As described above in A5 and in Example 2 found on page 7, NASD understands that quotations may move rapidly in a Regulation NMS environment and that there will be instances when ISO trades (or trades executed and reported in reliance on other trade-through exceptions or exemptions) will be reported as trade-through exempt even when a trade-through did not actually occur.

Q7: Can firms include both the prior reference price modifier in Field 4 and the late or late extended hours execution modifiers in Field 3 on the same transaction report?

A7: No. Trade reports should not contain both the prior reference price and the late or late extended hours execution modifiers.

Q8: Which trade reporting modifiers included in a transaction report will be publicly disseminated?

A8: Most of the modifiers identified in the Trade Reporting Modifier Chart will be disseminated to the tape (in conformity with each of the SIP's specifications). However, there are certain modifiers that will be submitted to NASD solely for regulatory purposes, and NASD will not forward them to the SIPs for public dissemination. The modifiers that will not be forwarded to the SIPs for dissemination include: (1) self-help; (2) qualified contingent trades; and (3) sub-penny trade-through. In addition, while firms are required to distinguish between the use of inbound and outbound Intermarket Sweep Order (ISO) exceptions (see SEC Rule 611(b)(5) and (6)) when reporting such trades to NASD, this information will be generically identified as an ISO when sent to the SIPs. Lastly, firms will expressly identify stop stock transactions when reporting a transaction to NASD, but NASD will send this trade to the SIPs as a weighted-average price modifier.

Q9: If multiple SEC Rule 611 exception/exemptions apply, which takes priority for purposes of populating the SEC Rule 611 Exception/Exemption Reason in Field 2?

A9: At this time, NASD is aware of only one instance that will commonly occur where a firm must prioritize multiple SEC Rule 611 exceptions or exemptions for purposes of determining the appropriate modifier to populate Field 2. Specifically, when both the self-help exception and an ISO exception are applicable to a particular trade-through scenario, the firm should identify in Field 2 that the transaction is an ISO rather than a self-help transaction.

Q10: When do the new modifiers go into effect?

A10: The new modifiers will go into effect in accordance with the effective dates provided in the applicable rule filings. The ADF rules became effective on March 5, 2007. The TRF rules currently are scheduled to go into effect with the start of the Pilot Stocks Phase on July 9, 2007.¹⁸ Firms, however, are advised to check the technical specifications for each TRF to determine message formatting requirements. The TRF technical specifications can be found on NASD's TRF Web page, www.nasd.com/RegulatorySystems/TRF/index.htm.

Q11: ADF and TRF rules have prohibited the aggregation of transactions; does this prohibit a firm from reporting a cross as one transaction?

A11: No. The prohibition only applies to the aggregation of separate, multiple executions, for transaction reporting purposes, into a single transaction report submitted to the ADF and the TRFs, which previously were permitted using the .B modifier. It does not apply to the matching of multiple buy and sell orders in a single execution (e.g., through the facilities of an Alternative Trading System (ATS)) or to transactions that are designated as .W (i.e., exchange-for physicals, volume-weighted average-price trades or another special pricing formula). Such transactions previously were not reported as bunched or aggregated using the ".B" modifier.

Q12: Do Regulation NMS trade reporting requirements apply to all OTC transactions?

A12: No. The new Regulation NMS trade reporting requirements only apply to OTC transactions in NMS stocks, as defined in SEC Rule 600(b)(46).¹⁹

Q13: A firm intends to use the ISO (outbound) exception, pursuant to SEC Rule 611(b)(6), to execute a block transaction for a customer that will trade-through one or more trading centers. What are the firm's trade reporting obligations under NASD rules in this circumstance?

A13: To comply with the ISO exception, simultaneously with execution of the block trade, the firm is required to route an ISO to execute against the full displayed size of any protected quotation with a price superior to the block trade price.²⁰ The ultimate handling and execution of the customer's block order, however, may depend on the preference of the customer.

If a customer represents that it does *not* want to receive the benefit of any better prices obtained by the ISOs, the firm could promptly report the full size of the block to NASD as an ISO pursuant to SEC Rule 611(b)(6) since all material terms are known.²¹ If, however, the firm's customer is silent or affirmatively chooses to receive the benefit of any better prices obtained by the execution of any routed ISOs against the superior price protected quotations of other trading centers, any fills received from the execution of the routed ISO orders will reduce the size of the block trade that is reported to NASD as an ISO pursuant to SEC Rule 611(b)(6).²² Accordingly, in this instance the firm that was responsible for executing the block trade will only report the amount of the block that it executed (minus the number of shares executed by another trading center).

Q14: If Firm A receives and executes an ISO order from Firm B, what is Firm A's trade reporting obligation?

A14: Assuming Firm A has the trade reporting obligation, Firm A should report the trade with the trade-through exception/exemption flag marked "yes" and with the ISO inbound trade modifier pursuant to SEC Rule 611(b)(5). However, as noted in Q8, the transaction will be identified by the SIP with a generic ISO indicator for the purposes of dissemination to the public.

Q15: If the SEC suspends the operation of the trade-through provisions of Regulation NMS by issuing notice of an industry-wide “self help” exception to the Order Protection Rule, how will such notice be communicated to member firms and the industry generally?

A15: The SEC stated that, if serious market-wide systems problems arise, the SEC may suspend the operation of the trade-through provisions of Regulation NMS by issuing notice of an industry-wide “self help” exception to the Order Protection Rule.²³ Accordingly, NASD member firms should be advised that, if the SEC issues notice of an industry-wide self-help exception, NASD also will communicate the issuance of such a notice via a Member Alert, which will be posted in the Member Alert section of the NASD Web site²⁴ and distributed via email to those on the executive representative email distribution list. To the extent that the executive representative of an NASD member firm receives such an email and such individual is not the appropriate person at the firm to take the necessary actions, that executive representative should be prepared to forward immediately the email to the appropriate individual(s) at the member.

OATS Reporting Question

Q16: Are there any Order Audit Trail System (OATS) reporting obligations for NASDAQ securities relating to Regulation NMS?

A16: Yes. For orders subject to the OATS Rules, members will be required to identify on the applicable OATS report the receipt and routing of an ISO. Specifically:

1. A new Special Handling Code of “ISO” has been added to the New Order Report, Combined Order/Route Report, Combined Order/Execution Report and Cancel/Replace Report to reflect the receipt of an ISO by a trading center; and
2. A new Routing Method Code of “I” will be added to the Route Report and Combined Order/Route Report to identify orders, or portions of orders, that are routed to another trading center and identified to such trading center as an ISO.

The ISO Special Handling Code for trading centers receiving an ISO will be mandatory on July 9, 2007, the Pilot Stocks Phase Date under Regulation NMS. NASD has filed a proposed rule change with the SEC to establish the new Routing Method Code.²⁵ If the rule change is approved, the Routing Method Code “I” for members routing ISOs to other trading centers will be available on June 11, 2007, but will not be mandatory until February 4, 2008. This will provide firms with additional time to program for the new code.

For illustrative purposes, the following are examples of the applicability of these new OATS codes:

Example #1: "ISO" Special Handling Code: An ADF trading center is displaying a protected quotation in the ADF. Another broker-dealer wishes to access this protected quotation by routing an ISO to execute against its full displayed size, as required by SEC Rule 611(b)(6). This broker-dealer therefore routes an ISO to the ADF trading center to access the protected quote.

OATS reporting obligations of the ADF trading center in Example #1:

The ADF trading center must submit to OATS: (1) a New Order Report with a Special Handling Code of ISO to reflect the receipt of an order; and (2) an Execution Report reflecting execution of the routed ISO, if applicable.

Example #2: "I" Routing Method Code: A member firm intends to utilize the ISO exception to the trade-through rule to obtain executions for an order that it has received from its customer. To satisfy its obligations under SEC Rule 611, the member firm routes ISOs, which it chooses to send on an agency basis, to execute against the relevant protected quotations.

OATS reporting obligations of the member firm in Example #2:

The member firm must submit to OATS: (1) a New Order Report reflecting receipt of the order from its customer; (2) a Route Report for each ISO sent, on an agency basis, to another trading center with a Routing Method Code of "I" and a Destination Code reflecting the specific exchange or trading center to which the order was routed; and (3) to the extent that the member routed the ISOs, on an agency basis, with the intent of executing on a principal basis the balance, if any, of the customer order not satisfied by the routing (and subsequent execution, if any) of such ISOs, an Execution Report to reflect the execution of the balance of the block order with its customer.

Questions Relating to ADF Requirements

In addition to the questions and answers below, firms should also review *Notice to Members 06-67* for additional information on Regulation NMS requirements relating to the ADF.

Q17: Can member firms, exchange trading facilities, or other ADF trading centers access ADF trading centers through NASD or the ADF?

A17: No. The ADF is a display-only facility. Accordingly, neither NASD nor the ADF offers a single common access point or central connectivity linkage. ADF trading center quotes are accessible through direct and/or indirect access in accordance with ADF rules. Please refer to the specifications of the applicable ADF trading center located on NASD's ADF Web page for specific quote access information: www.nasd.com/RegulatorySystems/ADF/Participants/index.htm.

Q18: Will market participants be able to tell which ADF trading center is posting a quote that represents the best bid or offer (BBO) in the ADF at any given time (particularly if multiple ADF trading centers are posting equally priced bids or offers on the same side of the market)?

A18: Yes. The quotation data feeds for NMS stocks display the specific ADF trading center MPID that is setting the ADF BBO.

Q19: What securities does the ADF support?

A19: As of March 5, 2007, all NMS stocks became eligible for quoting, trade reporting and comparison through the ADF. Previously, only NASDAQ-listed securities were supported.

Q20: Will participants quoting through NASD facilities continue to be accessible through the Intermarket Trading System (ITS)?

A20: No. As of March 5, 2007, participants quoting through NASD facilities are no longer accessible through ITS for CQS securities. ADF trading center quotes are currently accessible through direct and/or indirect access, as set forth in NASD's ADF rules.

Endnotes

- 1 17 CFR 242.600 *et seq.* See also Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (Regulation NMS Approval Order).
- 2 In addition, Regulation NMS adopted: (1) an Access Rule that, among other things, requires fair and non-discriminatory access to quotations; (2) a Sub-Penny Rule that, in general, prohibits market participants from accepting, ranking or displaying orders, quotations or indications of interest in a pricing increment smaller than a penny, except for orders, quotations or indications of interest that are priced at less than \$1.00 per share; and (3) amendments to Market Data Rules to update the requirements for consolidating, distributing and displaying market information, as well as amendments to the joint industry plans for disseminating market information that modify the formulas for allocating plan revenue and broadening participation in plan governance. This *Notice* describes changes to NASD's trade reporting rules that primarily relate to implementation of the Order Protection Rule.
- 3 The ADF is a quotation collection, trade comparison and trade reporting facility developed by NASD, which provides ADF trading centers the ability to post quotations in NMS stocks and provides all firms that participate in the ADF the ability to view quotations and report transactions in NMS stocks to the appropriate Exclusive Securities Information Processor (SIP or Processor) for consolidation and dissemination of data to vendors.
- 4 See Securities Exchange Act Release No. 54537 (September 28, 2006), 71 FR 59173 (October 6, 2006) (File No. SR-NASD-2006-91).
- 5 The SEC also approved changes to the ADF Trading Center Certification Record, which became effective on September 28, 2006.
- 6 Generally, the TRFs are mechanisms for firms to report trades in NMS stocks effected otherwise than on an exchange. Currently, four TRFs are operational: the NASD/NASDAQ TRF, the NASD/NSX TRF, the NASD/BSE TRF and the NASD/NYSE TRF. Each TRF is a facility of NASD, subject to regulation by NASD and NASD's registration as a national securities association. Unlike the ADF, the TRFs are trade reporting mechanisms only; they do not permit quoting.
- 7 See Securities Exchange Act Release No. 55101 (January 12, 2007), 72 FR 2568 (January 19, 2007) (notice of filing and immediate effectiveness of SR-NASD-2007-002) and Securities Exchange Act Release No. 55346 (February 26, 2007), 72 FR 9807 (March 5, 2007) (notice of filing and immediate effectiveness of SR-NASD-2007-014) available at www.nasd.com/RulesRegulation/RuleFilings/2007RuleFilings/NA_SDW_018634.
- 8 While the new NASD trade reporting requirements for the TRFs are effective on this date, it should be noted, however, that the Order Protection Rule will only be applicable to certain NMS stocks on that date, in accordance with the compliance schedule set forth by the SEC in Securities Exchange Act Release No. 55160 (January 24, 2007), 72 FR 4202 (January 30, 2007). Accordingly, members will not be required to comply with the new Regulation NMS trade reporting modifiers for those NMS stocks that are not yet subject to the Order Protection Rule. However, members may voluntarily report such information to NASD for all NMS stocks.
- 9 ADF and TRF technical specifications can be found on the NASD Web site at www.nasd.com/RegulatorySystems/ADF/FIXInformation/index.htm and www.nasd.com/RegulatorySystems/TRF/Exchange_Participants/index.htm, respectively.
- 10 The full universe of settlement type modifiers that can be used, as appropriate, in the "Settlement Type - Field 1" are found in the applicable technical specifications.

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- 11 The full universe of trade type modifiers that can be used, as appropriate, in the "Extended Hours/Sold – Field 3" are found in the applicable technical specifications.
- 12 The full universe of trade type modifiers that can be used, as appropriate, in the "SRO Required Detail – Field 4" are found in the applicable technical specifications.
- 13 See SEC Rule 611(b)(8) which states: [t]he trading center displaying the protected quotation that was traded through had displayed, within one second prior to execution of the transaction that constituted the trade-through, a best bid or best offer, as applicable, for the NMS stock with a price that was equal or inferior to the price of the trade-through transaction.
- 14 To the extent that an NASD member firm believes that it can properly rely on the exception set forth in SEC Rule 611(b)(3) for an OTC trade, it should verify this with SEC staff. In addition, once the SEC staff determines that it is appropriate for the NASD member firm to rely on such exception, the firm should promptly notify NASD.
- 15 See SR-NASD-2007-032. The rule filing is available on NASD's Web site at www.nasd.com/RulesRegulation/RuleFilings/2007RuleFilings/NASDW_019139.
- 16 It is important to note, however, that consistent with the Commission's prior guidance concerning the applicability of the exception in SEC Rule 611(b)(9) (Stopped Stock) to certain "error corrections," firms should use the derivatively priced modifier in Field 2 to identify such situations, and not the stopped stock modifier in Field 4. See Question 3.11, Division of Market Regulation: Responses to Frequently Asked Questions concerning SEC Rule 611 and Rule 610 of Regulation NMS (October 31, 2006 update).
- 17 See NASDAQ Head Trader Alert 2004-081 (June 22, 2004).
- 18 See note 8.
- 19 Firms reporting OTC transactions in Non-NMS Stocks, e.g., OTC Bulletin Board and Pink Sheet securities, to the OTC Reporting Facility will be required to use the new four byte messaging format because the OTC Reporting Facility uses the same technology platform as the NASD/NASDAQ TRF. However, as noted above, the Regulation NMS-related trade reporting modifiers do not apply to transactions in these securities and, accordingly, should not be used when reporting transactions in Non-NMS Stocks.
- 20 To meet this requirement, the trading center will need to utilize an automated system that is capable of ascertaining current protected quotations and simultaneously routing the necessary ISOs.
- 21 See Question 3.03, Division of Market Regulation: Responses to Frequently Asked Questions concerning SEC Rule 611 and Rule 610 of Regulation NMS (October 31, 2006 update).
- 22 It is possible that the execution of the routed ISOs would satisfy the customer's order such that there would be no need to execute a block transaction with the customer pursuant to SEC Rule 611(b)(6).
- 23 See SEC Press Release 2007-029, dated March 2, 2007 (www.sec.gov/news/press/2007/2007-29.htm).
- 24 See www.nasd.com/RulesRegulation/MemberAlerts/2007MemberAlerts/index.htm.
- 25 See SR-NASD-2007-028. The rule filing is available on NASD's Web site at www.nasd.com/RulesRegulation/RuleFilings/2007RuleFilings/NASDW_018978

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Notice to Members

MAY 2007

SUGGESTED ROUTING

Legal and Compliance
Operations
Senior Management

KEY TOPICS

Short Interest Reporting

ACTION REQUIRED

Intermarket Surveillance Group

New Requirement for the Reporting of Consolidated Short Interest Positions to the Intermarket Surveillance Group (ISG); **Effective September 2007**

Executive Summary

This *Notice to Members* advises member firms that, effective September 2007, they are required to increase the frequency of short interest reporting from monthly to twice a month.¹ Attachment A outlines the revised Short Interest Reporting Schedule for September 2007 through December 2007. Additionally, the short interest reporting rules of certain ISG self-regulatory organizations (SROs) are included as Attachment B.

This *Notice* was prepared by the following SROs acting jointly as members of the ISG:

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

Questions/Further Information

Questions concerning short interest reporting requirements may be directed to any of the following SRO staff:

SRO	Individual	Telephone No.	Email Address
Amex	James Turnbull	(212) 306-1526	<i>james.turnbull@nasd.com</i>
BSE	Sharon Melanson	(617) 235-2152	<i>sharon.melanson@bostonstock.com</i>
CBOE	Pat Sizemore	(312) 786-7752	<i>sizemore@cboe.com</i>
CHX	Mike Cardin	(312) 663-2204	<i>mcardin@chx.com</i>
ISE	Ron Veith	(212) 897-8130	<i>rveith@iseoptions.com</i>
NASD	Jocelyn Mello	(240) 386-5091	
NASDAQ	NASDAQ OGC	(301) 978-8400	
NSX	Nicole Guiffra	(312) 786-8809	<i>nicole.guiffra@nsx.com</i>
NYSE	Glen Garofalo	(212) 656-2084	<i>ggarofalo@nyse.com</i>
NYSE Arca	John Chapin	(312) 442-7790	<i>jchapin@nyse.com</i>
PHLX	Joseph Cusick	(215) 496-1576	<i>joseph.cusick@phlx.com</i>

Technical or system questions should be directed to:

Organization	Contact	Telephone No.	Email Address
Amex	Helpdesk	(800) 321-NASD	<i>nasdregfiling@nasd.com</i>
NASD	Helpdesk	(800) 321-NASD	<i>nasdregfiling@nasd.com</i>
NYSE	Tom McNally	(212) 656-2237	<i>tmcnally@nyse.com</i>
NYSE	Eugene Kosoy	(212) 656-5740	<i>ekosoy@nyse.com</i>

ISG Regulatory Memorandum, ISG 2007-01

On March 6, 2007, the Securities and Exchange Commission (SEC) approved rule changes by the Amex, NASD and NYSE to require members and member organizations to increase the frequency of short interest reporting from monthly to twice a month.² The amended short interest reporting requirements become effective 180 days after SEC approval to give members and member organizations adequate time to make any changes necessary to comply with the new requirements. In addition to the rule changes at the Amex, NASD and NYSE, the other U.S. securities marketplace members of the ISG are also revising their short interest reporting requirements to correspond to the twice-a-month reporting cycle. Therefore, beginning in September 2007, all ISG SROs will require members and member organizations to submit short interest information twice a month.

The Mid-Month Short Interest Report will continue to be based on short positions³ held by members on the settlement date of the 15th of each month. If the 15th falls on a weekend or another non-settlement date, the designated settlement date will be the previous business day on which transactions settled. The End-of-Month Short Interest Report will be based on short positions held on the last business day of the month on which transactions settle.

All members and member organizations of the ISG SROs will continue to be required to report short positions in all securities they carry, irrespective of where the securities are listed. It is not expected that the current reporting processes or reporting systems offered by the ISG SROs will change other than having to report twice a month.⁴

Endnotes

- 1 See Securities Exchange Act Release No. 55406 (March 6, 2007), 72 FR 11071 (March 12, 2007) (order approving SR-NASD-2006-131, SR-NYSE-2006-111, SR-Amex-2007-005).
- 2 Currently, the Amex requires members to report End-of-Month Short Interest for "ETF type products."
- 3 Short positions to be reported are those resulting from short sales as the term is defined in SEC Rule 200 of Regulation SHO, subject to certain limited exceptions.
- 4 In connection with the implementation of the changes to NASDAQ symbology, certain of the ISG SROs may have changes to their reporting processes or systems.

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ATTACHMENT A

September through December 2007 – Short Interest Reporting Schedule

Trade Date	Settlement Date	Report Due to Amex & NYSE	Report Due to NASD (Exchange-Listed except NASDAQ)	Report Due to NASD (NASDAQ-Listed & OTC Equity)	Report Published by Amex & NYSE	Report Published by NASDAQ and NASD
September 11 (Tuesday)	September 14 (Friday)	September 18 1:00 p.m. (Tuesday)	September 18 1:00 p.m. (Tuesday)	September 18 6:00 p.m. (Tuesday)	September 20 (Thursday)	September 26 (Wednesday)
September 25 (Tuesday)	September 28 (Friday)	October 2 1:00 p.m. (Tuesday)	October 2 1:00 p.m. (Tuesday)	October 2 6:00 p.m. (Tuesday)	October 4 (Thursday)	October 10 (Wednesday)
October 10 (Wednesday)	October 15 (Monday)	October 17 1:00 p.m. (Wednesday)	October 17 1:00 p.m. (Wednesday)	October 17 6:00 p.m. (Wednesday)	October 19 (Friday)	October 25 (Thursday)
October 26 (Friday)	October 31 (Wednesday)	November 2 1:00 p.m. (Friday)	November 2 1:00 p.m. (Friday)	November 2 6:00 p.m. (Friday)	November 6 (Tuesday)	November 12 (Monday)
November 9 (Friday)	November 15 (Thursday)	November 19 1:00 p.m. (Monday)	November 19 1:00 p.m. (Monday)	November 19 6:00 p.m. (Monday)	November 21 (Wednesday)	November 28 (Wednesday)
November 27 (Tuesday)	November 30 (Friday)	December 4 1:00 p.m. (Tuesday)	December 4 1:00 p.m. (Tuesday)	December 4 6:00 p.m. (Tuesday)	December 6 (Thursday)	December 12 (Wednesday)
December 11 (Tuesday)	December 14 (Friday)	December 18 1:00 p.m. (Tuesday)	December 18 1:00 p.m. (Tuesday)	December 18 6:00 p.m. (Tuesday)	December 20 (Thursday)	December 27 (Thursday)
December 26 (Wednesday)	December 31 (Monday)	January 3, 2008 1:00 p.m. (Thursday)	January 3, 2008 1:00 p.m. (Thursday)	January 3, 2008 6:00 p.m. (Thursday)	January 7, 2008 (Monday)	January 11, 2008 (Friday)

All Times: Eastern Time

ATTACHMENT B

Short Interest Reporting Rules

Amex Rule:

30A Periodic Reports — Short Positions

Every member organization shall submit, as required by the Exchange, periodic reports with respect to short positions in securities.

Commentary

.01 Short positions.—Member organizations are required to report “short” positions, including odd lots, in each Amex-listed stock, warrant or other security treated as an equity, and in each other stock, warrant or other security treated as an equity not listed on the Exchange (and not otherwise reported to another self-regulatory organization), using such format and method as prescribed by the Exchange. Such reports must include customer and proprietary positions and must be made at such times and cover such time periods as may be designated by the Exchange.

For the purposes of this report, the term “customer” means any account other than the proprietary account of the reporting member organization.

“Short” positions to be reported are those resulting from “short sales” as that term is defined in Rule 200 of SEC Regulation SHO, but excluding positions resulting from sales specified in Securities Exchange Act Rule 10a-1(e) (1), (6), (7), (8) or (10). Also to be excluded are “short” positions carried for other members and member organizations reporting for themselves.

Only one report should be made for each stock, warrant or other security treated as an equity in which there is a short position. If more than one “account” has a short position in the same stock, warrant or other security treated as an equity, the combined aggregate should be reported.

NOTE: A member organization which does not carry customers’ margin accounts and does not clear its own transactions may obtain an exemption from reporting by notifying the Exchange in writing.

Adopted. March 6, 2007 (Amex-2007-05).

CBOE Rule:

15.1. Maintenance, Retention and Furnishing of Books, Records and Other Information

Each member shall make, keep current and preserve such books and records as the Exchange may prescribe and as may be prescribed by the Securities Exchange Act of 1934 and the Rules and Regulations thereunder as though such member were a broker or dealer registered pursuant to Section 15 of such Act. No member shall refuse to make available to the Exchange such books, records or other information as may be called for under the Rules or as may be requested in connection with an investigation by the Exchange.

Interpretations and Policies:

.01 The following Rules contain specific requirements with regard to the maintenance and retention of books, records and other information: Rules 3.4, 3.6, 8.9, 9.6, 9.7, 9.8, 9.10, 9.21, 9.23, 11.2, 12.12 and Chapter XV. In addition, the following Rules contain specific requirements with regard to the furnishing of information to the Exchange: Rules 3.7, 3.9, 3.17, 3.18, 3.20, 3.21, 3.23, 3.25, 4.9, 4.13, 6.49, 6.51, 6.56, 6.59, 6.71, 6.72, 7.2, 7.3, 7.6, 8.2, 8.3, 8.5, 8.10, 8.11, 9.1, 9.2, 9.3, 12.11, 13.4, 14.2 and 19.2. The foregoing list is not intended to be exhaustive and members must comply with all applicable recordkeeping and reporting requirements whether or not listed above.

Issued August 23, 1978; amended March 26, 1980; July 19, 2000, effective August 18, 2000 (99-15).

.02 Each member organization that clears stock transactions and for which the Exchange is the Designated Examining Authority shall maintain records of short stock positions in all customer and proprietary firm accounts for securities listed on a United States registered national securities exchange or for securities whose bids and offers are reported on the automated quotation system operated by the National Association of Securities Dealers, Inc. ("NASD"). Each such member that is not required to report short interest data to another stock exchange or to the NASD as a result of being a member of such organization shall report these short stock positions to either a stock exchange or to the NASD, as the Exchange so directs. The form, manner, and time of such report shall be specified by the appropriate exchange or the NASD.

Approved January 27, 1995 (94-55).

.03 In addition to the existing obligations under Exchange rules regarding the production of books and records, a Market-Maker in non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency, shall make available to the Exchange such books, records or other information pertaining to transactions in non-U.S. currency and the applicable non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives on such currency, as may be requested by the Exchange.

Amended November 2, 2006 (06-74).

.04 In addition to the existing obligation under Exchange rules regarding the production of books and records, a Market-Maker in options on Commodity Pool Units, shall make available to the Exchange such books, records or other information pertaining to transactions in the applicable physical commodity, physical commodity options, commodity futures contracts, options on commodity futures contracts, or any other derivatives on such commodity, as may be requested by the Exchange.

Amended April 13, 2007 (07-21).

NASD Rule:

3360. Short-Interest Reporting

(a) Each member shall maintain a record of total "short" positions in all customer and proprietary firm accounts in OTC Equity Securities, securities listed on a national securities exchange and not otherwise reported to another self-regulatory organization and shall regularly report such information to NASD in such a manner as may be prescribed by NASD. Reports shall be made as of the close of the settlement date designated by NASD. Reports shall be received by NASD no later than the second business day after the reporting settlement date designated by NASD.

(b) For purposes of this Rule:

(1) "short" positions to be reported are those resulting from "short sales" as that term is defined in SEC Rule 200 of Regulation SHO, with the exception of positions that meet the requirements of Subsections (e)(1), (6), (7), (8), and (10) of SEC Rule 10a-1 adopted under the Act;

(2) the term "customer" includes a broker-dealer; and

(3) the term "OTC Equity Securities" shall mean any equity security that is not listed on The Nasdaq Stock Market or a national securities exchange.

Amended by SR-NASD-2005-087 eff. Aug. 1, 2006.

Amended by SR-NASD-2005-112 eff. July 3, 2006.

Amended by SR-NASD-2005-001 eff. Jan. 7, 2005.

Amended by SR-NASD-2002-178 eff. Dec. 16, 2002.

Amended by SR-NASD-94-67 eff. May 1, 1995.

Amended eff. Aug. 31, 1987.

Adopted by SR-NASD-85-34 eff. Jan. 20, 1986.

Selected *Notices to Members*: 85-77, 85-87, 86-4, 86-15, 86-61, 87-15, 95-8, 03-08.

NASDAQ Rule:

3360. Short-Interest Reporting

(a) To the extent such information is not otherwise reported to the NASD in conformance with NASD Rule 3360, each member shall maintain a record of total "short" positions in all customer and proprietary firm accounts in securities listed on Nasdaq and shall regularly report such information to Nasdaq in such a manner as may be prescribed by Nasdaq. Reports shall be made as of the close of the settlement date designated by Nasdaq. Reports shall be received by Nasdaq no later than the second business day after the reporting settlement date designated by Nasdaq.

(b) For purposes of this Rule:

(1) "short" positions to be reported are those resulting from "short sales" as that term is defined in SEC Rule 200 of Regulation SHO, with the exception of positions that meet the requirements of Subsections (e)(1), (6), (7), (8), and (10) of SEC Rule 10a-1 adopted under the Act; and

(2) the term "customer" includes a broker-dealer.

Amended by SR-NASDAQ-2006-018 eff. July 25, 2006.
Adopted by SEC Release 34-53128 (Jan. 13, 2006).

NYSE Rule

421. Periodic Reports

Member organizations shall submit, as required by the Exchange, periodic reports with respect to

- (1) Short positions in securities;
- (2) Customers' debit and credit balances.

Amended April 4, 1968.

Amended October 7, 1982.

Amended March 6, 2007 (NYSE-2006-111).

Supplementary Material:

.10Short positions.—Member organizations for which the Exchange is the designated examining authority are required to report "short" positions, including odd lots, in each stock or warrant listed on the Exchange, and in each other stock or warrant not listed on the Exchange which is not otherwise reported to another United States securities exchange or securities association, using such automated format and methods as prescribed by the Exchange. Such reports must include customer and proprietary positions and must be made at such times and covering such time period as may be designated by the Exchange.

Member organizations for which the Exchange is not the designated examining authority must report "short" positions to the self-regulatory organization which is its designated examining authority ("DEA") if such DEA has a requirement for such reports. If the DEA does not have such a reporting requirement, then such member organization must comply with the provisions of Rule 421.

The term "designated examining authority" means the self-regulatory organization which has been assigned responsibility for examining a member organization for compliance with applicable financial responsibility rules. (See Rule 17d-1 under the Securities Exchange Act of 1934 (the "Exchange Act").)

"Short" positions to be reported are those resulting from "short" sales as defined in Rule 200 of the Securities and Exchange Commission's Regulation SHO, but excluding positions resulting from sales specified in clauses (1), (6), (7), (8), and (10) of paragraph (e) of Rule 10a-1 under the Exchange Act. Also to be excluded are "short" positions carried for other member organizations reporting for themselves.

Only one report should be made for each stock or warrant in which there is a short position. If more than one "account" has a short position in the same stock or warrant, the combined aggregate should be reported.

NOTE: A member organization which does not carry customers' margin accounts and does not clear its own transactions may obtain an exemption from reporting by notifying the Exchange in writing.

Amended March 30, 1993.

Amended March 6, 2007 (NYSE-2006-111).

Notice to Members

MAY 2007

SUGGESTED ROUTING

Legal & Compliance
Market Making
Operations
Registered Representatives
Senior Management
Systems
Trading

KEY TOPICS

Foreign Securities
American Depositary Receipts (ADRs)
Trade Reporting

GUIDANCE

Trade Reporting of Foreign Securities

NASD Provides Guidance Concerning Trade Reporting Obligations for Transactions in Foreign Securities and American Depositary Receipts

Executive Summary

NASD is publishing this *Notice* to provide members with guidance on trade reporting issues involving transactions in foreign securities and American Depositary Receipts (ADRs). NASD is announcing that, on April 20, 2007, NASD filed a rule change with the Securities and Exchange Commission (SEC) for immediate effectiveness to codify existing NASD guidance regarding members' trade reporting obligations for transactions in foreign equity securities.¹ NASD is also publishing this *Notice* to provide guidance to members concerning their trade reporting obligations with respect to certain transactions involving ADRs.

The new rule language is available in Attachment A of this *Notice*.

Questions/Further Information

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

Discussion

Trade Reporting Obligations for Transactions in Foreign Equity Securities

Pursuant to Rule 6620, NASD members generally are required to report transactions in OTC Equity Securities to NASD's OTC Reporting Facility.² Rule 6610 defines an "OTC Equity Security" as any non-exchange-listed security³ and certain exchange-listed securities that do not otherwise qualify for real-time trade reporting.

The definition of "OTC Equity Security" is broad and includes foreign equity securities, even those that trade exclusively outside the United States. Because of the breadth of this definition, NASD had published guidance that the transaction reporting requirements of Rule 6620 do not apply to transactions in foreign equity securities⁴ if: (1) the transaction is executed on and reported to a foreign securities exchange; or (2) the transaction is executed over the counter in a foreign country and is reported to the regulator of securities markets for that country.⁵ To ensure that all members are aware of their trade reporting obligations regarding foreign equity securities, on April 20, 2007, NASD filed for immediate effectiveness a rule change with the SEC to codify this guidance in NASD Rule 6620(g). The reporting requirements do, however, continue to apply to transactions in foreign equity securities that are executed over the counter in the United States or abroad that are not reported to a foreign exchange or regulator. All such transactions must be reported to NASD.⁶

Trade Reporting Obligations for ADR/Ordinary Swap Transactions

Over-the-counter transactions in ADRs are subject to the trade reporting requirements under NASD rules.⁷ NASD staff recently has received several inquiries relating to trade reporting requirements for ADR swap transactions (sometimes called "cross-book" transactions). In these types of transactions, a firm matches holders of ADRs with holders of the foreign ordinary equity security (referred to as the "ordinary" or "ordinaries") in the same company. To effect the "swap," a firm typically will execute the equivalent of two cross transactions in the two securities between the holders. Because the ADRs and the ordinary shares are separate securities and they are executed in separate transactions, both the ADR and the foreign ordinary share transactions must be reported separately to NASD for public dissemination, as required by NASD rules.

Endnotes

- 1 See Securities Exchange Act Release No. 55745 (May 11, 2007), 72 FR 27891 (May 17, 2007) (SR-NASD-2007-030).
- 2 Transactions in OTC Equity Securities generally must be reported to the OTC Reporting Facility within 90 seconds of execution. Foreign securities (excluding ADRs and Canadian issues), however, may be transmitted to the OTC Reporting Facility by 1:30 on T+1 (or next day) basis regardless of the time of execution.
- 3 A non-exchange-listed security is an equity security that is not traded on any national securities exchange. The term does not include "restricted securities" as defined in SEC Rule 144(a)(3) under the Securities Act of 1933 or any securities designated in the PORTAL Market (NASD Rule 6700 Series). See NASD Rule 6610(c).
- 4 The amendments define a foreign equity security as "any OTC Equity Security that is issued by a corporation or other organization incorporated or organized under the laws of any foreign country."
- 5 See *OTC Bulletin Board Update* (Spec. Ed. Dec. 1993). See also, *NASD Notice to Members 90-58* (Sept. 1990).
- 6 Any transaction reported to NASD must be reported in U.S. dollars, regardless of the currency in which the transaction occurred. The methodology employed by the member for currency conversion is left to the NASD member; however, the member should document its practice and employ the same method consistently.
- 7 See NASD Rules 4632, 4632A, 4632C, 4632D, 4632E, 6620. Members should note, however, that the conversion of ordinary shares into ADRs (or vice versa) at a bank depository, is not considered an OTC transaction for purposes of NASD trade reporting rules and is, therefore, not a reportable event.

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ATTACHMENT A

Below is the text of the rule change. New language is underlined.

6620. Transaction Reporting

(a) through (f) No change.

(g) Transactions in Foreign Equity Securities

(1) For purposes of this paragraph, the term "foreign equity security" means any OTC Equity Security that is issued by a corporation or other entity incorporated or organized under the laws of any foreign country.

(2) Transactions in foreign equity securities shall be reported to the OTC Reporting Facility unless:

(A) the transaction is executed on and reported to a foreign securities exchange; or

(B) the transaction is executed over the counter in a foreign country and is reported to the regulator of securities markets for that country.

Notice to Members

MAY 2007

SUGGESTED ROUTING

Continuing Education
Legal & Compliance
Registration
Senior Management

KEY TOPICS

Continuing Education
Firm Element

GUIDANCE

Continuing Education

Securities Industry/Regulatory Council on Continuing Education Issues Firm Element Advisory Update

Executive Summary

In the fourth quarter of every year, the Securities Industry/Regulatory Council on Continuing Education (Council) publishes the annual Firm Element Advisory (FEA). The Council is now updating the FEA in the second quarter of each year. Topics added to the FEA in the second-quarter update will be flagged as such, and will also appear in the year-end FEA.

Background and Discussion

The Council's FEA identifies regulatory and sales practice topics that firms should consider including in their Firm Element training plans. The topics are based on a review of recent industry and self-regulatory organizations' publications and other communications.

The FEA topics are not exhaustive and are intended as a guide to firms when they determine what to include in their training plans. Firms should consider the specific nature of their business, clients, products and services when creating their training plans.

The updated FEA is available on the Council's Web site at www.cecouncil.com/publications/council_publications/FEA_2007_Semi_Annual_Update.pdf

Questions/Further Information

Questions concerning this *Notice* may be directed to Joseph McDonald, Associate Director, Testing and Continuing Education, at (240) 386-5065.

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Disciplinary and Other NASD Actions

REPORTED FOR MAY

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 March 2007.

Firms Fined, Individuals Sanctioned

Amerifinancial (CRD #130623, Boca Raton, Florida) and Anthony Joseph Fareri (CRD #4176775, Registered Principal, Lighthouse Point, Florida) submitted an Offer of Settlement in which the firm was censured and fined \$30,000, of which \$25,000 was joint and several with Fareri, and \$5,000 was joint and several with another individual. Fareri was suspended from association with any NASD member in any capacity for one year. The fine must be paid before Fareri reassociates with any NASD member following the suspension, or before his firm requests relief from any statutory disqualification. Without admitting or denying the allegations, the firm and Fareri consented to the described sanctions and to the entry of findings that the firm, acting through Fareri, commenced a private placement offering and participated in municipal securities transactions contrary to its NASD membership agreement. The findings stated that the firm did not file an application for approval to engage in new lines of business, including private placement offerings and municipal securities transactions, even though these were material changes in the firm's business operations. The findings also stated that the firm, acting through Fareri, failed to adopt, maintain and enforce an adequate supervisory system regarding private placement transactions and the maintenance of internal communications. The findings also included that the firm, acting through an individual, conducted a securities business without maintaining its required minimum net capital. NASD found that Amerifinancial failed to timely create and implement its business continuity plan.

Fareri's suspension in any capacity is in effect from March 19, 2007, through March 18, 2008. (NASD Case #E072004054601)

GunnAllen Financial, Inc. (CRD #17609, Tampa, Florida), Richard Mark Nummi, (CRD #2540066, Registered Principal, Land O Lakes, Florida), Brian Edward Sanders (CRD #2743309, Registered Principal, Wading River, New York) and Stephen Irvin Saunders IV, (CRD #2873747, Registered Principal, Tampa, Florida) submitted an Offer of Settlement in which the firm was fined \$100,000, of which \$45,000 is joint and several with Saunders, \$27,500 of which is joint and several with Nummi, and \$17,500 of which is joint and several with Nummi and Sanders. Nummi and Saunders were suspended from association with any NASD member in any principal capacity for 60 days. Sanders was suspended from association with any NASD member in any principal capacity for 10 business days. Without admitting or denying the allegations of the complaint, GunnAllen, Nummi, Sanders and Saunders consented to the described sanctions and to the entry of findings that the firm, acting through Nummi, failed to establish and maintain a supervisory system, and failed to establish, maintain and enforce written supervisory procedures reasonably designed to provide a system of supervision for registered representatives with disciplinary histories of repeated customer complaints, disciplinary actions and/or arbitrations. The findings stated that the firm, acting through Nummi, failed to establish and maintain a supervisory system; failed to establish, maintain and enforce written supervisory procedures reasonably designed to prevent and detect unauthorized trading; failed to enforce the firm's written procedures relating to telecommunications; and permitted a registered representative to solicit an individual by telephone after the individual had requested to be placed on the firm's "do not call" list. The findings also stated that the firm, acting through Saunders, permitted an individual whose registration was CE Inactive to effect customer securities transactions. The findings also included that the firm, acting through Saunders, failed to report, and failed to report timely, customer-related reportable matters as NASD Rule 3070 requires, and failed to timely update Uniform Applications for Securities Industry Registration or Transfer (Forms U4) or Uniform Termination Notices for Securities Industry Registration (Forms U5) with respect to customer complaints or arbitrations against registered representatives. NASD found that Sanders failed to reasonably supervise registered representatives in a branch office of the firm to prevent and detect unauthorized trading.

Nummi's suspension in any principal capacity is in effect from March 19, 2007, through May 17, 2007. Sanders' suspension in any principal capacity was in effect from April 2, 2007, through April 16, 2007. Saunders' suspension in any principal capacity is in effect from April 2, 2007, through May 31, 2007. (NASD Case #E072004006101)

Newwest Securities Corporation (CRD #46464, Las Vegas, Nevada), Sergey Rumyantsev (CRD #4009791, Registered Principal, Las Vegas, Nevada) and Antony Michel Santos (CRD #3239243, Registered Principal, Las Vegas, Nevada) submitted an Offer of Settlement in which the firm was censured and fined \$100,000, of which \$100,000 was joint and several with Santos and \$75,000 was joint and several with Rumyantsev, and required to hire an independent consultant to review the firm's policies, controls, systems, procedures and training relating to the firm's ability to comply with the Bank Secrecy Act, NASD Rule 3011 and other anti-money laundering (AML) statutes and regulations, and all rules and regulations related to its participation in private offerings. The firm was also ordered not to participate in any private offering for 30 days following the effective settlement date, and not to accept or hold customer securities until it certifies to NASD that it has adopted and implemented recommendations the consultant made in the initial written report. Rumyantsev and Santos were each censured, suspended from association with any NASD member in all principal capacities for three months and required to complete 16 hours of AML training each year for a two-year period, 16 hours within six months after the settlement's effective date. Without admitting or denying the allegations, the firm, Rumyantsev and Santos consented to the described sanctions and to the entry of findings that the firm, acting through Rumyantsev and Santos, failed to adequately implement and enforce AML procedures, and the firm failed to adequately perform due diligence, file Suspicious Activity Reports (SARs) or cease trading in multiple accounts a public customer of the firm owned and controlled.

The findings stated that the respondents were aware, or should reasonably have been aware, of "red flags" that should have triggered the firm's AML obligations. The findings also stated that the firm, acting through Santos, participated in private placement distributions of securities for which the memoranda represented

that the offerings were on a best efforts “part or none” basis, and failed to properly escrow purchasers’ funds in a segregated account until the minimum contingency had been satisfied. The findings also stated that the firm caused the release of funds before satisfaction of the contingency to sell the minimum amount of securities through *bona fide* transactions to non-affiliated investors, thereby rendering their presentations in the memoranda false and misleading. NASD found that the firm, acting through Santos, failed to timely report written customer complaints to NASD, and failed to timely report the existence of conditions that required disclosure within 10 business days after the firm knew, or should have known, of the existence of the conditions. NASD also found that Santos failed to ensure that the firm establish and maintain an effective supervisory system, including adequate written procedures, reasonably designed to achieve compliance with federal securities laws, regulations and NASD rules relating to contingency offerings and reporting requirements.

Santos’ suspension in any principal capacity is in effect from April 16, 2007, through July 15, 2007. Rumyantsev’s suspension in any principal capacity will be in effect from July 17, 2007, through October 16, 2007. (NASD Case #E0220040112-01)

Firms Fined

American Enterprise Investment Services, Inc. (CRD #26506, Minneapolis, Minnesota) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$30,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it began conducting non-purpose stock borrowing, and the amounts associated with the borrowing were inappropriately included as debits in the firm’s reserve formula calculations. The findings stated that the firm’s error resulted in deficiencies in its Special Reserve Bank Account for the Exclusive Benefit of Customers. (NASD Case #20050014557-02)

Banc of America Securities LLC (CRD #26091, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$56,500 and required to revise its written supervisory procedures and supervisory enforcement

with respect to registration, Securities and Exchange Act (SEC) Rule 11Ac1-6, short sales, bid test, and books and records. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to accept or decline transactions in eligible securities in the Automated Confirmation Transaction System (ACT) within 20 minutes after execution. The findings stated that the firm failed, within 90 seconds after execution, to transmit last sale reports of transactions in NASDAQ National Market (NNM), NASDAQ SmallCap (SC) securities and OTC equity securities through ACT. The findings also stated that the firm failed to enforce its written supervisory procedures for trade reporting and failed to designate last sale reports of transactions in OTC equity securities executed outside normal market hours as “.T” through ACT. The findings also included that the firm transmitted reports that contained inaccurate, incomplete or improperly formatted data to the Order Audit Trail System (OATS), effected short sales in certain securities for the firm’s proprietary account and failed to make/annotate an affirmative determination that the firm could borrow the securities or otherwise provide for delivery of the securities by settlement date. NASD found that the firm executed short sale orders and failed to properly mark the order tickets as short for those orders, and failed to provide written notification disclosing to its customers its correct capacity in the transaction, that transactions were executed at an average price and that the firm was a market maker. NASD also found that the firm failed to report the correct symbol indicating whether transactions were a buy, sell, sell short, sell short exempt or cross for transactions in eligible securities to ACT. In addition, NASD determined 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 registration, SEC Rule 11Ac1-6, short sales, bid test, and books and records. (NASD Case #20050000639-01)

BNY Convergen Execution Solutions LLC (CRD #35693, New York, New York) 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. The findings stated that the firm reported Route or

Combined Order/Route Reports to OATS that the OATS system was unable to link to the related order routed to the NASDAQ Exchange due to inaccurate, incomplete or improperly formatted data. **(NASD Case #20050002074-01)**

BTIG, LLC (CRD #122225, San Francisco, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it accepted and executed unsolicited customer orders to purchase and sell options, and failed to timely submit an application for NASD approval of this material change in business. The findings stated that the firm's written supervisory procedures were not reasonably designed to achieve compliance with rules applicable to its options business. **(NASD Case #20060039749-01)**

C.E. Unterberg, Towbin, LLC (CRD #24790, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$19,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it incorrectly reported riskless principal transactions in NNM securities to the NASDAQ Market Center (NMC), incorrectly designated the capacity of the transactions as principal and incorrectly reported the price of riskless principal transactions in NNM securities to the NMC. The findings stated that the firm failed to report the correct symbol indicating whether transactions were a buy, sell, sell short, sell short exempt or cross for transactions in eligible securities to the NMC, and incorrectly reported a last sale report of a stock transfer from its proprietary desk to its market making desk to the NMC. The findings also stated that the firm incorrectly reported riskless principal transactions in last sale reports of transactions in OTC equity and OTC Bulletin Board (OTCBB) securities through the NMC. The findings also included that the firm, when it acted as principal for its own account, failed to provide written notification disclosing to its customers that it was a market maker in each security and that transactions were executed at an average price. NASD found that the firm failed to show the correct entry time and the terms and conditions on brokerage order memoranda. **(NASD Case #20050003967-01)**

Corby Capital Markets, Inc. (CRD #7165, Boston, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$11,000 and required to revise its written supervisory procedures with respect to MSRB Rule G-14. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report information about transactions effected in municipal securities to the Real-time Transaction Reporting System (RTRS) within 15 minutes of trade time in the manner prescribed by MSRB Rule G-14 RTRS procedures and the RTRS Users Manual. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with MSRB Rule G-14. **(NASD Case #20050021861-01)**

Deutsche Bank Securities, Inc. (CRD #2525, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$45,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it accepted customer short sale orders from single and multiple accounts and, for each order, failed to make/annotate an affirmative determination that the firm would receive delivery of the security on the customer's behalf, or that the firm could borrow the security on the customer's behalf for delivery by settlement date. The findings stated that the firm failed to report customer transactions in municipal securities to the MSRB within 15 minutes of the execution time. The findings also stated that the firm failed to enforce its written supervisory procedures, which specified that the designated supervisor was responsible for reviewing daily all exceptions generated for instances in which the Securities Lending Department did not have a corresponding locate or the number of shares exceeded the locate. **(NASD Case #20041000088-01)**

Essex Financial Services, Inc. (CRD #127549, Essex, Connecticut) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$25,000 and required to review its procedures regarding the preservation of electronic mail communications for compliance with federal securities laws, regulations and NASD rules. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to maintain and

preserve all of its electronic communications as SEC Rule 17a-4 requires. (NASD Case #2006003916101)

Fifth Third Securities, Inc. (CRD #628, Cincinnati, Ohio) 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 executed customer transactions in municipal securities that were not reported to the MSRB within 15 minutes of the execution time. Some transactions were reported with incorrect execution times and others were reported to the MSRB in error. The findings stated that the firm failed to timely amend Forms U4 to disclose customer complaints and failed to timely file Forms G-36 Official Statement (OS) with the MSRB. (NASD Case #E8A2005007701)

Geneos Wealth Management, Inc. (CRD #120894, Denver, Colorado) submitted an Offer of Settlement in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it permitted a statutorily disqualified person to function as an associated person. NASD found that the firm failed to obtain fingerprints from that individual and submit them for identification and processing as SEC Rule 17f-2 required and failed to discover that the individual had previously been convicted of a felony. The findings stated that the firm permitted a statutorily disqualified individual to function as an associated person of the firm in contravention of NASD By-laws. (NASD Case #2005000863703)

Hampton Securities (USA), Inc. (CRD #46816, Toronto, Ontario, Canada) 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 accepted 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. (NASD Case #20050012335-01)

KBC Financial Products USA, Inc. (CRD #46709, 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 to the NMC the correct symbol indicating whether transactions were a buy, sell, sell short, sell short exempt or cross for transactions in reportable securities. The findings stated that the firm failed to report to the NMC the correct symbol indicating whether the firm executed transactions in reportable securities in a principal or agency capacity, and failed to report the correct execution time to the NMC in a last sale report of a transaction in a designated security. The findings also stated that the firm failed to submit to the NMC, for the offsetting, "riskless" portion of "riskless" principal transactions in designated securities, either a clearing-only report with a capacity indicator of "riskless principal" or a non-tape, non-clearing report with a capacity indicator of "riskless principal." (NASD Case #20060058662-01)

Knight Equity Markets, L.P. (CRD #38599, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$45,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report to the NMC, on behalf of broker-dealers with which it had Qualified Service Representative (QSR) agreements, short sale transactions in eligible securities with a short sale modifier. The findings stated that the firm transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data, and failed to provide written notification disclosing to its customers that a transaction was executed at an average price. The findings also stated that the firm failed to report to the Trade Reporting Facility the correct symbol indicating whether transactions were a buy, sell or cross in last sale reports of transactions in designated securities, and incorrectly designated the capacity of the transactions as "agent." The findings also included that the firm failed to submit to the OTC Reporting Facility, for the offsetting, "riskless" portion of some "riskless" principal transactions in designated securities, either a clearing-only report with a capacity indicator of "riskless principal," or a non-tape, non-clearing report with a capacity indicator of "riskless principal." (NASD Case #20050013746-01)

Knight Equity Markets, L.P. (CRD #38599, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$125,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report Reportable Order Events (ROEs) to OATS. The findings stated that the firm submitted reports with respect to equity securities traded on the NASDAQ Stock Market to OATS that were not in the NASD-prescribed electronic form and were repairable. The findings stated that the OATS system rejected the subject 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 any of the reports. The findings also stated 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 inaccurate information as to the canceled shared data for an order type/size category and inaccurate information as to the amount of executed shares for another order type/size category. The findings also included that the firm failed to provide NASD with accurate and complete information regarding the enforcement of its supervisory system and written procedures in connection with supervisory reviews in response to an NASD request. **(NASD Case #20050006052-01)**

Maxim Group LLC (CRD #120708, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$17,000 and required to revise its written supervisory procedures regarding NASD Rule 6440, SEC Rules 605 and 606, riskless principal trading, crossing of orders, “regular and rigorous” review, three quote rule, reporting of riskless principal trades, ensuring trades reported on the firm’s behalf were accurately reported, affirmative determination, correctly marking and reporting trades as long, short or short exempt, prohibitions on executing non-exempt short sales on a down tick, trading or quotation activity during trading halts, locking and/or crossing quotations, ensuring OATS data is consistent with NMC and/or TRACS, reporting the correct Routed Order ID, Chinese Walls, and books and records.

Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it transmitted reports to OATS that contained inaccurate Routed Order IDs, and incorrectly submitted an Order Route Report to OATS when it

should have submitted a New Order Report. The findings stated that the firm failed to provide written notification disclosing to its customers its correct capacity in transactions and inaccurately provided written notification disclosing to its customers that transactions were executed at an average price. The findings also stated that the firm failed to establish, maintain and/or enforce adequate written supervisory procedures regarding NASD Rule 6440, SEC Rules 605 and 606, riskless principal trading, crossing of orders, “regular and rigorous” review, three quote rule, reporting of riskless principal trades, ensuring trades reported on the firm’s behalf were accurately reported, affirmative determination, correctly marking and reporting trades as long, short or short exempt, prohibitions on executing non-exempt short sales on a down tick, trading or quotation activity during trading halts, locking and/or crossing quotations, ensuring OATS data is consistent with NMC and/or TRACS, reporting the correct Routed Order ID, Chinese Walls, and books and records. **(NASD Case #20050013055-01)**

Maxim Group LLC (CRD #120708, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$18,500 and required to revise its written supervisory procedures regarding qualification of personnel, limit order display, limit order protection, “regular and rigorous” review, three quote rule, riskless principal transaction reporting, trade reporting, accepting or declining trades in a timely manner, reporting the correct indicator for sales transactions, tick test and submission of OATS data. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to show customer positions as long or short on brokerage order memoranda and brokerage order memoranda for listed securities. The findings stated that the firm executed short sale transactions and failed to report them to the NMC with a short sale modifier, and failed to provide its customers with written notification of its correct capacity in transactions. The findings also stated that the firm made a report available on the covered orders in national market system securities that it received for execution from any person that incorrectly disclosed the “Market Center Executed Shares” and the “Executed Away Shares,” and could not demonstrate if the orders were covered or not covered. The findings also included that the firm failed to show the correct entry time and the terms and conditions on brokerage order memoranda.

NASD found that the firm failed to establish, maintain and/or enforce adequate written supervisory procedures regarding qualification of personnel, limit order display, limit order protection, "regular and rigorous" review, three quote rule, riskless principal transaction reporting, trade reporting, accepting or declining trades in a timely manner, reporting the correct indicator for sales transactions, tick test and submission of OATS data. (NASD Case #20042000246-01)

OptionsXpress, Inc. (CRD #103849, Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to timely report ROEs to OATS. The findings stated that the firm submitted to OATS New Order Reports and related subsequent reports where the timestamp for the related subsequent report occurred prior to the receipt of the order, and as a result, the OATS system was unable to create an accurate, time-sequenced record from the receipt of the order through its resolution. (NASD Case #20050005755-01)

Pacific Crest Securities, Inc. (CRD #6619, Portland, Oregon) 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 failed to correctly report the price to ACT (nka NMC) in last sale reports of transactions in NNM securities. The findings stated that the firm incorrectly reported to ACT transactions as riskless principal that the firm executed in a principal capacity, and failed to report a last sale report of a transaction in an OTCBB equity security. The findings also stated that the firm failed to report to ACT the correct symbol indicating whether the transaction was a buy, sell or cross in last sale reports of transactions in NNM securities, and reported cancellation reports of transactions in NNM securities it was not required to report. The findings also included that the firm failed, within 90 seconds of the decision to cancel the trade, to report cancellation reports of NNM securities to ACT. NASD found that the firm failed to report to ACT the correct symbol indicating whether the firm executed transactions in a principal, riskless principal or agency capacity, and incorrectly reported to ACT transactions as riskless principal that the firm executed in a principal

capacity. NASD also found that the firm transmitted reports to OATS that contained inaccurate "Capacity" and/or "Reporting Exception" data. (NASD Case #20050003053-01)

Sterne, Agee & Leach, Inc. (CRD #791, Birmingham, Alabama) 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, within 90 seconds after execution, to transmit to the OTC Reporting Facility last sale reports of transactions in OTC equity securities and failed to designate some of the reports as late. The findings stated that the firm incorrectly designated last sale reports of transactions in OTC equity securities executed during normal market hours as ".T" to the OTC Reporting Facility. (NASD Case #20050026995-01)

Stern Brothers & Co. (CRD #16325, St. Louis, Missouri) 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 submitted Form G-36 Official Statement (OS) and Advanced Refunding Document (ARD) filings later than one business day after receipt of the final official statement from the issuer, and some forms included an incorrect date of sale. The findings stated that the firm failed to file a Form G-36 (ARD) for an offering. The findings also stated that the firm reported Trade Reporting and Compliance Engine (TRACE)-eligible transactions that were not reported within the required 15 minutes of execution, and some reports were inaccurate. The findings also included that the firm failed to report one TRACE-eligible transaction. (NASD Case #20060039825-01)

Stifel, Nicolaus & Company, Incorporated (CRD #793, St. Louis, Missouri) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it acted as an underwriter in primary offerings of municipal securities and failed to file G-36 forms with the MSRB in a timely manner. The findings stated that the firm failed to establish and maintain a supervisory

system reasonably designed to achieve compliance with MSRB Rule G-36 filing requirements. **(NASD Case #20060039884-01)**

TD Ameritrade, Inc. (CRD #7870, Bellevue, Nebraska) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$32,500 and required to revise its written supervisory procedures concerning TRACE and OATS reporting, marking of order tickets and affirmative determinations. 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 to TRACE within 45 minutes of the execution time. The findings stated that the firm transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data. The findings also 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, trade and OATS reporting, marking of order tickets and affirmative determinations reporting. **(NASD Case #20050001490-01)**

Triad Advisors, Inc. (CRD #25803, Norcross, Georgia) 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 corporate bond trades within the time period NASD Rule 6230 prescribes. The findings also stated that the firm failed to establish and maintain a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with NASD Rule 6230. **(NASD Case #2006003971501)**

UBS Securities, LLC (CRD #7654, Stamford, Connecticut) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$27,500 and required to revise its written supervisory procedures concerning SEC Rules 605, 606, and maintenance and retention of books and records. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to adjust open orders. The findings stated that the firm transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data. 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 in each security. The findings also included 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 Rules 605, 606, and maintenance and retention of books and records. **(NASD Case #20050002993-01)**

Vandham Securities Corp. (CRD #26258, Woodcliff Lake, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$30,000 and required to revise its written supervisory procedures concerning disclosure of order routing information, riskless principal trade reporting, trade reporting of sales transactions, soft dollar accounts and trading, and books and records requirements. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to correctly report riskless principal transactions in last sale reports of transactions in eligible securities through the NMC, and failed to report the correct symbol indicating whether the firm executed transactions in eligible securities in a principal or agency capacity.

The findings stated that the firm failed to correctly report transactions on principal transactions in eligible securities to the NMC as media reported, and failed to report the correct symbol indicating whether it executed transactions in OTCBB and OTC equity securities in a principal or agency capacity to the NMC. The findings also stated that the firm failed to provide written notification disclosing the markup or markdown to its customers, and failed to provide written notification disclosing its correct capacity in a transaction to a customer. The findings also included that the firm reported one transaction through the NMC with the incorrect modifier, failed to report the cancellation of one transaction in eligible securities and failed to report the correct short sale indicator in transactions in eligible securities. NASD found that the firm failed to submit execution reports to OATS and transmitted reports to OATS that contained inaccurate, incomplete and improperly formatted data. NASD also found that the firm failed to provide written notification disclosing to its customers that transactions were executed at an average price; when it acted as principal for its own

account, the firm failed to disclose the correct reported trade price; and failed to make a report on its routing of non-directed orders in covered securities publicly available for a period of time. In addition, NASD determined that the firm failed to show the correct order receipt time, correct execution time, correct execution price, the terms and conditions on brokerage order memoranda, and failed to preserve for a period of not less than three years, the first two in an accessible place, brokerage order memoranda. Moreover, NASD 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 disclosure of order routing information, riskless principal trade reporting, trade reporting of sales transactions, soft dollar accounts and trading, and books and records requirements. **(NASD Case #20042000169-01)**

Wedbush Morgan Securities Inc. (CRD #877, Los Angeles, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$18,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to timely file Forms U5. The findings stated that the firm's supervisory procedures regarding the timely filing of Forms U5 were not enforced. **(NASD Case #E0220050169-01)**

W.R. Hambrecht + Co., LLC (CRD #45040, San Francisco, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$127,239, which includes disgorgement of \$77,239. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it underwrote an offering of common stock on a firm commitment basis and in an effort to meet a perceived regulatory minimum deal size, it submitted a bid to purchase 200,000 shares that had not been bid for in the auction without identifying itself as the bidder. The findings stated that the firm allocated shares for which it did not have orders to its market-making account and sold the shares the next day in the after-market at prevailing prices, thereby receiving \$77,239 in profits. The findings also stated that the preliminary prospectus did not disclose that the firm would or could submit a bid that indicated its intent to purchase shares in the auction, and the final prospectus did not disclose that the firm had sold the shares at prevailing market prices

and realized a profit on the transactions. NASD found that the firm engaged in conduct inconsistent with just and equitable principles of trade by submitting a bid in the live-auction and purchasing shares offered in the auction in a proprietary capacity without disclosure. Further, NASD found that the profit realized on the proprietary transactions constituted underwriting compensation that the firm failed to disclose. **(NASD Case #E0120050083-02)**

Individuals Barred or Suspended

Alan Nicholas Basile (CRD #1179455, Registered Representative, Greenville, North Carolina) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Basile reassociates with any NASD member following the suspension or before his firm requests relief from any statutory disqualification. Without admitting or denying the findings, Basile consented to the described sanctions and to the entry of findings that, while employed at a bank affiliated with his member firm and in connection with a mortgage application, he falsified a copy of a public customer's canceled check by changing the date and number on the check to make it appear that it was the missing check needed to prove that the customer had been making regular payments on an existing credit account, and submitted it and other check copies to the retail credit sales department in order to process the loan application.

The suspension in any capacity is in effect from April 16, 2007, through October 15, 2007. **(NASD Case #2006006249601)**

Mark William Bender (CRD #1364977, Registered Principal, Webster, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the findings, Bender consented to the described sanctions and to the entry of findings that he received \$1,000 from a public customer as a reward for the gains the customer realized in his brokerage account in violation of NASD Rule 2330(f), which prohibits registered representatives from sharing directly or indirectly in the profits in any customer account.

The suspension in any capacity was in effect from April 2, 2007, through April 16, 2007. (NASD Case #2006005613701)

David Melville Berkowitz (CRD #19495, Registered Principal, Laredo, Texas) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Berkowitz consented to the described sanction and to the entry of findings that he failed to completely respond to NASD requests for documents and information. (NASD Case #20060057634-01)

Howard Scott Bernstein (CRD #1636604, Registered Representative, Coral Springs, Florida) submitted a Letter of Acceptance, Waiver and Consent in which he was suspended from association with any NASD member in any capacity for 120 days. Without admitting or denying the findings, Bernstein consented to the described sanction and to the entry of findings that he participated in private securities transactions without providing prior written notice to, and obtaining approval from, his member firm.

The suspension in any capacity is in effect from April 2, 2007, through July 30, 2007. (NASD Case #E072004077401)

Joe Desoto (CRD #2879888, Associated Person, Kissimmee, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Desoto willfully failed to disclose material facts on his Form U4 and failed to respond to NASD requests for information. (NASD Case #2006004240501)

Charles Collingwood Fawcett IV (CRD #1576169, Registered Representative, Venetia, Pennsylvania) 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 Fawcett failed to provide information and on-the-record testimony that NASD requested.

This decision has been appealed to the SEC, and the sanction is in effect pending consideration of the appeal. (NASD Case #C9A20040024)

Mark Steven Fineberg (CRD #1344873, Registered Representative, Newtown Square, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Fineberg reassociates with any NASD member following the suspension, or before his firm requests relief from any statutory disqualification. Without admitting or denying the findings, Fineberg consented to the described sanctions and to the entry of findings that he engaged in the sale of annuity contracts on an insurance company's behalf and failed to provide prompt written notice to his member firm.

The suspension in any capacity is in effect from April 16, 2007, through July 15, 2007. (NASD Case #2006006568801).

Newton Eduardo Gomez (CRD #4443260, Registered Representative, Fort Lee, 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 nine months. The fine must be paid before Gomez reassociates with any NASD member following the suspension, or before his firm requests relief from any statutory disqualification. Without admitting or denying the findings, Gomez consented to the described sanctions and to the entry of findings that as a representative of a bank affiliated with his member firm, he provided false information to a mortgage company in that he substantially overstated the amount of funds a bank customer had in his checking account and misrepresented the date on which the account was opened. The findings stated that Gomez submitted the falsified document to the mortgage company for processing.

The suspension in any capacity is in effect from April 2, 2007, through January 1, 2008. (NASD Case #2006006511501)

Jordan John Hanson (CRD #4006058, Registered Representative, Appleton, Wisconsin) 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 one year. The fine must be paid before Hanson reassociates with any NASD member following the suspension, or before his firm requests relief from any statutory disqualification.

Without admitting or denying the findings, Hanson consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on his Form U4.

The suspension in any capacity is in effect from April 2, 2007, through April 1, 2008. **(NASD Case #2006005382101)**

Cheryl Rose Hayes (CRD #4361800, Registered Representative, Lewisburg, West Virginia) submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Hayes reassociates with any NASD member following the suspension, or before her firm requests relief from any statutory disqualification. Without admitting or denying the findings, Hayes consented to the described sanctions and to the entry of findings that she received a check from a public customer for investment purposes, created a fictitious account statement purporting to show that she had opened an account for the customer, and had invested the funds. The findings stated that Hayes faxed the fictitious statement to an official at her member firm who, not knowing it was false, provided the statement to the customer.

The suspension in any capacity is in effect from April 16, 2007, through October 15, 2007. **(NASD Case #2006007447701)**

Karen Jean Hill (CRD #1018669, Registered Representative, Saginaw, Michigan) was suspended from association with any NASD member in any capacity for six months. Hearing Panel costs must be paid if Hill seeks to return to the securities industry. The sanction was based on findings that Hill created false documents and submitted them to her member firm by having public customers sign blank switch forms that she completed with the correct surrender charges and submitting them to her firm as if the customers had executed the completed switch forms.

The suspension in any capacity is in effect from March 19, 2007, through September 18, 2007. **(NASD Case #C8A20050060)**

Ronald Hilyer Jr. (CRD #4817856, Registered Representative, Okeechobee, 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, Hilyer consented to the described sanction and to the entry of findings that he caused the purchase and sale of a securities position to be executed in a public customer's account without the customer's prior authorization or consent, and without having discretionary power over the account. The findings stated that Hilyer failed to respond to NASD requests for information. **(NASD Case #2006004727801)**

Brian Stuart Hirsch (CRD #4770599, Registered Representative, Miami Beach, Florida) 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 18 months, and ordered to requalify by exam as a general securities representative (Series 7) within 90 days of becoming reassociated with any NASD member in any capacity. If Hirsch fails to requalify within 90 days, he will be automatically suspended from association with any NASD member in any capacity until he requalifies. The fine must be paid before Hirsch reassociates with any NASD member following the suspension, or before his firm requests relief from any statutory disqualification. Without admitting or denying the findings, Hirsch consented to the described sanctions and to the entry of findings that at the request of institutional public customers, he provided them with letters that contained false and misleading representations to the effect that each of the institutions maintained the required collateral to issue credit facilities in the amount of \$130 million. The findings stated that Hirsch failed to verify deposit of funds prior to sending the letters, knowing that the institutions planned to use the letters to secure funds for investment in venture capital projects. The findings also stated that Hirsch knew that the institutions had no funds or securities in their accounts at his member firm. The findings also included that Hirsch neglected to obtain prior approval of the correspondence from a principal at his firm when he knew, or should have known, that prior approval of outgoing correspondence was required pursuant to firm procedures.

The suspension in any capacity is in effect from April 16, 2007, through October 15, 2008. (NASD Case #2005002601001)

Gary Evert Hirth (CRD #2830464, 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, Hirth consented to the described sanction and to the entry of findings that he willfully failed to disclose material information on his Form U4. The findings stated that Hirth functioned as a member firm's associated person and engaged in a securities business even though he was statutorily disqualified. The findings also stated that Hirth failed to respond to an NASD request for information and documents. (NASD Case #2006005683701)

Kenneth T. Jones (CRD #4938185, Associated Person, Riverdale, Illinois) was barred from association with any NASD member in any capacity. The sanction was based on findings that Jones failed to respond to NASD requests for information. The findings stated that Jones failed to disclose material information on his Form U4. (NASD Case #2005001362601)

John David Kaweske (CRD #2309807, Registered Principal, Miami, Florida) was fined \$140,000 and barred from association with any NASD member in any capacity. The NAC imposed the sanctions following appeal of an OHO decision. The sanctions were based on findings that Kaweske failed to promptly return investor funds after an offering closed without meeting its sales contingency, and failed to establish an escrow account for the contingency offering. The findings stated that Kaweske made fraudulent misrepresentations in connection with the purchase and sale of preferred stock. The findings also stated that Kaweske willfully failed to disclose material information on his Form U4. (NASD Case #C0720040042)

Jason Michael Korn (CRD #3105666, Registered Representative, Gainesville, Virginia) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Korn consented to the described sanction and to the entry of findings that he forged public customers' signatures on insurance applications and related

documents. The findings stated that Korn made unauthorized purchases of mutual funds in customer accounts. (NASD Case #2006004295201)

John Christian Krudop (CRD #2376067, Registered Representative, Ballwin, Missouri) 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 six weeks. Without admitting or denying the findings, Krudop consented to the described sanctions and to the entry of findings that he placed large on-open orders through the NASDAQ Opening Cross through SuperMontage to create a buy or sell imbalance that would exert pressure on the security's share price, then he placed transactions through an Electronic Communications Network (ECN) on the opposite side of the imbalance he had created to obtain an advantageous price that would not have been available but for his entry of a large on-open order. The findings also stated that upon receiving execution of his order(s), Krudop would cancel the subject orders prior to the time after which such orders could not be canceled.

The suspension in any capacity was in effect from April 2, 2007, through May 11, 2007. (NASD Case #20050034677-01)

Timothy John Lane (CRD #2215044, Registered Representative, Eugene, Oregon) was barred from association with any NASD member in any capacity. The sanction was based on findings that Lane borrowed \$5,000 from a public customer in contravention of his member firm's written procedures that prohibit employees from borrowing or otherwise obtaining any customer funds for personal use or investment. The findings stated that Lane failed to respond to NASD requests for information. (NASD Case #20050019203-01)

Randall Kevin Lenz (CRD #3145974, Registered Representative, Mattawan, Michigan) submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. The fine must be paid before Lenz reassociates with any NASD member following the suspension, or before his firm requests relief from any statutory disqualification. Without admitting or denying the allegations, Lenz consented to the described sanctions and to the entry of findings

that he borrowed \$3,500 from a public customer in contravention of his member firm's written procedures that prohibit borrowing money or securities from a customer.

The suspension in any capacity was in effect from April 16, 2007, through April 27, 2007. **(NASD Case #2005003138001)**

Charlie Harn Littlejohn Jr. (CRD #1210719, Registered Representative, Dunedin, Florida) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 business days. The fine must be paid before Littlejohn reassociates with any NASD member following the suspension, or before his firm requests relief from any statutory disqualification. Without admitting or denying the findings, Littlejohn consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on his Form U4.

The suspension in any capacity is in effect from April 16, 2007, through May 25, 2007. **(NASD Case #2006006008801)**

Vikram S. Manhas (CRD #2518451, Registered Representative, New York, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Manhas had a public customer unknowingly sign documents to open a securities account at another broker-dealer, transferred \$240,000 from the customer's old account to the new account and submitted false documents to the new broker-dealer to transfer the customer's assets to Manhas' personal account. The findings stated that Manhas sold the assets and withdrew the proceeds from his account, thereby converting the customer's funds to his own use and benefit. The findings also stated that Manhas submitted falsified documents to a member firm in furtherance of his scheme to convert the customer's assets. The findings also included that Manhas failed to respond to NASD requests for information and failed to appear for an NASD on-the-record interview. **(NASD Case #20050027081-01)**

James W. McCann (CRD #4670752, Registered Representative, Sioux Falls, South Dakota) 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, McCann consented to the described sanction and to the entry of findings that he engaged in outside business activities and failed to notify his member firm, in writing, of the activity and that he would be compensated for his services. The findings also stated that McCann failed to respond to an NASD request to appear for an on-the-record interview. **(NASD Case #20060045919-01)**

Brian Thomas McGrail (CRD #1945132, Registered Representative, Louisville, Kentucky) submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. The fine must be paid before McGrail reassociates with any NASD member following the suspension, or before his firm requests relief from any statutory disqualification. Without admitting or denying the allegations, McGrail consented to the described sanctions and to the entry of findings that he failed to timely amend his Form U4 to disclose material information.

The suspension in any capacity is in effect from March 19, 2007, through May 17, 2007. **(NASD Case #2005003634401)**

Ralph Merhi (CRD #3094962, Registered Principal, Boca Raton, Florida) was barred from association with any NASD member in any capacity and ordered to pay \$28,454, plus interest, in restitution. The NAC imposed the sanctions following an appeal of an OHO decision. The sanctions were based on findings that Merhi traded excessively in a public customer's account and exercised discretion in the account without the customer's written authority, and without his member firm's approval of the account as discretionary. **(NASD Case #E072004044201)**

Stephen Paul Miller (CRD #2007485, Registered Principal, Rockland, Maine) 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, Miller consented to the described sanction and to the entry of findings that he effected an unauthorized mutual fund transaction by forging a public customer's signature on a new account application, a mutual fund disclosure and authorization form, an Individual Retirement Account (IRA) application, and a request for transfer of assets. **(NASD Case #2006006197301)**

Penny Dorton Montalvo (CRD #2996228, Registered Representative, Winter Springs, Florida) submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Montalvo consented to the described sanction and the entry of findings that she made improper use of public customers' funds in that she notarized what was purported to be the customers' signatures on a Letter of Authorization (LOA) requesting a \$1,000 wire transfer from the customers' account to a bank account in the name of Montalvo's family member, without the customers' authorization. The findings stated that Montalvo failed to appear for an NASD on-the-record interview. (NASD Case #2006004558801)

Kelly Irene O'Brien (CRD #2901568, Registered Representative, Ardmore, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the findings, O'Brien consented to the described sanction and to the entry of findings that she submitted expense reports to her member firm in which she had forged her supervisor's name. (NASD Case #2006007054301)

Klaus Alois Robert Offenbacher (CRD #1280108, Registered Principal, Itasca, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$25,000 and suspended from association with any NASD member in any capacity for 90 days with credit to be given for a 60-day suspension without pay his member firm imposed. Without admitting or denying the findings, Offenbacher consented to the described sanctions and to the entry of findings that he knowingly and intentionally, artificially increased the market price of a stock in an attempt to comply with the provisions of SEC Rule 10b-18 and still execute a cross transaction between the issuer and the seller at the negotiated price.

The suspension in any capacity is in effect from April 16, 2007, through May 15, 2007. (NASD Case #20060063414-01)

Dallas Wilbur Oudekirk (CRD #2612882, Registered Representative, Rochester, Minnesota) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Oudekirk reassociates

with any NASD member following the suspension, or before his firm requests relief from any statutory disqualification. Without admitting or denying the findings, Oudekirk consented to the described sanctions and to the entry of findings that he failed to timely respond to NASD requests for information.

The suspension in any capacity is in effect from April 16, 2007, through July 15, 2007. (NASD Case #20060060671-01)

Phillip Raymond Pereira Jr. (CRD #3040998, Registered Principal, Cheshire, Connecticut) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Pereira reassociates with any NASD member following the suspension, or before his firm requests relief from any statutory disqualification. Without admitting or denying the findings, Pereira consented to the described sanctions and to the entry of findings that in connection with a funds transfer a public customer authorized, he signed the public customer's name on a rollover request form without the customer's knowledge or authorization.

The suspension in any capacity is in effect from April 16, 2007, through July 15, 2007. (NASD Case #2006006759301)

Jimmy Poma (CRD #5088147, Registered Representative, Passaic, 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, Poma consented to the described sanction and to the entry of findings that he improperly waived overdraft bank fees on his personal checking account at his member firm's affiliate bank. The findings stated that Poma had not been authorized and/or was otherwise not entitled to those waivers. (NASD Case #2006006767601)

Jeremy D. Price (CRD #4735115, Registered Representative, Gulf Breeze, Alabama) 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, Price consented to the described sanction and to the entry of findings that he fraudulently negotiated blank

bank checks and converted \$290 from the bank for his own use and benefit without the bank's knowledge or consent. (NASD Case #2006005938101)

William Frederick Ross (CRD #1459870, Registered Principal, Spokane, Washington) submitted an Offer of Settlement in which he was fined \$50,000, suspended from association with any NASD member in a principal capacity for one year and required to complete 25 hours of AML continuing education within 12 months of becoming associated with any NASD member firm. Without admitting or denying the allegations, Ross consented to the described sanctions and to the entry of findings that he failed to establish, maintain and enforce written procedures reasonably designed to supervise his member firm's wholesale trading and market making business and its registered representatives' actions. The findings stated that Ross failed to establish and maintain an adequate supervisory system reasonably designed to achieve compliance with federal securities laws, regulations and NASD rules to adequately supervise the trading and market making activity the firm conducted. The findings also stated that Ross failed to adequately review a representative's trading activities and ignored or failed to identify red flags associated with the representative's manipulative trading. The findings also included that Ross failed to provide adequate AML training for appropriate personnel and failed to provide for independent testing for AML compliance by member personnel or a qualified outside party. NASD found that because Ross failed to monitor and analyze manipulative trading, he did not further investigate suspicious activity to determine if he should file an SAR to report suspicious transactions.

The suspension in a principal capacity is in effect from April 16, 2007, through April 15, 2008. (NASD Case #2005000094001)

Rooney Arun Sahai (CRD #1551326, Registered Representative, Ridgewood, New Jersey) was fined \$5,000 and suspended from association with any NASD member in any capacity for two years. The SEC sustained, in part, sanctions the NAC imposed following the appeal of an OHO decision. The sanctions were based on findings that Sahai failed to respond, fully and timely, to NASD requests for information and documents. The findings also stated that Sahai purchased a variable annuity on a public customer's behalf without the customer's prior knowledge, authorization or consent.

The suspension in any capacity is in effect from January 5, 2007, through January 4, 2009. (NASD Case #C9B20020032)

James Manner Schrack II (CRD #1220751, Registered Principal, Mansfield, Ohio) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Schrack consented to the described sanction and to the entry of findings that he misappropriated \$280,000 that belonged to mutual fund shareholders. The findings also stated that Schrack failed to respond to NASD requests for information and failed to appear for an NASD on-the-record interview. (NASD Case #2006004517101)

Kenneth Christopher Shelley (CRD #4478307, Registered Representative, Hattiesburg, Mississippi) was barred from association with any NASD member in any capacity. The NAC imposed the sanction following an appeal of an OHO decision. The sanction was based on findings that Shelley attempted to cheat on the Series 24 examination and failed to comply with NASD Rules of Conduct governing securities examinations. (NASD Case #C3A20050003)

Lonnie Richard Shupak (CRD #4444418, Registered Representative, Hillsborough, 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, Shupak consented to the described sanction and to the entry of findings that he opened several money market accounts for public customers of a bank affiliated with his member firm, accessed the bank's electronic records system and changed a code in the records to show that the money market accounts had been opened as checking accounts. The findings stated that Shupak was entitled to receive more compensation from the bank for opening a checking rather than a money market account. (NASD Case #2006006141401)

Billy Joe Sipes (CRD #2045588, Registered Principal, Bardstown, Kentucky) was barred from association with any NASD member in any capacity. The sanction was based on findings that Sipes failed to respond to NASD requests for information. The findings stated that Sipes willfully failed to amend his Form U4. (NASD Case #2005001575801)

Jeffrey Arthur Smith Sr. (CRD #4360471, Registered Representative, Sinking Spring, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which he was suspended from association with any NASD member in any capacity for one month. In light of Smith's financial status, no monetary sanction has been imposed. Without admitting or denying the findings, Smith consented to the described sanction and to the entry of findings that he engaged in outside business activities, for compensation, without providing prompt written notice to his member firm.

The suspension in any capacity was in effect from April 2, 2007, through May 1, 2007. **(NASD Case #2005002264701)**

Victoria Crawford Smotherman (CRD #4479059, Registered Representative, Wooster, Ohio) submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Smotherman consented to the described sanction and to the entry of findings that, while attempting to influence public customers to purchase shares of mutual funds and variable annuities, she made misrepresentations to the customers that there would be no fees or sales loads in connection with the purchase and sale of the securities, that the principal was guaranteed and that the securities had a guaranteed return of at least 5 percent. **(NASD Case #2006003897501)**

Timothy John Stabile (CRD #1940043, Registered Representative, Ottumwa, Iowa) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Stabile consented to the described sanction and the entry of findings that he failed to respond to NASD requests for information. **(NASD Case #20060041870-01)**

Michael Joseph Stefano (CRD #2209407, Registered Representative, Marysville, Washington) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Stefano reassociates with any NASD member following the suspension, or before his firm requests relief from any statutory

disqualification. Without admitting or denying the findings, Stefano consented to the described sanctions and to the entry of findings that he failed to disclose material information on his Form U4.

The suspension in any capacity is in effect from April 2, 2007, through July 1, 2007. **(NASD Case #20060053252-01)**

Maria Teresa Taussi (CRD #4263416, Registered Representative, Kew Gardens, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Taussi converted \$80,000 from her member firm for her own use and benefit by cashing checks that were issued to "Cash" and falsely recording that these checks had been paid to vendors. The findings also stated that Taussi failed to respond to NASD requests for information and documents. **(NASD Case #2005002322601)**

Neilson Ojastro Valdejezza (CRD #2404251, Registered Representative, San Francisco, California) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Valdejezza consented to the described sanction and to the entry of findings that he deposited cash in varying amounts to his personal bank account at an automated teller machine (ATM) and each time falsely represented the amount of the deposit by adding zeros to the deposit amount when entering it on the ATM keypad. The findings stated that Valdejezza intentionally entered the false deposit amounts knowing that the bank would credit them to his account and that he would have access to funds to which he was not entitled until the bank reconciled the false entries. **(NASD Case #20060057612-01)**

Christopher Henry Webb (CRD #1867233, Registered Representative, Camden Wyoming, Delaware) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 15 months. The fine must be paid before Webb reassociates with any NASD member following the suspension, or before his firm requests relief from any statutory disqualification. Without admitting or denying the findings, Webb consented to the described sanctions and to the entry of findings

that he provided false information regarding public customers on their insurance applications and forged their signatures on the insurance applications and related documents.

The suspension in any capacity is in effect from April 2, 2007, through July 1, 2008. (NASD Case #2006004691601)

Individual Fined

Robert Eugene Strong (CRD #3079588, Registered Principal, New York, New York) was fined \$10,000. The NAC imposed the sanction following an appeal of an OHO decision. The sanction was based on findings that Strong failed to supervise a research analyst who traded securities contrary to the recommendations contained in various research reports and traded during the blackout periods. The findings further stated that Strong failed to include or included insufficient or inaccurate required disclosures in research reports and failed to file timely an annual attestation of supervisory procedures for research analysts.

This decision has been appealed to the SEC and the sanction is not in effect pending consideration of the appeal. (NASD Case #C0420050005)

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 the allegations in the complaint.

Stephen Ira Golden (CRD #224150, Registered Principal, Livingston, New Jersey) and **Richard Francis Kresge (CRD #729077, Registered Principal, Bayshore, New York)** were named as respondents in an NASD complaint alleging that in connection with the purchase and sale of securities, and by the use of means or instrumentalities of interstate commerce, Golden and

Kresge directly or indirectly, knowingly or recklessly, employed devices, schemes or artifices to defraud and engaged in acts, practices, or courses of business that operated or would operate as a fraud or deceit upon any person. The complaint alleges that Golden and Kresge knowingly or recklessly participated in a manipulative scheme whose effect was to inflate the price of securities and to create the false appearance of active trading volume in the market in the securities by engaging in transactions at times and prices with contra parties, as a municipal bond trader directed. The complaint also alleges that by engaging in the pre-arranged, circular wash trades of the securities, Golden and Kresge caused reports to be published in which they had reason to believe that they were not *bona fide* transactions, and were in furtherance of a fraudulent, deceptive or manipulative purpose. The complaint further alleges that Golden and Kresge aided and abetted the municipal bond trader's fraudulent scheme to park and to manipulate the price of the securities. (NASD Case #2005000323905)

Gerald Jamieson Kesner (CRD #2337113, Registered Representative, Littleton, Colorado) was named as a respondent in an NASD complaint alleging that he recommended that public customers join an investor group he assembled and acquire stock by pledging equity in their home and securities held at his member firm as collateral for the loan the group would obtain to finance the acquisition. The complaint alleges that Kesner knew, or should have known, that his recommendation to the customers was unsuitable in light of their financial circumstances and needs, and that their risk was disproportionate to that of other investors. The complaint also alleges that Kesner omitted material information to public customers in connection with the acquisition of shares of the stock. (NASD Case #2005001729501)

Mike A. Ketcham (CRD #4945897, Registered Representative, Palatine, Illinois) was named as a respondent in an NASD complaint alleging that he exercised control over a bank customer's account and used the customer's personal information to open an account at his member firm's bank affiliate under a different name. The complaint alleges that Ketcham reversed overdraft fees on these accounts that were never actually charged, thus creating positive balances in each account, and withdrew \$7,141 from the

accounts without the bank's knowledge or consent and used the funds for his own personal use. The complaint also alleges that Ketcham failed to respond to NASD requests for information. (NASD Case #2006006434701)

Shane Alexander Selewach (CRD #2936484, Registered Principal, Hyannis, Massachusetts) was named as a respondent in an NASD complaint alleging that he misused public customers' funds by depositing \$71,000 intended for investment purposes into an account he controlled and used the funds for various personal expenses. The complaint alleges that Selewach borrowed \$158,500 from public customers, contrary to his member firm's written supervisory procedures that specifically prohibit registered representatives from borrowing money from all customers, other than immediate family members. (NASD Case #2006005005301)

Firm Expelled for Failure to Pay Fines and/or Costs in Accordance with NASD Rule 8320

Gryphon Financial Securities Corp.
Palm Beach, Florida
(March 22, 2007)

Firms Suspended for Failure to Supply Financial Information Pursuant to NASD Rule 9552

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

CAC Capital Corp.
Dallas, Texas
(March 9, 2007)

Cannondale Securities, LLC
New York, New York
(March 30, 2007)

Capital City Advisors, Inc.
Atlanta, Georgia
(March 9, 2007 – May 2, 2007)

The Reid Group LLC
New York, New York
(June 30, 2006 – December 13, 2006)

Firms Suspended Pursuant to NASD Rule 9553 for Failure to Pay NASD Dues, Fees and Other Charges

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

Great Eastern Securities, Inc.
New York, New York
(March 20, 2007)

Greenwich Global, LLC
Wilton, Connecticut
(March 5, 2007)

Paul L. Forchheimer & Co., Inc.
New York, New York
(March 19, 2007)

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

James Brendan Hanley
Malden, Massachusetts
(April 24, 2006)

William Edward Kassar Jr.
Lattingtown, New York
(March 22, 2007)

Richard Leaf Levardsen
Patchogue, New York
(April 24, 2006)

Israel Elias Lozada
Chestnut Ridge, New York
(April 24, 2006)

John F. Mangan Jr.
Charlotte, North Carolina
(April 24, 2006)

James Harold McKamy
Richardson, Texas
(April 24, 2006)

Blake Justin Shanaphy
Hoboken, New Jersey
(March 22, 2007)

Joseph T. Tancredi
Brooklyn, New York
(April 24, 2006)

Reynolds Michael Verdiner
Brooklyn, New York
(April 24, 2006)

Younis Zubchevich
Royal Palm Beach, Florida
(March 22, 2007)

**Individuals Barred Pursuant to NASD
Rule 9552(h)**

Robert Lawrence Benton
Clearwater, Florida
(March 5, 2007)

Luther Carl Cooper
New York, New York
(March 12, 2007)

Randall Scott Humphrey
Scottsdale, Arizona
(March 14, 2007)

John M. Meyers
Coram, New York
(March 5, 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.)

Eduardo Jesus Camejo
St. Petersburg, Florida
(March 5, 2007)

Warren Craig Coetzer
Fort Worth, Texas
(March 26, 2007)

Scott C. Dorenbush
Albertville, Minnesota
(March 13, 2007)