

JULY 2007

Notices to Members

Notices

- 07-31** NASD Rule Changes to Conform with Amendments to SEC Rule 10a-1 and Regulation SHO; **Compliance Date: July 6, 2007**
- 07-32** NASD Amends Rule 3013 and Interpretive Material 3013 to Permit Members to Designate Co-Chief Executive Officers and Multiple Chief Compliance Officers; **Compliance Date: July 16, 2007**

Disciplinary and Other NASD Actions



©2007. NASD. All rights reserved.

NASD Notices to Members is published monthly by NASD Corporate Communications, Michelle Volpe-Kohler, Editor, 1735 K Street, NW, Washington, DC 20006-1506, (202) 728-8289. No portion of this publication may be copied, photocopied, or duplicated in any form or by any means, except as described below, without prior written consent of NASD. Members of NASD are authorized to photocopy or otherwise duplicate any part of this publication without charge only for internal use by the member and its associated persons. Nonmembers of NASD may obtain permission to photocopy for internal use through the Copyright Clearance Center (CCC) for a \$3-per-page fee to be paid directly to CCC, 222 Rosewood Drive, Danvers, MA 01923.

Each member firm's Executive Representative is entitled to one annual subscription to *Notices to Members* at cost (\$15 per year). Additional annual subscriptions are available for \$225; single issues cost \$25. To order, send a check or money order (payable to NASD) to NASD MediaSource, P.O. Box 9403, Gaithersburg, MD 20898-9403; to order with a credit card (American Express, MasterCard, or Visa), call (240) 386-4200, Monday to Friday, 9 a.m. to 5 p.m., Eastern Time. Back issues may be ordered by calling MediaSource at (240) 386-4200. Subscribers with questions or concerns may contact NASD Corporate Communications at gina.cherry@nasd.com. To make an address change, please contact NASD's CRD Department at (301) 590-6500, or log on to the NASD Contact System at www.nasd.com/ncs.

Notices to Members (December 1996 to current) are also available on the Internet at www.nasd.com.

Notice to Members

JULY 2007

SUGGESTED ROUTING

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

KEY TOPICS

IM-5100
IM-6130
Rule 3360
Rule 4632
Rule 5100
Rule 6130
Rule 9610
Short Exempt Marking Requirements
Short Sales
TRF Trade Reporting

GUIDANCE

Short Sale Requirements

NASD Rule Changes to Conform with Amendments to SEC Rule 10a-1 and Regulation SHO;
Compliance Date: July 6, 2007

Executive Summary

NASD is issuing this *Notice* to advise firms and other interested parties of conforming NASD rule changes in light of the elimination of Rule 10a-1 under the Securities Exchange Act of 1934 (SEC Rule 10a-1) and amendments to Regulation SHO. Specifically, on July 5, 2007, NASD filed for immediate effectiveness a proposed rule change to: (1) repeal NASD Rule 5100 and IM-5100; (2) eliminate references to NASD Rule 5100 and SEC Rule 10a-1 from NASD rules; and (3) remove any "short exempt" marking requirements in NASD rules.¹ NASD also is advising firms of temporary no-action relief from Rule 200(g) of Regulation SHO granted by the Securities and Exchange Commission (SEC) for "short exempt" transactions in certain circumstances.

The text of the affected NASD rules, as amended, is set forth in Attachment A of this *Notice*. The compliance date of the amendments is July 6, 2007, to coincide with the compliance date of the amendments to SEC Rule 10a-1 and Regulation SHO.

Questions/Further Information

Questions regarding 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.

Background & Discussion

On June 13, 2007, the SEC adopted amendments that, among other things: (1) eliminate the short sale price test contained in SEC Rule 10a-1²; (2) add Rule 201(a) of Regulation SHO to provide that no price test, including any price test of any self-regulatory organization (SRO), shall apply to short sales in any security; (3) add Rule 201(b) of Regulation SHO to prohibit any SRO from having a price test; and (4) amend Rule 200(g) of Regulation SHO to remove the requirement that a broker-dealer mark a sell order of an equity security as "short exempt" if the seller is relying on an exception from the price test of SEC Rule 10a-1, or any price test of any exchange or national securities association.³ The elimination of SEC Rule 10a-1 and amendments to Regulation SHO became effective on July 3, 2007; however, the compliance date is July 6, 2007.

Several NASD rules are impacted by the elimination of SEC Rule 10a-1 and amendments to Regulation SHO. As a result, NASD filed for immediate effectiveness a proposed rule change to make conforming amendments to NASD rules. First, because of the elimination of SEC Rule 10a-1, NASD has removed all references to SEC Rule 10a-1 from NASD rules and also has amended Rule 3360 (Short-Interest Reporting) to replace the references to the exceptions in SEC Rule 10a-1 with the underlying rule text of each provision.⁴ Second, under newly adopted Rule 201 of Regulation SHO, NASD is prohibited from having a short sale price test. Accordingly, NASD has eliminated its short sale rule contained in Rule 5100 and the related interpretive material in IM-5100.⁵ NASD also has made conforming amendments to certain NASD rules to delete any references to Rule 5100. Lastly, in light of the SEC amendments to remove the short exempt marking requirement in Rule 200(g) of Regulation SHO, NASD has eliminated the short exempt marking requirements from NASD rules.

Consistent with the compliance date of the amendments to SEC Rule 10a-1 and Regulation SHO, the compliance date of the amendments to NASD rules will be July 6, 2007. However, the SEC staff of the Division of Market Regulation has issued a No-Action Letter stating that SEC staff will not recommend enforcement action under Rule 200(g) of Regulation SHO if a broker-dealer marks a short sale order "short exempt," rather than "short," for a period of 90 days following the July 6, 2007 compliance date, subject to certain conditions.⁶ Therefore, firms are permitted to continue to mark transactions as "short exempt" for a 90-day transitional period following the July 6, 2007 compliance date, consistent with the terms and conditions of the SEC No-Action Letter.

Endnotes

- 1 See File No. SR-NASD-2007-047.
- 2 SEC Rule 10a-1(a)(1) generally provided that, subject to certain exceptions, an exchange-listed security may only be sold short (A) at a price above the price at which the immediately preceding sale was effected (plus tick), or (B) at the last sale price if it is higher than the last different price (zero-plus tick).
- 3 See Securities Exchange Act Release No. 55970 (June 28, 2007) 72 FR 36348 (July 3, 2007).
- 4 NASD Rule 3360 required members to record and report short interest information to NASD, with the exception of positions that meet the requirements of subsections (e)(1), (6), (7), (8) and (10) of SEC Rule 10a-1.
- 5 NASD Rule 5100, which governed short sales of over-the-counter (OTC) transactions reported to the Alternative Display Facility or a Trade Reporting Facility, generally prohibited a member firm from effecting short sales in NASDAQ Global Market securities otherwise than on an exchange for a customer account, or the firm's own account, at or below the current national best (inside) bid, when the current national best (inside) bid is below the preceding national best (inside) bid.
- 6 See Securities Industry and Financial Markets Association, SEC No-Action Letter (July 2, 2007). See also, American Stock Exchange LLC, SEC No-Action Letter (July 2, 2007). A copy of the letters are available on the SEC's Web site at www.sec.gov/divisions/marketreg/mr-noaction/2007/sifma070207-sho.pdf and www.sec.gov/divisions/marketreg/mr-noaction/2007/amex070207-sho.pdf.

©2007. NASD. All rights reserved. *Notices to Members* attempt to present information to readers in a format that is easily understandable. However, please be aware that, in case of any misunderstanding, the rule language prevails.

ATTACHMENT A

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

3360. Short-Interest Reporting

(a) No change.

(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(a) of Regulation SHO, with the exception of positions that meet the following requirements [of Subsections (e)(1), (6), (7), (8), and (10) of SEC Rule 10a-1 adopted under the Act];

(A) any sale by any person, for an account in which he has an interest, if such person owns the security sold and intends to deliver such security as soon as is possible without undue inconvenience or expense;

(B) any sale of a security (except a sale to a stabilizing bid complying with Rule 104 of Regulation M) effected with the approval of an exchange which is necessary to equalize the price of such security thereon with the current price of such security on another national securities exchange which is the principal exchange market for such security;

(C) any sale of a security for a special arbitrage account by a person who then owns another security by virtue of which he is, or presently will be, entitled to acquire an equivalent number of securities of the same class as the securities sold; provided such sale, or the purchase which such sale offsets, is effected for the bona fide purpose of profiting from a current difference between the price of security sold and the security owned and that such right of acquisition was originally attached to or represented by another security or was issued to all the holders of any such class of securities of the issuer;

(D) any sale of a security registered on, or admitted to unlisted trading privileges on, a national securities exchange effected for a special international arbitrage account for the bona fide purpose of profiting from a current difference between the price of such security on a securities market not within or subject to the jurisdiction of the United States and on a securities market subject to the jurisdiction of the United States; provided the seller at the time of such sale knows or, by virtue of information currently received, has reasonable grounds to believe that an offer enabling him to cover such sale is then available to him such foreign securities market and intends to accept such offer immediately; and

(E) any sale by an underwriter, or any member of a syndicate or group participating in the distribution of a security, in connection with an over-allotment of securities, or any lay-off sale by such a person in connection with a distribution of securities through rights or a standby underwriting commitment.

(2) No change.

(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.

* * * * *

4632. Transaction Reporting

(a) through (b) No change.

(c) Information To Be Reported

Each last sale report shall contain the following information:

(1) through (3) No change.

(4) A symbol indicating whether the transaction is a buy, sell, sell short, [sell short exempt] or cross;

(5) through (6) No change.

(d) through (h) No change.

* * * * *

4632A. Transactions Reported by Members to TRACS

(a) through (b) No change.

(c) Information To Be Reported — Two Party Trade Reports

(1) No change.

(2) Each two party last sale report submitted by a reporting NASD Member should contain:

(A) through (C) No change.

(D) A designated symbol denoting whether the transaction, from the Reporting NASD Member's perspective, is a buy, sell, sell short, [sell short exempt,] or cross;

(E) If known, a designated symbol denoting whether the transaction, from the perspective of the Non-Reporting Member, is a buy, sell, or sell short[, or sell short exempt];

(F) through (T) No Change.

(3) No change.

(d) Information To Be Reported — Three Party Trade Reports

(1) No change.

(2) Each Three Party Trade Report Submitted by a Reporting Member shall contain the following information:

Transaction Information

(A) through (H) No change.

(I) All three party trade reports from Non-ECNs must be denoted as riskless principal trade reports and shall include a designated symbol denoting whether the trade between the non-ECN and the buy-side OEID is a sell[,] or sell short[, or sell short exempt] transaction;

(J) through (V) No change.

(W) If known, a symbol denoting whether the trade, from the Sell Side OEID's perspective, is a sell[,] or sell short[, or sell short exempt] transaction;

(X) through (BB) No change.

(3) No change.

(e) through (j) No change.

* * * * *

4632C. Transaction Reporting

(a) through (b) No change.

(c) Information To Be Reported

Each last sale report shall contain the following information:

(1) through (3) No change.

-
- (4) A symbol indicating whether the transaction is a buy, sell, sell short, [sell short exempt] or cross;
- (5) through (6) No change.
- (d) through (h) No change.

* * * * *

4632D. Transaction Reporting

- (a) through (b) No change.

(c) Information To Be Reported—Two Party Trade Reports

- (1) No change.
- (2) Each two party last sale report submitted by a Reporting Member shall contain the following information:
- (A) through (C) No change.
 - (D) A symbol indicating whether the transaction, from the perspective of the Reporting Member, is a buy, sell, sell short, [sell short exempt] or cross;
 - (E) If known, a designated symbol indicating whether the transaction, from the perspective of the Non-Reporting Member (or other contra party), is a buy, sell, or sell short[, or sell short exempt];
 - (F) through (Q) No change.

(d) Information To Be Reported—Three Party Trade Reports

- (1) No change.
- (2) Each three party trade report submitted by a Reporting Member shall contain the following information:
- (A) through (H) No change.
 - (I) All three party trade reports from non-ECNs must be denoted as riskless principal trade reports and shall include a designated symbol indicating whether the trade between the non-ECN and the buy-side OEID is a sell[,] or sell short[, or sell short exempt] transaction;
 - (J) through (T) No change.

(U) If known, a symbol indicating whether the trade, from the Sell Side OEID's perspective, is a sell[,], or sell short[, or sell short exempt] transaction;

(V) through (X) No change.

(e) through (i) No change.

* * * * *

4632E. Transaction Reporting

(a) through (b) No change.

(c) Information To Be Reported—Two Party Trade Reports

(1) No change.

(2) Each two party last sale report submitted by a Reporting Member shall contain the following information:

(A) through (C) No change.

(D) A symbol indicating whether the transaction, from the perspective of the Reporting Member, is a buy, sell, sell short, [sell short exempt] or cross;

(E) If known, a designated symbol indicating whether the transaction, from the perspective of the Non-Reporting Member (or other contra party), is a buy, sell, or sell short[, or sell short exempt];

(F) through (Q) No change.

(d) Information To Be Reported—Three Party Trade Reports

(1) No change.

(2) Each three party trade report submitted by a Reporting Member shall contain the following information:

(A) through (H) No change.

(I) All three party trade reports from non-ECNs must be denoted as riskless principal trade reports and shall include a designated symbol indicating whether the trade between the non-ECN and the buy-side OEID is a sell[,], or sell short[, or sell short exempt] transaction;

(J) through (T) No change.

(U) If known, a symbol indicating whether the trade, from the Sell Side OEID's perspective, is a sell[,], or sell short[,], or sell short exempt] transaction;

(V) through (X) No change.

(e) through (i) No change.

* * * * *

5100. [Short Sale Rule]Reserved.

[(a) With respect to trades reported to the ADF or a Trade Reporting Facility, no member shall effect a short sale in a Nasdaq Global Market Security (as that term is defined in Rule 4200) otherwise than on an exchange for the account of a customer or for its own account at or below the current national best (inside) bid when the current national best (inside) bid is below the preceding national best (inside) bid in the security. In addition, for a transitional period ending on November 3, 2006, members may use the Nasdaq Exchange best (inside) bid rather than the national best (inside) bid for purposes of the application of this rule, provided that the member has submitted prior written notification to NASD of this selection. Members are required to use the same bid tick test on a firm-wide basis. A member using the Nasdaq Exchange best (inside) bid may not use the national best (inside) bid prior to the end of the transitional period unless the member submits prior written notification to NASD of this change. For the purposes of this rule, the term "customer" includes a non-member broker-dealer.]

[(b) In determining the price at which a short sale may be effected after a security goes ex-dividend, ex-right, or ex-any other distribution, all quotation prices prior to the "ex" date may be reduced by the value of such distribution.]

[(c) The provisions of paragraph (a) shall not apply to:]

[(1) Sales by a registered market maker registered in the security in connection with bona fide market making activity. For purposes of this paragraph, transactions unrelated to normal market making activity, such as index arbitrage and risk arbitrage that are independent from a member's market making functions, will not be considered bona fide market making activity.]

[(2) Any sale by any person, for an account in which he has an interest, if such person owns the security sold and intends to deliver such security as soon as possible without undue inconvenience or expense.]

[(3) Sales by a member, for an account in which the member has no interest, pursuant to an order to sell that is marked "long."]

[(4) Sales by a member to offset odd-lot orders of customers.]

[(5) Sales by a member to liquidate a long position which is less than a round lot, provided that such sale does not change the position of the member by more than one unit of trading.]

[(6) Sales by a person of a security for a special arbitrage account if the person then owns another security by virtue of which the person is, or presently will be, entitled to acquire an equivalent number of securities of the same class of securities sold; provided such a sale, or the purchase which such sale offsets, is effected for the bona fide purpose of profiting from a current difference between the price of the security sold and the security owned and that such right of acquisition was originally attached to or represented by another security or was issued to all the holders of any such class of securities of the issuer.]

[(7) Sales by a person of a security effected for a special international arbitrage account for the bona fide purpose of profiting from a current difference between the price of such security on a securities market not within or subject to the jurisdiction of the United States and on such a securities market subject to the jurisdiction of the United States; provided the person at the time of such sale knows or, by virtue of information currently received, has reasonable grounds to believe that an offer enabling the person to cover such sale is then available to the person in such foreign securities market and intends to accept such offer immediately.]

[(8) Sales by an underwriter, or any member of a syndicate or group participating in the distribution of a security, in connection with an over-allotment of securities, or any layoff sale by such a person in connection with a distribution of securities through rights or a standby underwriting commitment.]

[(9) Sales of securities as to which all short sale price tests have been suspended by operation of a Pilot Order issued by the Commission pursuant to SEC Rule 202T.]

[(10) Sales of securities included in the Nasdaq-100 Index.]

[(d) No member shall effect a short sale for the account of a customer or for its own account indirectly or through the offices of a third party to avoid the application of this Rule.]

[(e) No member shall knowingly, or with reason to know, effect sales for the account of a customer or for its own account to avoid the application of this Rule.]

[(f) A member that is not currently registered as a market maker in a security and that has acquired a security while acting in the capacity of a block positioner shall be deemed to own such security for the purposes of this Rule notwithstanding that such member may not have a net long position in such security if and to the extent that such member's short position in such security is the subject of one or more offsetting positions created in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities.]

[(g) For purposes of this Rule, a depositary receipt of a security shall be deemed to be the same security as the security represented by such receipt.]

[(h)(1) A member shall be permitted, consistent with its quotation obligations, to execute a short sale for the account of an options market maker that would otherwise be in contravention of this Rule, if:]

[(A) the options market maker is registered with a qualified options exchange as a qualified options market maker in a stock options class on a Nasdaq Global Market Security or an options class on a qualified stock index; and]

[(B) the short sale is an exempt hedge transaction.]

[(2) For purposes of this paragraph:]

[(A)(i) An “exempt hedge transaction,” in the context of qualified options market makers in stock options classes, shall mean a short sale in a Nasdaq Global Market Security that was effected to hedge, and in fact serves to hedge, an existing offsetting options position or an offsetting options position that was created in a transaction(s) contemporaneous with the short sale,* provided that when establishing the short position the options market maker is eligible to receive(s) good faith margin pursuant to Section 220.12 of Regulation T under the Act for that transaction.]

[(ii) An “exempt hedge transaction,” in the context of qualified options market makers in stock index options classes, shall mean a short sale in a Nasdaq Global Market Security that was effected to hedge, and in fact serves to hedge, an existing offsetting stock index options position or an offsetting stock index options position that was created in a transaction(s) contemporaneous with the short sale, provided that:]

[a. the security sold short is a component security of the index underlying such offsetting index options position;]

[b. the index underlying such offsetting index options position is a “qualified stock index;” and]

[c. the dollar value of all exempt short sales effected to hedge the offsetting stock index options position does not exceed the aggregate current index value of the offsetting options position.]

[(iii) Notwithstanding any other provision of this paragraph (h), any transaction unrelated to normal options market making activity, such as index arbitrage or risk arbitrage that in either case is independent of an options market maker’s market making functions, will not be considered an “exempt hedge transaction.”]

[(B) A “qualified options market maker” shall mean an options market maker who has received an appointment as a “qualified options market maker” for certain classes of stock options on Nasdaq Global Market securities and/or index options on qualified stock indexes pursuant to the rules of a qualified options exchange.]

[(C) A “qualified options exchange” shall mean a national securities exchange that has approved rules and procedures providing for:]

[(i) designating market makers as qualified options market makers, which standards shall be designed to identify options market makers who regularly engage in market making activities in the particular options class(es);]

[(ii) the surveillance of its market maker’s utilization of the exemption set forth in paragraph (h)(1) to assure that short sales effected by qualified options market makers are exempt hedge transactions and that other non-qualified market makers are not utilizing the exemption; and]

[(iii) authorization of the Association to withdraw, suspend or modify the designation of a qualified options market maker but only if a qualified options exchange has determined that the qualified options market maker has failed to comply with the terms of the exemption, and that such a withdrawal, suspension or modification of the market maker’s exemption is warranted in light of the substantial, willful, or continuing nature of the violation.]

[(D) A “qualified stock index” shall mean any stock index that includes one or more Nasdaq Global Market securities, provided that more than 10% of the weight of the index is accounted for by Nasdaq Global Market securities and provided further that the qualification of an index as a qualified stock index shall be reviewed as of the end of each calendar quarter, and the index shall cease to qualify if the value of the index represented by one or more Nasdaq Global Market securities is less than 8% at the end of any subsequent calendar quarter.]

[(E) “Aggregate current index value” shall mean the current index value times the index multiplier.]

[(F) A member will not be in violation of paragraph (a) above if the member executes a short sale for the account of an options market maker that is in contravention of this paragraph (h), provided that the member did not know or have reason to know that the options market maker’s short sale was in contravention of this paragraph (h).]

[(i)(1) A member shall be permitted, consistent with its quotation obligations, to execute a short sale for the account of a warrant market maker that would otherwise be in contravention of this Rule, if:]

[(A) the warrant market maker is a registered market maker for the warrant; and]

[(B) the short sale is an exempt hedge transaction that results in a fully hedged position.]

[(2) For purposes of this paragraph, an “exempt hedge transaction” shall mean a short sale in a Nasdaq Global Market Security that was effected to hedge, and in fact serves to hedge, an existing offsetting warrant position or an offsetting warrant position that was created in a transaction(s) contemporaneous with the short sale.* Notwithstanding any other provision of this paragraph, any transaction unrelated to normal warrant market making activity, such as index arbitrage or risk arbitrage that in either case is independent of a warrant market maker’s market making functions, will not be considered an “exempt hedge transaction.”]

[(3) The Association may withdraw, suspend or modify the exemption for a warrant market maker upon determination that the market maker has failed to comply with the terms of the exemption, and that such a withdrawal, suspension or modification of the market maker’s exemption is warranted in light of the substantial, willful, or continuing nature of the violation.]

[(4) A member will not be in violation of paragraph (a) above if the member executes a short sale for the account of a warrant market maker that is in contravention of this paragraph (i), provided that the member did not know or have reason to know that the warrant market maker’s short sale was in contravention of paragraph (i).]

[(j) Pursuant to the Rule 9600 Series or on the Association’s own motion, the Association may exempt either unconditionally, or on specified terms and conditions, any transaction or class of transactions from the provisions of this Rule.]

[(k) Definitions:]

[(1) The term “short sale” shall have the same meaning as contained in SEC Rule 200, adopted pursuant to the Act.]

[(2) The term “block positioner” shall have the same meaning as contained in SEC Rule 3b-8(c) for “Qualified Block Positioner” adopted pursuant to the Act.]

[(l) This section shall be in effect until December 15, 2007.]

[IM-5100. Short Sale Rule]

[(a)(1) In developing a Short Sale Rule for Nasdaq Global Market securities effected otherwise than on an exchange, NASD has adopted an exemption to the Rule for certain market making activity. This exemption is an essential component of the Rule because bona fide market making activity is necessary and appropriate to maintain continuous, liquid markets in Nasdaq Global Market securities. Rule 5100(c)(1) states that short selling prohibitions shall not apply to sales by registered market makers in connection with bona fide market making activity and specifies that transactions unrelated to normal market making activity, such as index arbitrage and risk arbitrage that are independent from a member's market making functions, will not be considered as bona fide market making. Thus, two standards are to be applied: one must be a registered market maker and one must engage in "bona fide" market making activity to take advantage of this exemption. With this interpretation, NASD wishes to clarify for members some of the factors that will be taken into consideration when reviewing market making activity that may not be deemed to be bona fide market making activity and therefore would not be exempted from the Rule's application.]

[(2) First, as the Rule indicates, bona fide market making activity does not include activity that is unrelated to market making functions, such as index arbitrage and risk arbitrage that is independent from a member's market making functions. While these types of arbitrage activity appear to be suitable for the firm's overall hedging or risk management concerns, they do not warrant an exemption from the Rule. However, short sales of a security of a company involved in a merger or acquisition will be deemed bona fide market-making activity if made to hedge the purchase or prospective purchase (based on communicated indications of interest) of another security of a company involved in the merger or acquisition, which purchase was made, or is to be made, in the course of bona fide market making activity. The purchase of a security of a company involved in a merger or acquisition made to hedge a short sale of another security involved in the merger or acquisition, which sale was made in the course of bona fide market making activity, will not cause the sale to be deemed unrelated to normal market-making activity. Short sales made to hedge any such purchases or prospective purchases must be reasonably consistent with the exchange ratio (or exchange ratio formula) specified by the terms of the merger or acquisition.]

[(3) Similarly, bona fide market making would exclude activity that is related to speculative selling strategies of the member or investment decisions of the firm and is disproportionate to the usual market making patterns or practices of the member in that security. The Association does not anticipate that a firm could properly take advantage of its market maker exemption to effectuate such speculative or investment short selling decisions. Disproportionate short selling in a market making account to effectuate such strategies will be viewed by the Association as inappropriate activity that does not represent bona fide market making and would therefore be in violation of Rule 5100.]

[(b) With respect to trades reported to the ADF or a Trade Reporting Facility, Rule 5100 requires that no member shall effect a short sale in a Nasdaq Global Market Security (as that term is defined in Rule 4200) otherwise than on an exchange for the account of a customer or for its own account at or below the current national best (inside) bid when the current national best (inside) bid is below the preceding national best (inside) bid in the security. For purposes of this rule, the term "customer" includes a non-member broker-dealer. NASD has determined that in order to effect a "legal" short sale when the current best bid is lower than the preceding best bid the short sale must be executed at a price of at least \$0.01 above the current inside bid when the current inside spread is \$0.01 or greater. The last sale report for such a trade would, therefore, be above the inside bid by at least \$0.01.]

[(c)(1) Rule 5100 prohibits a member from effecting a short sale for the account of a customer or for its own account directly or through the offices of a third party for the purpose of avoiding the application of the Short Sale Rule. Further, the Rule prohibits a member from knowingly, or with reason to know, effecting sales for the account of a customer or for its own account for the purpose of avoiding the Rule. With this interpretation, the Association wishes to clarify some of the circumstances under which a member would be deemed to be in violation of Rule 5100.]

[(2) For example, in instances where the current best bid is below the preceding best bid, if a market maker alone at the inside best bid were to lower its bid and then raise it to create an "up bid" for the purpose of facilitating a short sale, NASD would consider such activity to be a manipulative act and a violation of NASD's Short Sale Rule. NASD also would consider it a manipulative act and a violation of the Rule if a market maker with a long stock position were to raise its bid above the inside bid and then lower it to create a "down bid" for the purpose of precluding market participants from selling short. In addition, if a market maker agrees to an arrangement proposed by a member or a customer whereby the market maker raises its bid in order to effect a short sale for the other party and is protected against any loss on the trade or on any other executions effected at its new bid price, the market maker would be deemed to be in violation of Rule 5100. Similarly, a market maker would be deemed in violation of the Rule if it entered into an arrangement with a member or a customer whereby it used its exemption from the rule to sell short at the bid at successively lower prices, accumulating a short position, and subsequently offsetting those sales through a transaction at a prearranged price, for the purpose of avoiding compliance with the Rule, and with the understanding that the market maker would be guaranteed by the member or customer against losses on the trades.]

[(3) The Association believes that members' activities to circumvent the Rule through indirect actions such as executions with other members or through facilitation of customer orders while being protected from loss are antithetical to the purposes of the Rule. Accordingly, the Association will consider any such activity as a violation of Rule 5100.]

* * * * *

6130. Trade Report Input

(a) through (c) No change.

(d) Trade Information To Be Input

Each report to the System shall contain the following information:

(1) through (5) No change.

(6) A symbol indicating whether the transaction is a buy, sell, sell short, [sell short exempt] or cross;

(7) through (13) No change.

(e) through (i) No change.

IM-6130. Trade Reporting of Short Sales

[The NASD's short sale rule (Short Sale Rule or Rule 5100) generally prohibits members from effecting short sales in NGM securities at or below the inside bid when the current inside bid is below the previous inside bid.] Rule 6130(d)(6) requires that members indicate on System reports whether a transaction is a short sale[or a short sale exempt] transaction ("short sale reporting requirements"). Rule 6130 explicitly requires members to file reports [not just for NGM securities transactions, but] for [other securities] transactions in all Reportable Securities, including transactions in exchange-listed, [Capital Market,] convertible debt, OTC Bulletin Board, and OTC equity securities. Thus, all short sale transactions in these securities reported to the System must carry a "short sale" indicator [(or a "short sale exempt" indicator if it is a short sale transaction in an NGM or exchange-listed security that qualifies for an exemption from Rule 5100 or SEC Rule 10a-1)].

* * * * *

6130C. Trade Report Input

(a) through (c) No change.

(d) Trade Information To Be Input

Each report to the System shall contain the following information:

(1) through (5) No change.

(6) A symbol indicating whether the transaction is a buy, sell, sell short, [sell short exempt] or cross;

(7) through (13) No change.

(e) through (h) No change.

IM-6130C. Trade Reporting of Short Sales

[NASD's short sale rule (Short Sale Rule or Rule 5100) generally prohibits members from effecting short sales in Nasdaq Global Market ("NGM") securities at or below the inside bid when the current inside bid is below the previous inside bid.] Rule 6130C(d)(6) requires that members indicate on System reports whether a transaction is a short sale [or a short sale exempt] transaction ("short sale reporting requirements"). Rule 6130C applies to members that submit reports to the NASD/NSX Trade Reporting Facility [not just for NGM securities transactions, but] for transactions in all exchange-listed securities. Thus, all short sale transactions in these securities reported to the System must carry a "short sale" indicator [(or a "short sale exempt" indicator if it is a short sale transaction in any exchange-listed security that qualifies for an exemption from Rule 5100 or SEC Rule 10a-1)].

* * * * *

6130D. Trade Report Input

(a) through (c) No change.

(d) Trade Information To Be Input

Each report to the System shall contain the following information:

(1) through (5) No change.

(6) A symbol indicating whether the transaction is a buy, sell, sell short, [sell short exempt] or cross;

(7) through (13) No change.

(e) through (h) No change.

IM-6130D. Trade Reporting of Short Sales

[NASD's short sale rule (Short Sale Rule or Rule 5100) generally prohibits members from effecting short sales in Nasdaq Global Market ("NGM") securities at or below the inside bid when the current inside bid is below the previous inside bid.] Rule 6130D(d)(6) requires that members indicate on System reports whether a transaction is a short sale [or a short sale exempt] transaction ("short sale reporting requirements"). Rule 6130D applies to members that submit reports to the NASD/BSE Trade Reporting Facility [not just for NGM securities transactions, but] for transactions in all exchange-listed securities. Thus, all short sale transactions in these securities reported to the System must carry a "short sale" indicator [(or a "short sale exempt" indicator if it is a short sale transaction in any exchange-listed security that qualifies for an exemption from Rule 5100 or SEC Rule 10a-1)].

* * * * *

6130E. Trade Report Input

(a) through (c) No change.

(d) Trade Information To Be Input

Each report to the System shall contain the following information:

(1) through (5) No change.

(6) A symbol indicating whether the transaction is a buy, sell, sell short, [sell short exempt] or cross;

(7) through (13) No change.

(e) through (h) No change.

IM-6130E. Trade Reporting of Short Sales

[NASD's short sale rule (Short Sale Rule or Rule 5100) generally prohibits members from effecting short sales in Nasdaq Global Market ("NGM") securities at or below the inside bid when the current inside bid is below the previous inside bid.] Rule 6130E(d)(6) requires that members indicate on System reports whether a transaction is a short sale [or a short sale exempt] transaction ("short sale reporting requirements"). Rule 6130E applies to members that submit reports to the NASD/NYSE Trade Reporting Facility not just for NGM securities transactions, but for transactions in all exchange-listed securities. Thus, all short sale transactions in these securities reported to the System must carry a "short sale" indicator [(or a "short sale exempt" indicator if it is a short sale transaction in any exchange-listed security that qualifies for an exemption from Rule 5100 or SEC Rule 10a-1)].

* * * * *

9610. Application

(a) Where to File

A member seeking exemptive relief as permitted under Rules 1021, 1050, 1070, 2210, 2315, 2320, 2340, 2520, 2710, 2720, 2790, 2810, 2850, 2851, 2860, Interpretive Material 2860-1, 3010(b)(2), 3020, 3150, 3230, [5100,] 6958, 8211, 8213, 11870, or 11900, or Municipal Securities Rulemaking Board Rule G-37 shall file a written application with the appropriate department or staff of NASD and provide a copy of the application to the Office of General Counsel of NASD.

(b) through (c) No change.

Notice to Members

JULY 2007

SUGGESTED ROUTING

Legal & Compliance
Operations
Registered Representatives
Senior Management
Training

KEY TOPICS

Rule 3013
IM-3013

GUIDANCE

Annual Certification of Compliance and Supervisory Processes

NASD Amends Rule 3013 and Interpretive Material 3013 to Permit Members to Designate Co-Chief Executive Officers and Multiple Chief Compliance Officers;
Compliance Date: July 16, 2007

Executive Summary

Effective July 16, 2007, NASD member firms may designate co-chief executive officers (co-CEOs) and multiple chief compliance officers (co-CCOs) to discharge the requirements of Rule 3013 (Annual Certification of Compliance and Supervisory Processes and accompanying IM-3013). The text of the rules, as amended, are set forth in Attachment A of this *Notice*.¹

Questions/Further Information

Questions regarding this *Notice* may be directed to Philip Shaikun, Associate Vice President and Associate General Counsel, Office of General Counsel, at (202) 728-8451.

Background & Discussion

NASD Rule 3013(a) requires each member to designate, and specifically identify on Schedule A of the Uniform Application for Broker-Dealer Registration (Form BD), a principal to serve as chief compliance officer (CCO). Rule 3013(b) requires that the CEO certify annually that the firm has in place processes to establish, maintain, review, modify and test policies and procedures reasonably designed to achieve compliance with applicable NASD rules, MSRB rules and federal securities laws and regulations.

The certification language and additional guidance are set forth in IM-3013. The certification includes not only a statement that the member has in place certain compliance processes, but also that the CEO has conducted one or more meetings with the CCO in the preceding 12 months to discuss the processes. The IM explains that the mandated meetings between the CEO and CCO must include a discussion of the firm's compliance efforts to date and identify and address significant compliance problems and plans for emerging business areas. The IM further sets forth the expertise that is expected of a CCO, including the process of gaining an understanding of a member's products, services and line functions that need to be the subject of written compliance policies and written supervisory procedures.

NASD recognizes that such expertise may reside in more than one individual in firms with distinct business segments. In those circumstances, NASD believes the purposes of the rule can be achieved equally effectively by dividing the responsibility to advise the firm on its compliance scheme among those compliance experts within each business unit. Accordingly, the amendment permits a member to designate multiple CCOs on Schedule A of Form BD, provided that:

- (1) each designated CCO is a principal;
- (2) the member precisely defines and documents the areas of primary compliance responsibility assigned to each designated CCO and makes specific provisions for which of the designated CCOs has primary compliance responsibility in areas that can reasonably be expected to overlap;
- (3) each designated CCO satisfies all of the requirements of Rule 3013 and IM-3013 with respect to his or her defined area of primary compliance responsibility as if that individual was the firm's only CCO; and
- (4) collectively, the designated CCOs have the responsibilities and expertise that enable them to consult with the CEO on the totality of the subject matters required to be addressed in the certification by the CEO under Rule 3013.

Thus, for example, IM-3013 explains that member must conduct one or more meetings annually between the CEO and CCO to (1) discuss and review the matters that are the subject of the certification; (2) discuss and review the member's compliance efforts as of the date of such meetings; and (3) identify and address significant compliance problems and plans for emerging business areas. A member that chooses to have multiple CCOs must conduct one or more meetings annually between the CEO and each designated CCO, individually or collectively. And at each such meeting, the CEO is required to discuss with each CCO the required topics, but only as it relates to the particular CCO's defined area of primary compliance responsibility. Similarly, the IM requires review by the CCO of the report evidencing a member's processes and consultation by the CEO with the CCO prior to execution of the certification. Firms with multiple CCOs must have each CCO must review the report, and the CEO must consult with each CCO prior to certification.

The amendment also permits the designation of a single co-CEO solely for the purposes of compliance with Rule 3013 and IM-3013² (a member firm may have a maximum of two CEOs). However, in contrast to the change that permits co-CCOs, co-CEOs may not divide up the requirements of the Rule and IM; rather, each of the two CEOs are required to individually discharge all of the obligations set forth in Rule 3013 and IM-3013, each is responsible for the representations in the certification as if they were the member's only CEO, and the signature of each co-CEO is expected to appear on the same single annual certification.

Endnotes

- 1 NASD filed this amendment with the Securities and Exchange Commission for immediate effectiveness on July 16, 2007. See SR-NASD-2007-049. Pursuant to Section 19(b) of the Securities Exchange Act of 1934, the SEC has authority to summarily abrogate this type of rule change within 60 days of the filing.
- 2 Designation of a co-CEO pursuant to the rule amendment has no effect on any other regulatory obligation imposed on a member or its CEO.

©2007. NASD. All rights reserved. *Notices to Members* attempt to present information to readers in a format that is easily understandable. However, please be aware that, in case of any misunderstanding, the rule language prevails.

ATTACHMENT A

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

3013. Annual Certification of Compliance and Supervisory Processes

(a) Designation of Chief Compliance Officer(s)

Each member shall designate and specifically identify to NASD on Schedule A of Form BD one or more [[a]] principals to serve as a chief compliance officer.

(b) Annual Certification

Each member shall have its chief executive officer(s) (or equivalent officer(s)) certify annually,¹ as set forth in IM-3013, that the member has in place processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable NASD rules, MSRB rules and federal securities laws and regulations, and that the chief executive officer(s) has conducted one or more meetings with the chief compliance officer(s) in the preceding 12 months to discuss such processes.

¹ No change to text of footnote.

IM-3013. Annual Compliance and Supervision Certification

The NASD Board of Governors is issuing this interpretation to the requirement under Rule 3013(b), which requires that the member's chief executive officer(s) (or equivalent officer(s)) execute annually¹ a certification that the member has in place processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable NASD rules, MSRB rules and federal securities laws and regulations. A member may choose to designate a second co-chief executive officer, provided that each of the two chief executive officers must individually discharge all of the obligations set forth in Rule 3013 and this Interpretive Material, and each shall be held responsible for the representations in the certification as if they were the member's only chief executive officer.² The certification shall state the following:

¹ No change to text of footnote.

² Designation of a co-chief executive officer pursuant to this Interpretive Material applies only for the purposes of Rule 3013 and IM-3013 and has no effect on any other regulatory obligation imposed on a member or its chief executive officer.

* * *

Annual Compliance and Supervision Certification

The undersigned is/are the chief executive officer(s) (or equivalent officer(s)) of [name of member corporation/partnership/sole proprietorship] (the "Member"). As required by NASD Rule 3013(b), the undersigned make(s) the following certification:

1. The Member has in place processes to:

(a) establish, maintain and review policies and procedures reasonably designed to achieve compliance with applicable NASD rules, MSRB rules and federal securities laws and regulations;

(b) modify such policies and procedures as business, regulatory and legislative changes and events dictate; and

(c) test the effectiveness of such policies and procedures on a periodic basis, the timing and extent of which is reasonably designed to ensure continuing compliance with NASD rules, MSRB rules and federal securities laws and regulations.

2. The undersigned chief executive officer(s) (or equivalent officer(s)) has/have conducted one or more meetings with the chief compliance officer(s) in the preceding 12 months, the subject of which satisfy the obligations set forth in IM-3013.

3. The Member's processes, with respect to paragraph 1 above, are evidenced in a report reviewed by the chief executive officer(s) (or equivalent officer(s)), chief compliance officer(s), and such other officers as the Member may deem necessary to make this certification. The final report has been submitted to the Member's board of directors and audit committee or will be submitted to the Member's board of directors and audit committee (or equivalent bodies) at the earlier of their next scheduled meetings or within 45 days of the date of execution of this certification.

4. The undersigned chief executive officer(s) (or equivalent officer(s)) has/have consulted with the chief compliance officer(s) and other officers as applicable (referenced in paragraph 3 above) and such other employees, outside consultants, lawyers and accountants, to the extent deemed appropriate, in order to attest to the statements made in this certification.^{[2]3}

[2]3 Members should understand that the requirements of Rule 3013 and this Interpretive Material represent, in part, a principle-based requirement to certify that the member has in place processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable NASD rules, MSRB rules and federal securities laws and regulations. Consequently, compliance with the periodic and content requirements in this Interpretive Material pertaining to meetings between the chief executive officer(s) (or equivalent officer(s)) and the chief compliance officer(s) does not satisfy the full extent of these principle-based obligations that will vary with the facts and circumstances of a member's business activities and organizational structure. Moreover, NASD emphasizes the testing aspect of this principle-based requirement; an integral purpose of NASD rules pertaining to supervision is that members adopt policies and procedures that are effective as to both the scope of, and the achievement of compliance with, applicable NASD rules, MSRB rules and federal securities laws and regulations.

* * *

It is critical that each NASD member understand the importance of employing comprehensive and effective compliance policies and written supervisory procedures. Compliance with applicable NASD rules, MSRB rules and federal securities laws and regulations is the foundation of ensuring investor protection and market integrity and is essential to the efficacy of self-regulation. Consequently, the certification requirement is intended to require processes by each member to establish, maintain, review, test and modify its compliance policies and written supervisory procedures in light of the nature of its businesses and the laws and rules that are applicable thereto, and to evidence such processes in a report reviewed by the chief executive officer(s) (or equivalent officer(s)) executing the certification.

Included in this processes requirement is an obligation on the part of the member to conduct one or more meetings annually between the chief executive officer(s) (or equivalent officer(s)) and the chief compliance officer(s) to: (1) discuss and review the matters that are the subject of the certification; (2) discuss and review the member's compliance efforts as of the date of such meetings; and (3) identify and address significant compliance problems and plans for emerging business areas.

The periodic and content requirements for meetings between the chief executive officer(s) (or equivalent officer(s)) and the chief compliance officer(s), as well as the pertinent requirements of paragraphs 3 and 4 of the certification, are intended to indicate the unique and integral role of [[the]]a chief compliance officer both in the discharge of certain compliance processes and reporting requirements that are the subject matter of the certification and in providing a reliable basis upon which the chief executive officer(s) can execute the certification. [[The]]A chief compliance officer is [[the]]a primary advisor to the member on its overall compliance scheme and the particularized rules, policies and procedures that the member adopts. This is because [[the]]a chief compliance officer should have an expertise in the process of (1) gaining an understanding of the products, services or line functions that need to be the subject of written compliance policies and written supervisory procedures; (2) identifying the relevant rules, regulations, laws and standards of conduct pertaining to such products, services or line functions based on experience and/or consultation with those persons who have a technical expertise in such areas of the member's business; (3) developing, or advising other business persons charged with the obligation to develop, policies and procedures that are reasonably designed to achieve compliance with those relevant rules, regulations, laws and standards of conduct; (4) evidencing the supervision by the line managers who are responsible for the execution of compliance policies; and (5) developing programs to test compliance with the member's policies and procedures.

NASD recognizes that such expertise may reside in more than one individual in firms with distinct business segments. Therefore, a member may choose to designate more than one chief compliance officer, provided that (1) each designated chief compliance officer is a principal; (2) the member precisely defines and documents the areas of primary compliance responsibility assigned to each designated chief compliance officer and makes specific provisions for which of the designated chief compliance officers has primary compliance responsibility in areas that can reasonably be expected to overlap; (3) each designated chief compliance officer satisfies all of the requirements of Rule 3013 and this Interpretive Material with respect to his or her defined area of primary compliance responsibility as if that individual was the member's only chief compliance officer and (4) collectively, the designated chief compliance officers have the responsibilities and expertise that enable them to consult with the chief executive officer(s) on the totality of the subject matters required to be addressed in the certification by the chief executive officer(s) under Rule 3013. Thus, for example, a member that chooses to have multiple chief compliance officers is required to conduct one or more meetings annually between the chief executive officer(s) (or equivalent officer(s)) and each designated chief compliance officer, individually or collectively. At each such meeting, the chief executive officer (or equivalent officer) would be required to discuss with each chief compliance officer the required topics, but only as it relates to the particular chief compliance officer's defined and documented area of primary compliance responsibility.

It is the expertise in the process of compliance that makes the chief compliance officer an indispensable party to enable the chief executive officer(s) to reach the conclusions stated in the certification. Consequently, any certification made by a chief executive officer (or equivalent officer) under circumstances where the chief compliance officer has concluded, after consultation, that there is an inadequate basis for making such certification would be, without limitation, conduct inconsistent with the observance of the high standards of commercial honor and the just and equitable principles of trade — a violation of Rule 2110. Beyond the certification requirement, it is the intention of both Rule 3013 and this Interpretive Material to foster regular and significant interaction between senior management and the chief compliance officer(s) regarding the member's comprehensive compliance program.

The chief compliance officer(s) and other compliance officers that report to the chief compliance officer(s) (as described in the sentence that immediately follows) shall perform the compliance functions contemplated by this Interpretive Material and paragraphs 3 and 4 of the certification. Nothing in this Interpretive Material is intended to limit or discourage the participation of other employees both within and without the member's compliance department in any aspect of the member's compliance programs or processes, including those matters discussed in this Interpretive Material. However, it is understood that the chief compliance officer and, where applicable, the most senior compliance officers having primary compliance department responsibility for each of the member's business segments, will retain responsibility for the compliance functions contemplated by this Interpretive Material and paragraphs 3 and 4 of the certification.

As may be necessary to render their views and advice, the chief compliance officer(s) and the other officers referenced in paragraph 3 of the certification who consult with the chief executive officer(s) (or equivalent officer(s)) pursuant to paragraph 4, shall, in turn, consult with other employees, officers, outside consultants, lawyers and accountants.

The NASD Board of Governors recognizes that supervisors with business line responsibility are accountable for the discharge of a member's compliance policies and written supervisory procedures. The signatory to the certification is certifying only as to having processes in place to establish, maintain, review, test and modify the member's written compliance and supervisory policies and procedures and the execution of this certification and any consultation rendered in connection with such certification does not by itself establish business line responsibility.

The requirement to designate one or more chief compliance officers does not preclude such persons from holding any other position within the member, including the position of chief executive officer, provided that such persons can discharge the duties of a chief compliance officer in light of his or her other additional responsibilities. The requirement that a member's processes include providing the report to the board of directors and audit committee (required by paragraph 3 of the certification) does not apply to members that do not utilize these types of governing bodies and committees in the conduct of their business.^{[3]4}

The report required in paragraph 3 of the certification must document the member's processes for establishing, maintaining, reviewing, testing and modifying compliance policies, that are reasonably designed to achieve compliance with applicable NASD rules, MSRB rules and federal securities laws and regulations, and any principal designated by the member may prepare the report. The report must be produced prior to execution of the certification and be reviewed by the chief executive officer(s) (or equivalent officer(s)), chief compliance officer(s) and any other officers the member deems necessary to make the certification and must be provided to the member's board of directors and audit committee in final form either prior to execution of the certification or at the earlier of their next scheduled meetings or within 45 days of execution of the certification. The report should include the manner and frequency in which the processes are administered, as well as the identification of officers and supervisors who have responsibility for such administration. The report need not contain any conclusions produced as a result of following the processes set forth therein. The report may be combined with any other compliance report or other similar report required by any other self-regulatory organization provided that (1) such report is clearly titled in a manner indicating that it is responsive to the requirements of the certification and this Interpretive Material; (2) a member that submits a report for review in response to an NASD request must submit the report in its entirety; and (3) the member makes such report in a timely manner, i.e., annually.

[3]4 No change to text of footnote.

* * * * *

Disciplinary and Other NASD Actions

REPORTED FOR JULY

NASD® has taken disciplinary actions against the following firms and individuals for violations of NASD rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this Notice is current as of the end of May 2007.

Firm Suspended, Individuals Sanctioned

Investprivate, Inc. (CRD #103737, New York, New York), Donald Geraghty (CRD # 1659545, Registered Principal, Secaucus, New Jersey), Scott Lee Mathis (CRD #1362203, Registered Principal, New York, New York) and Ronald S. Robbins (CRD #400704, Registered Representative, Chestnut Hill, Massachusetts) submitted an Offer of Settlement in which the firm was censured and fined \$205,000, of which \$67,500 was imposed jointly and severally with Mathis; \$40,000 was imposed jointly and severally with Mathis and Geraghty; and \$15,000 was imposed jointly and severally with Geraghty. The firm was suspended for 60 days from seeking or accepting new engagements to conduct or participate in the offer or sale of unregistered securities through any private offering, private placement or private investment in public equity (PIPE) transactions for 60 days. The firm was also required to retain an independent consultant to conduct a comprehensive review of the adequacy of the firm's policies, systems and procedures (written or otherwise) and training relating to the offer or sale of unregistered securities through any private offering, private placement or PIPE transactions. Mathis and Geraghty were suspended from association with any NASD member in any principal capacity for 30 days. Robbins was fined \$10,000 and suspended from association with any NASD member in any capacity for 10 business days.

Without admitting or denying the allegations, the firm, Geraghty, Mathis and Robbins consented to the described sanctions and to the entry of findings that the firm, acting through Mathis, directly or indirectly, by the use of means or instrumentalities of interstate commerce or of the mails, negligently made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading by (1) distributing, or causing to be distributed, to investors or potential investors, private placement memoranda (PPM) that contained material misrepresentations or omissions, and (2) failing to supplement or amend the PPMs during periods in which each remained in effect so that they did not contain material misrepresentations or omissions of fact that occurred after the PPMs were issued.

The findings stated that the firm, acting through Mathis, offered and sold securities without registration statements filed with the Securities and Exchange Commission (SEC). The findings also stated that the firm, acting through Geraghty, failed to report a written customer complaint; failed to timely report a written customer complaint; and failed to report the settlement of customer complaints to NASD that involved payments in excess of \$25,000. The findings further stated that the firm, acting through Robbins, Mathis and Geraghty, violated NASD Membership and Registration rules by permitting Robbins to engage in activity requiring registration as a general securities principal and a general securities representative without obtaining the required registrations. NASD also found that the firm failed to establish qualified escrow accounts on contingency offerings as required by SEC Rule 15c2-4 and failed to maintain its minimum net capital. NASD also found that the firm failed to preserve complete electronic mail communications by routinely deleting the contents of electronic mail folders of all employees who left the firm and deleted portions of the contents of current employees' electronic mail folders. NASD determined that the firm, acting through Geraghty, failed to implement, maintain and enforce an effective supervisory system that would have enabled the firm to comply with federal securities laws and NASD rules, and failed to implement, maintain and enforce reasonable systems and procedures to ensure that PPMs did not contain material misrepresentations and omissions; that the accounts used for deposit of contingency offerings the firm conducted complied with SEC Rule 15c2-4; and that the firm retained email records related to its business in compliance with Rule 17a-4 of the Securities Exchange Act and NASD Rule 3110.

Mathis' suspension in any principal capacity will be in effect from June 18, 2007, through July 17, 2007. Geraghty's suspension in any principal capacity will be in effect from July 23, 2007, through August 21, 2007. Robbins' suspension in any capacity was in effect from June 18, 2007, through June 29, 2007. (NASD Case# C1020040052)

Firms and Individuals Fined

First Citizens Financial Plus, Inc. (CRD #18591, Dyersburg, Tennessee) and James Thomas Hopper (CRD #2181853, Registered Principal, Dyersburg, Tennessee) submitted a Letter of Acceptance, Waiver and Consent in which the firm and Hopper were censured and fined \$10,000, jointly and severally. Without admitting or denying the findings, the firm and Hopper consented to the described sanctions and to the entry of findings that the firm, acting through Hopper, issued sales literature to its public customers that omitted material facts and failed to file the newsletters, which discussed registered investment companies, with NASD's Advertising Department 10 days prior to first use. (NASD Case #2006003762801)

Pension Fund Evaluations, Inc. (CRD #10985, Centereach, New York) and Gregory George Philipps (CRD #1544670, Registered Principal, Lake Grove, New York) submitted a Letter of Acceptance, Waiver and Consent in which they were censured and fined \$7,500, jointly and severally. The firm was fined an additional \$18,500 and Philipps was fined an additional \$2,500. Without admitting or denying the findings, the firm and Philipps consented to the described sanctions and to the entry of findings that the firm, acting through Philipps, permitted a registered person to continue to perform duties that require registration while his NASD registration was inactive due to his failure to satisfy the regulatory element of his continuing education requirements. The findings stated that the firm failed to develop an anti-money laundering (AML) program reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act and the implementing regulations promulgated thereunder. The findings also stated that the firm, acting through Philipps, permitted an individual to park his registration with the firm. NASD also found that the firm failed to establish, maintain and enforce an adequate supervisory system and written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning annual compliance meetings, customer complaint reporting, designation of titles, registration status and location of supervisory personnel, private securities transactions, outside business activities and review of correspondence. NASD found that the firm did not have a system to retain email communications relating to its business

that Philipps sent or received using his personal email account, and failed to preserve copies of such electronic communications. NASD also found that the firm, acting through Philipps, failed to maintain net capital, in the amount of \$5,000, and actually had negative net capital. (NASD Case #ELI2005005401)

Firms Fined

Alpine Securities Corporation (CRD #14952, Salt Lake City, Utah) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$27,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it had failed to deliver positions in threshold securities at a clearing agency for 13 consecutive settlement days, and failed to immediately close out the fail to deliver positions by purchasing securities of like kind and quantity, or failed to borrow the security or enter into a *bona fide* arrangement to borrow the security before executing proprietary short sales in connection with its market making activities. The findings also stated that the firm incorrectly reported to the NASDAQ Market Center (NMC) that customer sale transactions under SEC Rule 144 were long sales and proprietary sale transactions were exempt short sales. 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, NASD Rule 6130(d)(6), and SEC Rules 200(g)(Order Making), 203(a)(Long Sales), 203(b)(Locate Requirements), 203(b)(3) and 203(b)(3)(iii)(Pre-Borrow Requirements). (NASD Case #20060044708-01)

America's Growth Capital, LLC (CRD #125958, Boston, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$20,000 and required to revise the firm's written supervisory procedures concerning the Order Audit Trail System (OATS). Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to submit route reports to OATS for orders it routed to other market participants for handling and/or execution, and failed to timely report Reportable Order Events (ROEs) to OATS. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with

applicable securities laws, regulations and NASD rules concerning OATS. (NASD Case #20050000181-01)

Ameritrade, Inc. nka TD Ameritrade Clearing, Inc. (CRD #5633, Bellevue, Nebraska) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$12,500 and required to revise the firm's written supervisory procedures concerning OATS. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to repair ROEs that OATS rejected for context or syntax errors. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning OATS. (NASD Case #20050002093-01)

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 \$60,000 and required to revise the firm's written supervisory procedures concerning Trade Reporting and Compliance Engine (TRACE) reporting, order handling and soft dollar accounts and trading. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it transmitted execution reports to OATS that contained inaccurate, incomplete or improperly formatted data that the OATS system was unable to link to the related trade reports in an NASD trade reporting system; erroneously reported execution codes with the exception code of "R" to OATS for riskless principal trades it reported under the Alternative Approach and failed to repair rejected ROEs.

The findings stated that the firm submitted 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 or link to the corresponding new order submitted by the destination member firm due to inaccurate, incomplete or improperly formatted data, and failed to timely report ROEs to OATS. The findings also stated that the firm failed, within 90 seconds after execution, to transmit to the last sale reports of transactions in designated securities to the Trade Reporting Facility and to transmit to the Over-the-Counter (OTC) Reporting Facility last sale reports of transactions in OTC equity securities and reported last sale reports of transactions in designated securities it was not required to report to the Trade Reporting

Facility. NASD found that the firm failed to report the correct contra-party's identifier for transactions in TRACE-eligible securities to TRACE. NASD also found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning TRACE reporting, order handling and soft dollar accounts and trading. **(NASD Case #20050000186-01)**

Basic Investors Inc. (CRD #1187, Melville, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$25,000 and required to revise its written supervisory procedures concerning compliance with disclosure of order execution information, riskless principal trade reporting, sales in threshold securities, books and records, and the quotation of non-exchange-listed securities. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to display immediately customer limit orders in listed 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; or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each security; and the size of the order represented more than a *de minimis* change in relation to the size associated with the firm's bid or offer in each security.

The findings stated that the firm incorrectly reported to the NMC the second leg of: "riskless" principal transactions in NNM securities, SmallCap securities and OTC securities because it incorrectly designated the capacity of the transactions as "principal." The findings also stated that the firm published quotations for OTC equity securities or non-exchange-listed securities, or, directly or indirectly, submitted such quotations for publication in a quotation medium (the Pink Sheets) and did not have in its records the documentation SEC Rule 15c2-11(a) required and failed to file a Form 211 with NASD at least three business days before its quotations were published or displayed in a quotation medium. 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 compliance with disclosure of order execution information, riskless principal trade reporting, sales in threshold securities, books and records, and the quotation of non-exchange-

listed securities. NASD found that the firm failed to provide documentary evidence that it performed the supervisory reviews set forth in its written supervisory procedures concerning the requirements of bid test compliance. **(NASD Case #20050003265-01)**

Capital Growth Financial, LLC (CRD #41040, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report the correct time of trade execution for transactions in TRACE-eligible securities to TRACE. The findings stated that the firm failed to show the correct execution time on brokerage order memoranda. The findings also stated that the firm failed to report to TRACE transactions in TRACE-eligible securities executed on a business day during TRACE system hours within 30 minutes of the execution time. **(NASD Case #20050002401-01)**

Casimir Capital L.P. (CRD# 105061, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$37,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to timely report statistical and summary information for customer complaints as NASD Rule 3070(c) requires. The findings stated that the firm and its associated persons made numerous calls to people who had previously requested to be placed on the firm's do-not-call list, and the firm failed to adequately train its personnel in the procedures it had established to avoid violations of do-not-call rules. **(NASD Case #2005000863101)**

Charles Schwab & Company (CRD #5393, San Francisco, California) 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 information about transactions effected in municipal securities to the Real-time Transaction Reporting System (RTRS) in the manner MSRB Rule G-14, RTRS Procedures and the RTRS Users Manual require. **(NASD Case #20060040583-01)**

Chicago Investment Group, LLC (CRD #11853, Chicago, Illinois) 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 last sale reports of transactions in OTC equity securities to the OTC Reporting Facility, and failed to designate certain last sale reports as late. (NASD Case #20060055601-01)

CIBC World Markets Corp. (CRD #630, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$30,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit last sale reports of transactions in OTC equity securities to the OTC Reporting Facility, and failed to designate certain last sale reports as late. The findings stated that the firm failed to enforce its written supervisory procedures relating to trade reporting that required the Head of Facilitation Trading to review trading data from the Equity Trading Compliance Group daily and document the reviews. The findings also stated that the firm failed to maintain or produce any documentation evidencing that these reviews were completed. (NASD Case #20050004892-01)

Colonial Brokerage, Inc. (CRD #111668, Montgomery, Alabama) 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 failed to perform an annual evaluation and prioritization of its training needs and failed to develop a written training plan. The findings stated that the firm failed to have a reasonable system for email review although it had established parameters through an automated system to flag emails that required review. The findings also stated that the firm actually reviewed only some of the emails that met the parameters. The findings also included that the firm failed to timely conduct branch office inspections for the branch offices that did not supervise non-branch locations. NASD found that the firm failed to report many of its municipal securities transactions to the MSRB. (NASD Case #2006003761801)

Equity Services, Inc. (CRD #265, Montpelier, Vermont) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$350,000 and required to review its policies and procedures concerning non-cash compensation. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to properly supervise non-cash compensation provided to its associated persons. The findings stated that the firm's supervisory system and written policies and procedures did not adequately ensure compliance with NASD rules relating to the payment or reimbursement of non-cash compensation. The findings also stated that the firm's associated persons received non-cash compensation from insurance companies in connection with the sale of variable annuities and investment company securities that violated NASD rules, but the firm approved or failed to detect non-cash compensation programs. The findings included that the firm failed to properly preserve emails in its home office and failed to properly journal email for custodians in its Office of Supervisory Jurisdiction (OSJ). (NASD Case #2005002217001)

E*Trade Capital Markets, LLC (CRD #111528, Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$17,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it submitted reports with respect to equity securities traded on the NASDAQ Stock Market (NSM) 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 some of the reports. (NASD Case #20050026784-01)

First Clearing, LLC (CRD #17344, Richmond, Virginia) 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 deliver a threshold security at a registered clearing agency for 13 consecutive days, and failed to immediately close out the fail to deliver position by purchasing securities of like kind and quantity. The findings stated that the firm's supervisory system did not provide for supervision

reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning Rule 203(b)(3) of Regulation SHO. (NASD Case #2005003150301)

First Southwest Company (CRD #316, Dallas, Texas) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$40,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to deliver positions in threshold securities at a clearing agency for 13 consecutive settlement days, and failed to immediately close out the fail to deliver positions by purchasing securities of like kind and quantity. (NASD Case #20050024943-01)

Fred Alger & Company, Incorporated (CRD #5300, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$15,000 and required to revise its written supervisory procedures concerning trade report input. 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 NMC within 20 minutes after execution that the firm, as the order entry identifier (OEID), had an obligation to accept or decline in the NMC. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning trade report input. (NASD Case #20050002664-01)

Gregory, Zent & Swanson, Inc. (CRD #22590, Fort Wayne, Indiana) 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 retain a copy of a discretionary authorization agreement for a customer's discretionary account and a customer complaint letter. The findings stated that, in connection with the firm's failure to maintain a copy of a customer's written complaint, the firm failed to adequately and properly supervise unregistered associated persons who were permitted to receive and direct the correspondence the firm received, and failed to provide training to properly identify customer complaints related to securities activities and to forward them to the firm's

appropriate registered principals so they could be properly reviewed, maintained and timely reported to NASD. (NASD Case #E8A2004095002)

Griffin Securities, Inc. (CRD #43229, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it held customer stock certificates in a safe on its premises, despite a provision in its membership agreement requiring that the firm not safe keep customer securities. The findings stated that, as a result of the firm holding customer securities, it conducted a securities business while failing to maintain its minimum net capital requirement. The findings also stated that the firm caused draft research reports containing price targets and/or ratings to be sent to companies that were the subjects of the reports when they should not have been sent. (NASD Case #2006003689401)

Itau Securities Inc. (CRD #118817, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report transactions in TRACE-eligible securities executed on a business day during TRACE system hours to TRACE within 15 minutes of the execution time. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning TRACE reporting. The findings also stated that the firm failed to report the lower of yield to call or yield to maturity for transactions in TRACE-eligible securities to TRACE. (NASD Case #20050032150-01)

ITG Inc. (CRD #29299, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it accepted short sale orders in equity securities from another person, or effected short sales in equity securities for its own account without borrowing the security, entering into a bona fide arrangement to borrow the security or without reasonable grounds to

believe that the security could be borrowed so that it could be delivered on the date delivery is due and documented compliance with SEC Rule 203(b)(1) of Regulation SHO. The findings stated that the firm accepted customer short sale orders in certain securities and 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 the settlement date. **(NASD Case #20050036195-01)**

Joseph Gunnar & Co. LLC (CRD #24795, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$35,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it permitted an individual to maintain his registration as a general securities representative through his purported association with the firm, when in fact he was not actively involved in the firm's securities or investment banking business, or otherwise functioning as a firm representative. The findings stated that certain communications with the public contained several deficiencies in that: the firm failed to provide evidence that a registered principal approved its Web site prior to use; the firm failed to file communications that contained discussions of options, mutual funds and U.S. government securities; pieces of the firm's promotional materials contained discussions of options without stating the name and address of the person from whom current options disclosure documents could be obtained; and the firm's communications made claims without supplying a sound basis for evaluating the statements. The findings also stated that the firm prepared and distributed research reports that failed to meet the disclosure and content requirements in NASD Conduct Rule 2711(h). **(NASD Case #E102005022102)**

Legend Equities Corporation (CRD #30999, Palm Beach Gardens, Florida) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$110,000 and required to review its procedures regarding required disclosures to customers and 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 the firm's system and procedures were not reasonably designed to ensure that all registered representatives used the firm's electronic server for business-related electronic communications. The findings stated that the firm failed to provide for reasonable follow-up and review on indications that some of its registered representatives were using external email accounts. The findings also stated that, as the result of the supervisory deficiencies, the firm failed to maintain and preserve certain of its electronic communications as SEC Rule 17a-4 requires. The findings also included that the firm failed to implement a reasonable supervisory system and written procedures for follow up and review to ensure that a registered representative conducting business at a bank location completed forms required in accordance with NASD Rule 2350(c)(3) and provided the forms to public customers. **(NASD Case #2006003703501)**

Leonard & Company (CRD #36527, Troy, Michigan) 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 executed customer transactions in municipal securities and failed to report them to the MSRB within 15 minutes of the execution time. The findings stated that the firm failed to enforce its written supervisory procedures to ensure compliance with MSRB Rule G-14 related to the timely reporting of transactions in municipal securities. **(NASD Case #2006003858401)**

MB Trading (CRD #30330, El Segundo, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$17,500. 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 common stock, and, for each order, failed to make or 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 the settlement date. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning affirmative determination. **(NASD Case #20050007851-01)**

McDonald Investments Inc. nka Keybank Capital Markets Inc. (CRD #566, Cleveland, Ohio) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$44,250. 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 TRACE-eligible transactions to TRACE. The findings stated that the firm failed to timely file Uniform Termination Notices for Securities Industry Registration (Forms U5) with NASD. The findings also stated that the firm failed to establish, maintain and/or enforce adequate written supervisory procedures reasonably designed to achieve compliance with applicable NASD rules regarding the timely filing of Forms U5. **(NASD Case #2006003844201)**

Merrill Lynch Professional Clearing Corp. (CRD #16139, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to timely report ROEs to OATS and failed to submit required information concerning ROEs to OATS. **(NASD Case #20060042271-01)**

Monex Securities, Inc. (CRD #30362, Houston, Texas) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to execute a TRACE Participation Agreement prior to its participation in TRACE. The findings stated that the firm failed to report transactions in TRACE-eligible securities that it was required to report to TRACE. The findings also stated that the firm failed to report the correct reporting side executing brokers as "give-up" for transactions in TRACE-eligible securities to TRACE. 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 TRACE reporting. **(NASD Case #20050001841-01)**

NYFIX Millennium, LLC (CRD #103843, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$17,500 and required to revise its written supervisory procedures concerning OATS. Without admitting or

denying the findings, the firm consented to the described sanctions and to the entry of findings that it reported execution reports to OATS that contained inaccurate, incomplete or improperly formatted data. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning OATS. **(NASD Case #20050000116-01)**

Oscar Gruss & Son, Incorporated (CRD #2091, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data, and failed to submit order information to OATS. The findings stated that the firm failed to provide written notification disclosing to its customers in customer confirmations its correct capacity in a transaction, that the transaction was executed at an average price, and/or a correct description of its compensation. **(NASD Case #20060040590-01)**

Piper Jaffray & Co. (CRD #665, Minneapolis, Minnesota) 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 failed to make, for its algorithmic and program trading business, for each of the first, second, third and fourth calendar quarters of 2005, a report on its routing of non-directed orders in covered securities during that quarter. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning SEC Rule 606. **(NASD Case #20060051663-01)**

Pruco Securities, LLC (CRD #5685, Newark, New Jersey) and Prudential Investment Management Services LLC (CRD #18353, Newark, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which they were censured, fined \$525,000, jointly and severally, and required to conduct an audit and prepare written findings regarding their compliance with NASD rules relating to the filing, approval and recordkeeping requirements for advertisements and

sales literature. Without admitting or denying the findings, the firms consented to the described sanctions and to the entry of findings that they committed numerous separate violations of NASD rules, including failures to file advertisements and sales literature in a timely manner with NASD, failures to have a registered principal approve advertisements and sales literature prior to use with the public, and failures to comply with their recordkeeping obligations for communications with the public.

The findings stated that the firms failed to establish, maintain and enforce supervisory systems and procedures reasonably designed to achieve compliance with NASD rules governing filing, approval and recordkeeping with respect to advertising and sales literature. The findings also stated that the firms failed to file pieces in a timely manner with NASD, and lacked adequate systems and procedures to monitor the timeliness of NASD filings. The findings also included that the firms failed to take sufficient remedial actions in response to written warnings from NASD that its filings were not timely. NASD found that the firms used advertisements with the investing public before a registered principal approved the sales literature for use that went largely undetected by the firms, as they had no systems or procedures to record when advertisements were first used with the public, and their systems and procedures to detect when advertisements were used prior to the requisite internal approval were not adequate. NASD also found that the firms failed to create and maintain reliable records of when advertisements were approved by a principal, and a flaw in their computer system caused inaccurate approval date records to be created and maintained. In addition, NASD determined that the firms failed to retain records of filings with NASD's Advertising Department and filed inaccurate dates of principal approval with NASD. (NASD Case #EAF0401420002)

Sandgrain Securities, Inc. (CRD #26004, Garden City, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$50,000 and required to provide to NASD written certification and documentation that any filings required under NASD Rule 3070 and amendments to Uniform Applications for Securities Industry Registration or Transfer (Forms U4) or Forms U5 and are the subject of this NASD disciplinary action have been completed. Without admitting or denying the findings, the firm

consented to the described sanctions and to the entry of findings that it failed to preserve copies of internal and external electronic mail communications. The findings stated that the firm failed to timely report statistical and summary information regarding customer complaints; failed to timely report settlements in excess of \$25,000 of customer claims against the firm and people associated with the firm; and failed to timely report the settlement of a customer claim in excess of \$15,000 against people associated with the firm. The findings also stated that the firm failed to amend, or ensure the amendment of, Forms U4 and U5 to disclose customer complaints and the resolution of the complaints. (NASD Case #2006003887501)

Securities America, Inc. (CRD #10205, Omaha, Nebraska) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$250,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it neglected to establish a system reasonably designed to supervise the activities of a registered representative who effected unsuitable securities transactions in public customers' accounts. The findings also stated that in connection with the transactions the individual effected, the firm failed to review all discretionary accounts at frequent intervals to detect and prevent transactions that were excessive in size or frequency in view of the account's financial resources and character. (NASD Case #2005001520702)

SG Americas Securities, LLC (CRD #128351, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$30,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to accept or decline transactions in reportable securities in the NMC within 20 minutes after execution, when the firm had an obligation to accept or decline as the OEID. The findings stated that the firm failed, within 90 seconds after execution, to transmit last sale reports of transactions in designated securities and eligible securities to the NMC. The findings also 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. 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 compliance with the three quote rule, anti-intimidation, third-party trade reporting and soft dollars accounts and trading. NASD found that for a month, the firm failed to provide documentary evidence that it performed the supervisory reviews set forth in its written supervisory procedures concerning the requirements of short sales. (NASD Case #20050025872-01)

Stephens Inc. (CRD #3496, Little Rock, Arkansas) 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 failed to timely report municipal securities customer transactions and municipal securities inter-dealer transactions to the MSRB. (NASD Case #2006003799401)

STG Secure Trading Group, Inc. (CRD #41216, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$15,000 and required to revise its written supervisory procedures concerning trade reporting. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit last sale reports of transactions in OTC equity securities to the NMC and failed to designate some of the last sale reports as late through the NMC. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning trade reporting. (NASD Case #20050017947-01)

Susquehanna Financial Group, LLP (CRD #35865, Bala Cynwyd, Pennsylvania) 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 to OATS that contained inaccurate, incomplete or improperly formatted data. The findings stated that the firm failed to provide written notification disclosing to its customers that transactions were executed at an average price and failed on one occasion to reflect the correct execution venue on the confirmation. The findings also stated that the firm

failed to properly characterize not-held orders in a quarterly report as "other" on its routing of non-directed orders in covered securities during that quarter. (NASD Case #20050023531-01)

Tejas Securities Group, Inc. (CRD #36705, Austin, Texas) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit last sale reports of transactions in NASDAQ securities through the NMC. (NASD Case #20050005058-01)

The Shemano Group, Inc. (CRD #35528, San Francisco, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$15,000 and required to revise its written supervisory procedures concerning withdrawal from market-making activities. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that one of its traders withdrew the posting of a portion of the firm's market-making quotations without properly submitting a prior written request for, and without properly obtaining approval of, an excused withdrawal of a portion of the firm's quotation for those days, and failed to provide complete information to NASDAQ regarding the reasons for the firm's withdrawal of a portion of its market-making quotations. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning withdrawal from market-making activities. (NASD Case #20050017711-01)

Track Data Securities Corporation (CRD #103802, Brooklyn, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$185,000 and required to revise its written supervisory procedures concerning order execution, Electronic Communications Network (ECN) reporting requirements, protecting confidential information and employee trading. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that the firm's Track Data Securities Electronic Communications Network (TRAC) transmitted reports to OATS that contained inaccurate, incomplete or improperly

formatted data. The findings stated that the firm and TRAC submitted reports with respect to equity securities traded on the NSM to OATS that were not in the NASD-prescribed electronic form and were repairable. The findings also stated that the OATS system rejected the subject reports and notice of such rejection was made available on the OATS Web site, but TRAC and the firm did not correct or replace most of the subject reports. The findings included that TRAC transmitted route reports that the OATS system was unable to link to the related order in SuperMontage or SelectNet due to inaccurate, incomplete or improperly formatted data. The findings also included that TRAC's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning OATS, order execution, ECN reporting requirements, protecting confidential information and employee trading. NASD found that TRAC failed to execute orders that were presented at its published quote in an amount equal to, or less than, its published quotation size and therefore failed to honor its published quotation. NASD also found that TRAC failed to enforce its written supervisory procedures regarding honoring published quotations and SEC Rule 605. In addition, NASD determined that, during trading halts initiated by the New York Stock Exchange and the NSM in specific securities, TRAC published indications of interest in the securities. Moreover, NASD found that TRAC made available reports on the covered orders in national market system securities that it received for execution from any person and the reports included incorrect information as to average realized spread, classification of orders by size and publication of data with respect to limit orders. The findings stated that the firm failed to timely report ROEs to OATS. **(NASD Case #20050000197-02)**

Tradition Asiel Securities, Inc. (CRD #28269, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it published quotations in OTC equity securities or, directly or indirectly, submitted the quotations for publication in a quotation medium and did not have in its records the documentation required by SEC Rule 15c2-11(a); did not have a reasonable basis for believing the information was accurate in all material respects and

did not have a reasonable basis for believing that the sources of the information were reliable. The findings stated that the quotations did not represent a customer's indication of unsolicited interest. The findings also stated that the firm failed to file a Form 211 with NASD at least three business days before its quotations were published or displayed in a quotation medium. 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 SEC Rule 15c2-11 and NASD Rule 6740. **(NASD Case #20050021086-01)**

Viewtrade Securities, Inc. (CRD #46987, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$35,000 and required to revise its written supervisory procedures concerning SEC Rule 11Ac1-5. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit last sale reports of transactions in OTC equity securities through the NMC, and failed to designate some of the reports as late through the NMC. The findings stated that the firm incorrectly designated transactions in OTC equity securities reported to the NMC last sale reports as ".SLD" through the NMC within 90 seconds after execution. 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 SEC Rule 11Ac1-5. The findings also included that the firm failed to report to the NMC the correct symbol indicating whether transactions were buy, sell, sell short, sell short exempt or cross for transactions in eligible securities. NASD found that the firm failed to report to the NMC the correct symbol indicating whether the firm executed transactions in eligible securities in a principal, riskless principal or agency capacity. NASD also found that the firm failed to provide written notification disclosing to its customers its correct capacity in transactions, and made available a report on the covered orders in national market system securities that it received for execution from any person that included incorrect information. **(NASD Case #20050000647-01)**

Wachovia Capital Markets, LLC (CRD #126292, Charlotte, North Carolina) submitted a Letter of

Acceptance, Waiver and Consent in which the firm was fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanction and to the entry of findings that it failed to ensure that all new employees promptly completed and returned forms disclosing whether they had interests in any outside brokerage accounts. (NASD Case #20050001705-01)

White Mountain Capital, LLC (CRD #104123, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$100,000 and required to review its supervisory system and procedures concerning preservation of electronic communications, registration of representatives and pre-registration Web CRD searches 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 its written supervisory procedures were not reasonably designed to ensure that the firm obtained and retained the required written consent for pre-registration searches on Web CRD and because of its deficiencies, the firm failed to obtain and/or retain the required written consent in connection with Web CRD searches of at least eight individuals.

The findings stated that the firm's written supervisory procedures were not reasonably designed to ensure compliance with the email retention and review requirement, and that it failed to maintain and preserve all of its business-related electronic communications as SEC Rule 17a-4 requires. The findings also stated that it failed to implement a written AML program reasonably designed to achieve compliance with the requirements imposed by the Bank Secrecy Act and the regulations promulgated thereunder and specifically failed to establish and implement an adequate Customer Identification Program. The findings also included that the firm permitted associated persons to act in the capacity of research analysts without being properly registered with NASD, and issued several research reports the associated persons prepared. (NASD Case #E9B2005016802)

Individuals Barred or Suspended

Monica Nicole Anderson (CRD #5065346, Registered Representative, Walkertown, North Carolina) 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, Anderson consented to the described sanction and to the entry of findings that she withdrew \$64,491.92 from public customers' bank accounts and converted the funds to her own use and benefit without the customers' knowledge, authorization or consent. (NASD Case #2006006062601)

Flynn Lambert Andrew (CRD #2748728, Registered Principal, Macon, Georgia) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the findings, Andrew consented to the described sanctions and to the entry of findings that in letters and emails sent to the public, he used the phrase "guarantee" or "guaranteed" regarding specified rates of return without making the necessary commensurate disclosures about the issuer's claims-paying ability or that there might be holding periods to obtain the rates of return. The findings stated that Andrew's communications compared variable annuities and mutual funds without the necessary disclosures that there are numerous mutual funds available and other costs and restrictions associated with variable annuities that might not apply to mutual funds.

The suspension in any capacity was in effect from June 4, 2007, through June 15, 2007. (NASD Case #E0420040369-05)

Ruben Francisco Augusta (CRD #2217612, Registered Principal, Brooklyn, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$25,000, suspended from association with any NASD member in any principal capacity for one year and suspended from association with any NASD member in any capacity for one month. The suspensions shall run concurrently. Without admitting or denying the findings, Augusta consented to the described sanctions and to the entry of findings that he performed Web CRD searches on individuals who were not seeking employment with his member firm and falsely affirmed

to Web CRD that he had obtained and would keep the required written consent in connection with those searches on file. The findings stated that Augusta failed to comply with his member firm's written supervisory procedures to retain hard copies of business-related email correspondence from outside email accounts in a file at his member firm. The findings also stated that Augusta permitted associated persons to act in the capacity of research analysts without being properly registered with NASD. The findings also included that Augusta failed to review registered representatives' business-related email correspondence when they used outside email accounts.

The suspension in any principal capacity is in effect from May 21, 2007, through May 20, 2008, and the suspension in any capacity was in effect from May 21, 2007, through June 20, 2007. (NASD Case #E9B2005016801)

Timothy Behany (CRD #2878998, Registered Supervisor, Bernardsville, New Jersey) was fined \$40,000, suspended from association with any NASD member in any capacity for two years and required to requalify by examination before acting in any registered capacity. The sanctions were based on findings that Behany improperly obtained contingent deferred sales charge (CDSC) waivers for public customers in connection with mutual fund redemptions by falsely representing on his member firm's electronic order entry system that the customers were disabled. The findings stated that as a result, several mutual fund companies were deprived of fees to which they were otherwise entitled. The findings also stated that Bethany's actions caused his member firm's books and records relating to redemptions to contain false and misleading information regarding the customers.

The suspension in any capacity is in effect from May 21, 2007, through May 20, 2009. (NASD Case #E9B2003026301)

Shawn Robert Blankenship (CRD #3153322, Registered Representative, Matthews, North Carolina) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Blankenship consented to the described sanction and to the entry of findings that he

misappropriated \$144,400 from public customers by effecting unauthorized withdrawals from the customers' variable annuities and wiring the funds to a bank account he controlled. The findings stated that Blankenship forged a customer's signature to a variable annuity funds withdrawal form. The findings also stated that Blankenship failed to respond to NASD requests for information. (NASD Case #2006004848101)

Shannon Lynn Bremmer (CRD #4862090, Associated Person, Chesterfield, Michigan) was barred from association with any NASD member in any capacity. The sanction was based on findings that Bremmer, while working in a branch bank affiliate of her member firm, removed \$7,800 in cash from the vault and her cash drawer without authority and converted the funds to her own use. (NASD Case #2005003490501)

Anna Bruno (CRD #2805793, Registered Principal, Bronx, New York) submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Bruno consented to the described sanction and to the entry of findings that she improperly obtained \$193.50 from a bank at which she was employed by submitting expense reports that overstated her actual expenses. (NASD Case #2006004927401)

Vincent Anthony Buchanan (CRD #34247, Registered Principal, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000, suspended from association with any NASD member in any financial and operations principal (FINOP) capacity for three months and required to requalify by examination as a FINOP prior to reassociation with any NASD member firm in that capacity. Without admitting or denying the findings, Buchanan consented to the described sanctions and to the entry of findings that a member firm, acting through Buchanan, used the instrumentalities of interstate commerce to conduct a securities business while failing to maintain its minimum required net capital, and filed inaccurate Financial and Operational Combined Uniform Single (FOCUS) reports.

The suspension in a FINOP capacity is in effect from June 4, 2007, through September 3, 2007. (NASD Case #2005002458401)

Stephen Ennio Capella (CRD #5015108, Registered Representative, New Rochelle, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Capella reassociates with an NASD member firm following the suspension, or prior to any application or request for relief from any statutory disqualification. Without admitting or denying the findings, Capella consented to the described sanctions and to the entry of findings that he received a completed application for an insurance policy from a public customer that was signed incorrectly. The findings stated that Capella crossed out the misplaced signature, signed the customer's name on the correct line of the application without the customer's authorization or consent and then submitted the application to the insurance company.

The suspension in any capacity is in effect from June 18, 2007, through September 17, 2007. (NASD Case #2007008076101)

Eric Whetham Carlton (CRD #3078425, Registered Supervisor, Laguna Beach, California) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Carlton consented to the described sanction and to the entry of findings that he submitted forged and falsified documents to his member firm, causing its records to be falsified. The findings stated that Carlton misused \$33,000 of public customers' funds by causing unauthorized transfers from the customers family trust account to other customer accounts. The findings also stated that Carlton engaged in unauthorized trading in a public customer's account without the customer's knowledge, authorization or consent. The findings also included that Carlton forged, or caused to be forged, customers' signatures on a letter of authorization that directed transfer of \$5,250 out of the customers' family trust account. (NASD Case #2005000726801)

Paul Jude Casella (CRD #2461957, Registered Principal, Woodbury, New York) was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. The sanctions were based on findings that Casella caused his member firm to charge customer accounts a \$150 fee for the costs associated with his firm changing clearing firms,

although none of the firms actually incurred the costs. The findings stated that Casella's firm would not have met its net capital requirement but for the \$91,950 capital infusion obtained through the assessment of the \$150 fee.

The suspension in any capacity is in effect from May 21, 2007, through May 20, 2008. (NASD Case #ELI20040411-01)

Seth William Chandler (CRD #2182871, Registered Representative, Larkspur, 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, Chandler consented to the described sanction and to the entry of findings that he participated in a private securities transaction and failed to provide prior written notice to, and obtain prior written permission from, his member firm. The findings stated that Chandler failed to respond to an NASD request to appear for an on-the-record interview. (NASD Case #20050007880-01)

Ogden Lavelle Coody (CRD #52888, Registered Principal, Monroe, Louisiana) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Coody consented to the described sanction and to the entry of findings that he recommended unsuitable mutual fund switches and exchanges to public customers without having a reasonable basis for the recommendations which resulted in payment by the customers of over \$75,600 in unnecessary fees and Coody's receipt of \$51,963 in commission charges that Coody received. The findings stated that Coody failed to disclose to the customers material information concerning the switches, in that he failed to offer the customers the opportunity to change funds within a fund family and avoid unnecessary front-end load fees. The findings also stated that Coody failed to provide the customers with switch letters disclosing the nature of the mutual fund exchanges as his member firm required. (NASD Case #E052004030101)

Robert Scott Copeland (CRD #1402841, Registered Supervisor, Clinton, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$7,500, suspended from association with any NASD member in any capacity for six months, and ordered to pay \$88,242 in restitution to public customers. Without

admitting or denying the findings, Copeland consented to the described sanctions and to the entry of findings that he effected trades in public customers' accounts pursuant to discretionary trading arrangements without obtaining written authorization from the customers and his member firm's acceptance of the accounts as discretionary. The findings stated that Copeland recommended unsuitable transactions in fee-based customer accounts and engaged in improper short-term trading in Class B shares of mutual funds and shares of new-issue, closed-end investment companies. The findings also stated that Copeland recommended the purchase of new-issue, closed-end fund shares to customers and then within two weeks or less, recommended their sale to purchase other securities which experienced immediate price declines. The findings also included that Copeland sold the funds before the price had a chance to recover, causing the customers to suffer losses from this unsuitable short-term buying and selling activity. NASD found that Copeland engaged in unsuitable short-term trading of Class B shares of mutual funds resulting in the customers having to pay CDSC. NASD also found that the customers suffered \$88,242 in losses from this unsuitable short-term buying and selling activity, while Copeland received net commissions of \$37,000.

The suspension in any capacity is in effect from June 18, 2007, through December 17, 2007. (NASD Case #E9B2004057401)

James Russell Day (CRD #1850322, Registered Representative, Mt. Pleasant, South Carolina) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for two months. The fine must be paid before Day reassociates with any NASD member following the suspension, or prior to any application or request for relief from any statutory disqualification. Without admitting or denying the findings, Day consented to the described sanctions and to the entry of findings that he engaged in outside business activities without prompt written notice to his member firm. The findings stated that Day accepted \$35,000 in loans from public customers without his member firm's approval.

The suspension in any capacity is in effect from June 18, 2007, through August 17, 2007. (NASD Case #2006005543701)

Kayel Guy DeAngelis (CRD #3259050, Registered Principal, Bayside, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that DeAngelis failed to respond to NASD requests for information. The findings further stated that DeAngelis engaged in private securities transactions and maintained an outside securities account without prior written notice to his member firm. (NASD Case #ELI2004032101)

Charles Lawrence Doraine (CRD #70411, Registered Representative, Corpus Christi, Texas) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the findings, Doraine consented to the described sanctions and to the entry of findings that he effected securities transactions in a public customer's account pursuant to instructions from a third party who, although verbally authorized to trade the account, was not authorized in writing to execute transactions in the account.

The suspension in any capacity was in effect from June 4, 2007, through June 8, 2007. (NASD Case #2005002388201)

Carliss Donald Dykes (CRD #4103565, Registered Principal, Dallas, Texas) submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Dykes reassociates with any NASD member following the suspension, or prior to any application or request for relief from any statutory disqualification. Without admitting or denying the findings, Dykes consented to the described sanctions and to the entry of findings that, despite knowing an individual was not registered with NASD, he instructed the individual to contact public customers and discuss investments with them. The findings stated that when the individual gave Dykes an application and other documents for the transactions involving a public customer, Dykes assigned the accounts to other registered representatives who had no involvement with the transactions and instructed one of the registered representatives to give the unregistered individual a \$2,000 personal check as compensation for the sale of the annuities.

The suspension in any capacity is in effect from May 21, 2007, through August 20, 2007. (NASD Case #E062004029602)

Garrett Richard Fischer (CRD #5083708, Associated Person, Des Moines, Iowa) was barred from association with any NASD member in any capacity. The sanction was based on findings that Fischer failed to respond to NASD requests for information. The findings stated that Fischer failed to disclose material information on his Form U4. (NASD Case #20060043797-01)

Marlene Hall Foster (CRD #3167630, Registered Representative, Memphis, Tennessee) submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$10,000, which includes disgorgement of \$2,459 in commissions, and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Foster reassociates with any NASD member following the suspension, or prior to any application or request for relief from any statutory disqualification. Without admitting or denying the findings, Foster consented to the described sanctions and to the entry of findings that by passively participating in a company's recruitment of new investors, opening new accounts for them, accepting customer funds and orders, and later complying with the stock promoter's instructions on when public customers were to purchase stock in the company, Foster negligently assisted the promoter in artificially increasing the company's stock price.

The suspension in any capacity is in effect from May 21, 2007, through November 20, 2007. (NASD Case #20050002644-02)

Joseph Marshall Francis Jr. (CRD #2581897, Registered Representative, Chattanooga, Tennessee) 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, Francis consented to the described sanction and to the entry of findings that he opened brokerage accounts on a foreign citizen's behalf without disclosing that the citizen was the accounts' true beneficial owner. The findings stated that Francis failed to disclose to the member firms at which the accounts were opened that he was a registered representative of another firm and lied to a representative of one firm about the source of the

funds he used to open the account. The findings also stated that Francis failed to properly notify his member firm of the existence of the outside securities accounts. The findings also included that Francis engaged in an outside business activity without notifying his member firm. (NASD Case #20060066655-01)

Emmanuel Cahot Gallardo (CRD #1456616, Registered Principal, Wayne, New Jersey) was barred from association with any NASD member in any capacity. The sanction was based on findings that Gallardo failed to respond to NASD requests for information. The findings stated that Gallardo willfully failed to amend his Form U4 to disclose material information. (NASD Case #2006005194401)

William George Gibson (CRD #2381501, Registered Representative, Myrtle Beach, South Carolina) was barred from association with any NASD member in any capacity. The sanction was based on findings that Gibson received \$22,025 from public customers to purchase stock and to invest in a private placement but failed to make the intended investments as directed. The findings also stated that Gibson failed to appear for an NASD on-the-record interview. (NASD Case #2006004260001)

Robert Parry Gormly Jr. (CRD #1768255, Registered Principal, Flower Mound, Texas) submitted an Offer of Settlement in which he was fined \$25,000 and suspended from association with any NASD member in any capacity for 18 months. The fine must be paid before Gormly reassociates with any NASD member following the suspension, or prior to any application or request for relief from any statutory disqualification. Without admitting or denying the allegations, Gormly consented to the described sanctions and to the entry of findings that he recommended and effected securities transactions for public customers without having a reasonable basis for believing the transactions were suitable for the customers in relation to their financial situations and needs. The findings stated that Gormly recommended that each of the customers designate his risk tolerance as "aggressive" on account application forms when Gormly knew that this did not represent the customers' actual tolerance of risk.

The suspension in any capacity is in effect from June 4, 2007, through December 3, 2008. (NASD Case #2005001520701)

Peter Harvey Gugisberg (CRD #3146810, Registered Principal, Fargo, North 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, Gugisberg consented to the described sanction and to the entry of findings that he failed to appear for an NASD on-the-record interview. **(NASD Case #20060053510-01)**

Adeline Aguilon Guzman (CRD #2594384, Registered Principal, San Diego, California) submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. The fine must be paid when Guzman reassociates with any NASD member following the suspension, or prior to any application or request for relief from any statutory disqualification. Without admitting or denying the findings, Guzman consented to the described sanctions and to the entry of findings that she borrowed \$3,000 from a public customer in violation of her member firm's written procedures that prohibited borrowing money from customers under any circumstances.

The suspension in any capacity was in effect from June 18, 2007, through June 29, 2007. **(NASD Case #20060064931-01)**

Jose Hernandez (CRD #1976668, Registered Representative, Cary, Illinois) was barred from association with any NASD member in any capacity. The sanction was based on findings that Hernandez received \$4,100 from a public customer for investment purposes, but used the funds for his personal benefit and not for the customer's benefit. The findings stated that Hernandez created false account statements in order to conceal his conversion of the customer's funds. The findings also stated that Hernandez failed to respond to NASD requests for information. **(NASD Case #2005001945401)**

Daniel Uhilamoelangi Herrera (CRD #4670630, Registered Principal, Newark, California) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Herrera reassociates

with any NASD member following the suspension, or prior to any application or request for relief from any statutory disqualification. Without admitting or denying the findings, Herrera consented to the described sanctions and to the entry of findings that he received Independent Business Applications and \$199 processing fees from prospective insurance agents, forwarded the applications to his member firm's affiliated insurance agency and converted the fees to his own use.

The suspension in any capacity is in effect from June 4, 2007, through June 3, 2008. **(NASD Case #20060052290-01)**

Kenneth Cecil Holtsclaw (CRD #1220860, Registered Principal, Tampa, 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, Holtsclaw consented to the described sanction and to the entry of findings that he falsified business expense reports, receiving \$282.72 to which he was not entitled, because he requested reimbursement for restaurant gift cards or meals for unauthorized guests in addition to reimbursement for actual meal expenses in violation of his member firm's written supervisory procedures. The findings stated that Holtsclaw failed to appear for an NASD on-the-record interview. **(NASD Case #2006006831001)**

Andrew Rupert Humer (CRD #2377033, Registered Representative, Rock Hill, South 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 three months. The fine must be paid before Humer reassociates with any NASD member following the suspension, or prior to any application or request for relief from any statutory disqualification. Without admitting or denying the findings, Humer consented to the described sanctions and to the entry of findings that he signed public customers' names to life insurance policy acknowledgement receipts and amendments changing the ownership of the policies without the customers' authorization to sign their names.

The suspension in any capacity is in effect from June 18, 2007, through September 17, 2007. **(NASD Case #2006004362901)**

Christopher James Johnson (CRD #3211983, Registered Principal, Middletown, Connecticut) 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, Johnson consented to the described sanction and to the entry of findings that he received \$7,837 from a public customer for investment in a mutual fund, inserted his name as the payee, negotiated the check and misappropriated the proceeds to his own use and benefit without the customer's knowledge or consent. The findings stated that Johnson failed to respond to NASD requests for information. (NASD Case #2006006507701)

Harlan Henry Kappel (CRD #2844112, Registered Representative, Dallas, Texas) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 business days. Without admitting or denying the findings, Kappel consented to the described sanctions and to the entry of findings that he signed a public customer's name to a letter acknowledging that Kappel had completed financial planning services for the customer and presented the letter to his member firm as the customer's genuine signature.

The suspension in any capacity is in effect from June 18, 2007, through July 30, 2007. (NASD Case #2006004191101)

John Francis Kavalec (CRD #1309961, Registered Representative, Batavia, Illinois) was barred from association with any NASD member in any capacity. The sanction was based on findings that Kavalec failed to respond to NASD requests for information. The findings stated that Kavalec borrowed \$25,000 from a public customer in contravention of his member firm's written supervisory procedures specifically prohibiting borrowing money from customers. (NASD Cases #2005002707301/2006004842802 consolidated)

Steven John Kesses (CRD #736577, Registered Representative, Woodbridge, 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 one month. Without admitting or denying the findings, Kesses consented to the described sanctions and to the entry of findings that he executed transactions in a

public customer's account without the customer's authorization or consent.

The suspension in any capacity is in effect from June 18, 2007, through July 17, 2007. (NASD Case #2006007531601)

Jeffrey John Kobak (CRD #2856529, Registered Representative, North Olmsted, Ohio) 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 90 days. The fine must be paid before Kobak reassociates with any NASD member following the suspension, or prior to any application or request for relief from any statutory disqualification. Without admitting or denying the findings, Kobak consented to the described sanctions and to the entry of findings that he participated in outside business activities, for compensation, without providing prompt written notice to his member firm.

The suspension in any capacity is in effect from June 4, 2007, through September 1, 2007. (NASD Case #2006004470601)

James Simon Kuri (CRD #4860052, Registered Representative, Portland, Oregon) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 45 days. The fine must be paid before Kuri reassociates with any NASD member following the suspension, or before his firm requests relief from any statutory disqualification. Without admitting or denying the findings, Kuri consented to the described sanctions and to the entry of findings that he failed to timely amend his Form U4 with material information.

The suspension in any capacity is in effect from June 4, 2007, through July 18, 2007. (NASD Case #2006005591201)

Jeffrey Tatios Malkasian (CRD #2668488, Registered Representative, Sacramento, 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, Malkasian consented to the described sanction and to the entry of findings that he engaged in private securities transactions without prior written notice to, and approval from, his member firms. The findings

stated that Malkasian received \$798,000 from public customers to invest in a money market fund but, instead, used the funds to invest in business opportunities related to his accountancy business. The findings also stated that Malkasian failed to provide investors with any documentation evidencing their investment. (NASD Case #2006005240701)

Michael Emmett Morris (CRD #1887409, Registered Representative, Covington, Kentucky) 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 five business days. Without admitting or denying the findings, Morris consented to the described sanctions and to the entry of findings that he exercised discretion in public customers' accounts without prior authorization from the customers and his member firm's acceptance of the accounts as discretionary.

The suspension in any capacity was in effect from June 18, 2007, through June 22, 2007. (NASD Case #20050034623-01)

Brendon Walter Myers (CRD #2140219, Registered Representative, Easton, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Myers consented to the described sanction and to the entry of findings that he informed a public customer that he sold shares of a security when in fact he failed to do so, and created and sent a false sales confirmation statement to the customer. The findings stated that Myers effected unauthorized transactions in customer accounts and falsified order tickets in connection with the purchase of securities in other customer accounts. The findings also stated that in order to evade his member firm's prohibition of soliciting the purchase of the securities, Myers falsely indicated on order tickets that the trades were "unsolicited." (NASD Case #2006005657801)

Bryan Darrell Oliphant (CRD #2745180, Registered Representative, Middlebury, Indiana) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Oliphant consented to the described sanction and to the entry of findings that he participated in private securities

transactions without prior written notice to, or prior written approval from, his member firm. The findings stated that Oliphant failed to respond to NASD requests for information. (NASD Case #2006005401901)

Patricia Ann Palmer (CRD #2519451, Registered Representative, Fiskdale, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent in which she was suspended from association with any NASD member in any capacity for one year. In light of Palmer's financial status, no monetary sanction was imposed. Without admitting or denying the findings, Palmer consented to the described sanction and to the entry of findings that she participated in private securities transactions without prior written notice to, or prior written approval from, her member firm.

The suspension in any capacity is in effect from June 18, 2007, through June 17, 2008. (NASD Case #2006005654701)

Masajji Edward Patrick (CRD #4767451, Registered Representative, Chicago, Illinois) was barred from association with any NASD member in any capacity. The sanction was based on findings that Patrick converted \$57,500 from a public customer's account without the customer's consent and deposited the funds into bank accounts he created in fictitious persons' names. The findings stated that Patrick consolidated the funds into one of the fictitious accounts and drafted a \$50,000 check drawn on the account payable to Patrick's relative. The findings stated that Patrick failed to respond to NASD requests for information. (NASD Case #2006005120401)

Tyson Jermaine Pettiford (CRD #4531582, Registered Representative, Jamaica, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before Pettiford reassociates with any NASD member following the suspension, or prior to any application or request for relief from any statutory disqualification. Without admitting or denying the findings, Pettiford consented to the described sanctions and to the entry of findings that he made misrepresentations of material facts during cold calls to prospective customers to induce them to purchase securities.

The suspension in any capacity is in effect from June 18, 2007, through July 17, 2007. (NASD Case #2005001502701)

Eric Richard Radez (CRD #4616939, Registered Representative, Indianapolis, Indiana) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Radez consented to the described sanction and to the entry of findings that he engaged in an outside business activity, for compensation, without prompt written notice to his member firm. The findings stated that Radez provided false testimony during an NASD on-the-record interview. (NASD Case #20050000292-01)

Mark Steven Ritchey (CRD #3011276, Registered Representative, Zanesville, Ohio) was fined \$10,000, suspended from association with any NASD member in any capacity for two months and must requalify by examination in all capacities before returning to the industry. The fine must be paid before Ritchey reassociates with any NASD member when he returns to the industry. The sanctions were based on findings that Ritchey affixed a public customer's signature on a distribution request form without the customer's knowledge or consent.

The suspension in any capacity is in effect from June 4, 2007, through July 31, 2007. (NASD Case #2006004493301)

Wilbert Kneeland Roberts (CRD #1745199, Registered Principal, Atlanta, Georgia) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Roberts consented to the described sanction and to the entry of findings that he borrowed \$3,500 from a public customer without providing notice to, or obtaining approval from, his member firm. The findings stated that Roberts refused to submit to an NASD on-the-record interview. (NASD Case #2006006198001)

Jim Zabala Simbe (CRD #2317085, Registered Representative, Troy, Michigan) 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, Simbe consented to the described sanction and to the entry of findings that he failed to timely disclose a

material fact on his Form U4. The findings stated that Simbe failed to respond to NASD requests for information. (NASD Case #2006005053901)

Christopher David Solomon (CRD #4470012, Registered Representative, Treasure Island, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Solomon engaged in an outside business activity without prompt written notice to his member firm. The findings stated that Solomon received \$8,000 from a public customer for investment purposes, deposited the funds into a bank account he controlled but failed to invest the funds in accordance with the customer's instructions, thereby converting the customer's funds. The findings also stated that Solomon provided the customer with a fictitious account statement in an attempt to conceal his conversion of the customer's funds. The findings also included that Solomon failed to respond to NASD requests for information. (NASD Case #2006005220901)

Michael Robert Taylor (CRD #820728, Registered Principal, Farmers Branch, Texas) submitted a Letter of Acceptance, Waiver and Consent in which he was suspended from association with any NASD member in any capacity for nine months. In light of Taylor's financial status, no monetary sanctions have been imposed. Without admitting or denying the findings, Taylor consented to the described sanction and to the entry of findings that he participated in private securities transactions and failed to provide his member firm with any notice, written or otherwise, of these transactions, his proposed role therein and whether he would receive any compensation.

The suspension in any capacity is in effect from May 21, 2007, through February 20, 2008. (NASD Case #2006004423601)

Eduardo M. Tejeda (CRD #4388070, Registered Representative, Houston, 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, Tejeda consented to the described sanction and to the entry of findings that he provided a company with letters on his member firm's letterhead that contained false and misleading representations confirming the company's credit line and funds availability, although he knew the company planned to use the letters in an

attempt to secure a loan, the company had no credit line at the firm and had not established an account with the firm. (NASD Case #2005003386301)

Ronald Vaughn (CRD #453836, Registered Representative, Voorhees, New Jersey) was barred from association with any NASD member in any capacity. The sanction was based on findings that Vaughn falsely represented to an insurance company that a public customer had not received \$74,240.41 due to him from the liquidation of his fixed annuity when in fact, the customer had received the payment and used these proceeds to purchase a fixed annuity through another insurance company. The findings stated that the insurance company mailed a second check to Vaughn, who forged the customer's endorsement to the check and deposited the check to his personal bank account, thereby converting the funds to his own use and benefit. The findings also stated that Vaughn failed to respond to NASD requests to appear for an on-the-record interview. The findings also included that Vaughn willfully failed to amend his Form U4 to disclose material information. (NASD Case #2006004213401)

Kelli Nichol Vernon (CRD #4010907, Associated Person, Detroit, Michigan) submitted a Letter of Acceptance, Waiver and Consent in which she was suspended from association with any NASD member in any capacity for 60 days. In light of Vernon's financial status, no monetary sanctions were imposed. Without admitting or denying the findings, Vernon consented to the described sanction and to the entry of findings that, without his knowledge or consent, Vernon signed the name of a branch office Cashiering Account Service Manager to letters of authorization for the firm to accept the incoming transfer of accounts for the customers' benefit.

The suspension in any capacity is in effect from May 21, 2007, through July 19, 2007. (NASD Case #20060061530-01)

Steve Brian Westfall (CRD #3207286, Registered Representative, St. George, Utah) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the findings, Westfall consented to the described sanctions and to the entry of findings

that he borrowed \$30,000 from a public customer in violation of his member firm's written procedures and failed to request an exception from his firm.

The suspension in any capacity is in effect from June 18, 2007, through July 17, 2007. (NASD Case #2006005361201)

Anthony Rahama Whitter (CRD #2733252, Registered Representative, Mt. Vernon, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Whitter misrepresented and omitted material facts in connection with the sale of speculative stock to public customers. The findings stated that Whitter made unreasonable price predictions for the stock and acted recklessly by withholding information concerning the issuer's negative financial condition and performance. (NASD Case #C0720050029)

Abigail Mann Whittle (CRD #4056487, Registered Representative, Roswell, Georgia) 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 20 business days. Without admitting or denying the findings, Whittle consented to the described sanctions and to the entry of findings that in order to transfer a public customer's account to her member firm from another broker dealer, she contacted the other broker dealer and impersonated the customer over the telephone without the customer's knowledge or consent.

The suspension in any capacity was in effect from June 4, 2007, through June 29, 2007. (NASD Case #2006006019001)

Asa Williams (CRD #2233649, Registered Principal, Kirkland, Washington) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$20,000, which includes disgorgement of \$10,000 in benefits received, and suspended from association with any NASD member in any capacity for four months. Without admitting or denying the findings, Williams consented to the described sanctions and to the entry of findings that he engaged in a private securities transaction without prior notice to, and approval from, his member firm. The findings stated that Williams engaged in outside business activities, for compensation, without prompt written notice to his member firm.

The suspension in any capacity is in effect from June 4, 2007, through October 3, 2007. (NASD Case #2005002812901)

Martin Yura (CRD #4042431, Registered Principal, Atlanta, Georgia) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Yura reassociates with any NASD member following the suspension, or prior to any application or request for relief from any statutory disqualification. Without admitting or denying the findings, Yura consented to the described sanctions and to the entry of findings that he instructed another supervisory principal to create a document stating that a registered representative had been suspended for resolving an incident with a public customer by paying the customer money when he had not been suspended. The findings stated that the document was to be placed in the representative's file at a branch office. The findings also stated that Yura falsely advised his firm's chief compliance officer that the representative had been suspended.

The suspension in any capacity is in effect from May 21, 2007, through May 20, 2008. (NASD Case #E0420040369-03)

Decisions Issued

The Office of Hearing Officers (OHO) issued the following decisions, which have been appealed to or called for review by the NAC as of May 31, 2007. The NAC may increase, decrease, modify or reverse the findings and sanctions imposed the decisions. Initial decisions whose time for appeal have not yet expired will be reported in the next *Notices to Members*.

Kevin Mark Glodek (CRD #2419411, Registered Representative, New York, New York) was fined \$25,000 and suspended from association with any NASD member in any capacity for 60 days. The sanctions were based on findings that Glodek made material misrepresentations to public customers in connection with the sale of stock and/or to convince them not to sell stock they already owned.

This decision has been appealed to the National Adjudicatory Council (NAC) and the sanctions are not in effect pending consideration of the appeal. (NASD Case #E9B2002010501)

Neal Anthony Impellizeri (CRD #1195207, Registered Principal, Plandome, New York), Michael Raymond Gimeli (CRD #2197242, Registered Representative, Babylon, New York), and Steven Richard Jaloza (CRD #1320831, Registered Representative, Muttontown, New York) were barred from association with any NASD member in any capacity. The sanctions were based on findings that Impellizeri, Gimeli and Jaloza recommended OTC Bulletin Board (OTCBB) stocks without their member firm's affirmative determination that the issuers' current financial statements and material business information provided a reasonable basis for the recommendations. The findings stated that Impellizeri and Jaloza failed to disclose material facts in connection with their recommendations that public customers purchase shares of the speculative OTCBB stocks. The findings also stated that Impellizeri made unreasonable price predictions to customers who purchased the stock.

This decision has been appealed to the NAC and the sanctions are not in effect pending consideration of the appeal. (NASD Case #2005000127502)

Paul Douglas Paratore (CRD #2054004, Registered Representative, Webster, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Paratore converted a customer's monthly insurance premium payments to other, unrelated customers without the customer's knowledge, authorization or consent. The sanction was also based on findings that Paratore settled the complaints of four customers by diverting the insurance premium payments to the customers who complained, to reimburse them for surrender charges or to pay their premiums in order to reinstate their lapsed policies, without his member firm's permission.

This decision has been appealed to the NAC and the sanction is not in effect pending consideration of the appeal. (NASD Case #2005002570601)

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.

Michael Forrest Brinlee (CRD #852723, Registered Principal, Lexington, Kentucky) was named as a respondent in an NASD complaint alleging that he misappropriated funds from a public customer's estate by writing a \$9,045 check against the customer's bank account in order to make a tuition payment for his family member's benefit. (NASD Case #2005001575201)

Steven Gray (CRD #2665911, Registered Principal, Brooklyn, New York) was named as a respondent in an NASD complaint alleging that by the use of means and instrumentalities of interstate commerce, the mails and the facilities of national securities exchanges, Gray did use and employ manipulative and deceptive devices and contrivances by employing devices, schemes and artifices to defraud; making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and engaging in acts, practices and courses of business which operated, and would operate, as a fraud and deceit upon persons in connection with the purchase and sale of promissory notes and stock. The complaint alleges that Gray failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #EFL2005001201)

Steven Kenneth Maidlow (CRD #1831371, Registered Representative, Cincinnati, Ohio) was named as a respondent in an NASD complaint alleging that he caused \$10,000 to be electronically transferred from a public customer's brokerage account and sent it to the customer's deceased mother's estate bank account without the customer's knowledge and consent. The complaint alleges that Maidlow removed the funds to resolve a shortfall in that account caused

by his failure to liquidate bonds the estate held in a timely fashion. The complaint also alleges that Maidlow prepared and sent to the customer documentation in the form of a Cash Flow Detail and an Asset Appraisal Report showing that the \$10,000 previously removed from her account had been returned, when in fact it had not. The complaint further alleges that Maidlow failed to respond to NASD requests for information. (NASD Case #2006005483001)

Hitomi Tsuyuki (CRD #1550142, Registered Representative, Coto de Caza, California) was named as a respondent in an NASD complaint alleging that he received \$188,957.82 from public customers to deposit into a money market account or to purchase municipal bonds and converted the funds to his own use and benefit. The complaint alleges that Tsuyuki gave the customers false account statements purporting to show their funds had been deposited or the municipal bonds had been purchased when they had not. The complaint also alleges that Tsuyuki failed to respond to NASD requests to appear for an on-the-record interview or to provide information and documents. (NASD Case #2005002253201)

Firms Suspended for Failure to Supply Financial Information

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

Doral Securities, Inc.
Puerto Nuevo, Puerto Rico
(May 14, 2007)

U-Trade Brokerage, LLC
Franklin Lakes, New Jersey
(May 14, 2007)

**Firms Cancelled Pursuant to NASD Rule 9553
for Failure to Pay Arbitration Fees**

Great Eastern Securities, Inc.
New York, New York
(May 21, 2007)

Greenwich Global, LLC
Wilton, Connecticut
(May 7, 2007)

Paul L. Forchheimer & Co., Inc.
New York, New York
(May 21, 2007)

**Firm Suspended Pursuant to NASD Rule 9553
for Failure to Pay Arbitration Fees**

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

Sterling Financial Investment Group, Inc.
Boca Raton, Florida
(May 30, 2007)

**Individual Suspended Pursuant to NASD
Rule 9553 for Failure to Pay Arbitration Fees**

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

Edwin Nazaire
Howell, New Jersey
(January 2, 2007 – May 9, 2007)

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

Courtney Wayne Davis
Huntsville, Texas
(May 9, 2007)

Michael Joseph Fabiano
Yardley, Pennsylvania
(May 21, 2007)

Jordon Ernest Goodrich
Las Vegas, Nevada
(May 7, 2007)

Dante Foree Gray
Indianapolis, Indiana
(May 2, 2007)

Ryan Richard Henry
Commerce City, Colorado
(March 1, 2005 – May 21, 2007)

David Lobato
Pueblo West, Colorado
(May 1, 2007)

Janis Ann Logay
Rochester Hills, Michigan
(May 1, 2007)

Robert Thomas Maloney
Buffalo, New York
(May 21, 2007)

Thomas McGovern
New York, New York
(May 14, 2007)

Brian Lee McKnight
Westchester, Ohio
(May 9, 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.)

Brian Lintag Fernando
Las Vegas, Nevada
(May 21, 2007)

Brian Frederick Ferraioli
West Orange, New Jersey
(May 7, 2007)

Kenneth A. Kuley
Cincinnati, Ohio
(May 15, 2007)

Erik Karl Penzin
Santa Monica, California
(May 9, 2007)

Robert Starace
Brooklyn, New York
(May 7, 2007)

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

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

Mckinley J. H. Armstrong II
Washington, DC
(May 29, 2007)

Edwin Nicholas Bastian
Sugarland, Texas
(May 14, 2007)

Hong Joon Chun
Forest Hills, New York
(May 9, 2007)

Todd Mitchell Eberhard
New York, New York
(May 9, 2007)

Jack Alan Frahmman
Fort Myers, Florida
(May 9, 2007)

Kerry Dee Gant
Madison, Tennessee
(May 29, 2007)

Theodore Angelo Pena
Orandell, New Jersey
(May 9, 2007)

Stephen Anthony Reynolds
Parrish, Florida
(May 4, 2007)

Edward Lee Sensor
Sterling, Illinois
(May 29, 2007)

Gerald Francis Stonehouse
Hingham, Massachusetts
(May 14, 2007)

NASD Fines HSBC Brokerage for Failure to Supervise Government Securities Transactions for Best Execution

Firm Routed Orders Internally for Over a Year Without Adequate Controls In Place

NASD has fined New York's HSBC Brokerage (HBI) \$250,000 for failure to have adequate systems in place to supervise government securities transactions to ensure best execution.

In addition, the firm routed orders to HSBC Securities (HSI), an affiliated firm, without taking adequate steps to ensure that customers would not be harmed in the pricing of these securities. HBI's inability to provide documentary evidence of its supervisory review for best execution of trades inhibited NASD's ability to review transactions for best execution.

In April 2005, HBI merged with HSI. The combined firm retains the name HSBC Securities.

"All firms have a fundamental obligation to provide their clients with best execution of their securities orders" said James S. Shorris, NASD's Executive Vice President and Head of Enforcement. "HBI put its customers' orders at risk by failing to monitor these orders to ensure that it was getting best execution. That risk was heightened when the firm began routing orders internally to its affiliated broker-dealer, without being able to demonstrate any supervisory review to evaluate whether its affiliate provided the best execution."

HBI's retail brokerage business was largely located in HSBC bank branches. To support the retail business, HBI operated a trading desk to handle orders that were placed by brokers who had direct contact with HBI's clients. One desk was devoted to filling orders for fixed income products. When a client order was placed, HBI required traders on the fixed income desk to call several broker-dealers on the "street" in an effort to get the best price for a client's transaction.

Toward the end of 2003, there were discussions between HBI and HSI about increasing business between the two affiliated firms and efforts were undertaken by HBI to increase its order flow to its institutional affiliate. In late 2003, HBI began to increase its order flow to its then-affiliate, HSI, and in May 2004, HBI directed its fixed income traders to route all government securities orders to HSI for execution.

As a result, the dollar volume of U.S. Treasury transactions that HBI sent to HSI rose from approximately 24 percent in October 2003 to approximately 79 percent in April 2004, and to close to 100 percent from June through December 2004. While its traders were required to "shop" an order for a government securities transaction before placing it with the affiliate, HBI had inadequate systems to monitor this process by its traders.

NASD also found that while several HBI officers recognized the increased risk associated with directing all government securities orders to a single, affiliated broker-dealer, the firm failed to put reasonable policies and procedures in place to ensure that clients received best execution for these orders. The firm had minimal systems in place to supervise for best execution prior to May 2004, and no further steps were taken to monitor for best execution after the directive to send all customer orders to the affiliated firm.

HBI was unable to provide documentary evidence of supervisory review for best execution for any of the trades requested by NASD as part of its review. This, combined with the fact that the firm did not have a system for recording competitive bids, severely limited NASD's ability to review transactions for best execution. NASD identified several transactions in which the firm violated its best execution obligations, but the firm lacked the records needed for a thorough best execution review.

HBI settled this action without admitting or denying the charges, but consented to the entry of NASD's findings.

NASD Fines Two Fidelity Broker Dealers \$400,000 for Distributing Misleading Sales Literature About Systematic Investment Plans Sold to Military Personnel

Fine to be Paid to NASD Investor Education Program for the Benefit of the Military Community

NASD has fined two Fidelity broker-dealers \$400,000 for preparing and distributing misleading sales literature promoting Fidelity's Destiny I and II Systematic Investment Plans, which were sold primarily to U.S. military personnel. Issuance and sales of new systematic investment plans (also known as periodic payment plans), which typically require investors to make a fixed number of monthly payments over a 10- to 15-year

period, were prohibited by Congress last fall. Previously sold plans remain in force.

As part of the settlement, for the next five years, the two broker-dealers—Fidelity Investments Institutional Services Company, Inc. of Smithfield, RI and Fidelity Distributors Corporation of Boston—are required to notify Destiny Plan holders who want to increase their investments in existing Destiny Plans that additional shares of the underlying fund can be purchased outside the Destiny Plans without paying the additional creation and sales charges of up to 50 percent on the first year's payments.

"NASD's advertising rules are designed to protect investors by prohibiting misleading sales literature and other misleading communications," said James S. Shorris, NASD Executive Vice President and Head of Enforcement. "In this case, the Fidelity Destiny Plans were sold using various performance charts and data that presented a misleading picture of the plans' performance. These failures were aggravated by the fact that the plans were sold primarily to military personnel, who often have limited time to study the marketing materials for investment products. And these particular products involve complex or unique features that may not be fully understood by the customers to whom they are offered or by the brokers who recommend them."

NASD found that between January 2003 and January 2006, the two broker-dealers violated NASD advertising rules by preparing and distributing various pieces of misleading sales literature. For instance, from May 2003 through January 2006, the Fidelity broker-dealers prepared and distributed a brochure entitled "Time is Money" that included misleading performance claims about the Destiny Plans. According to "mountain charts" contained in the brochures, Destiny Plans significantly outperformed the S&P 500 Index over a 30-year period. But during the most recent 10- and 15-year periods—the time frame most relevant to current and prospective investors—Destiny Plans substantially underperformed the S&P 500 Index. The 30-year time period masked the underperformance of the Destiny Plans over the most recent 15 years.

The brochures also showed Destiny Plans' average annual total returns for 1, 5 and 10 years as well as the life of the Plan, without showing comparable returns for the S&P 500 Index. Again, this created the misleading impression that Destiny outperformed the S&P 500

Index throughout the periods shown. The comparable S&P 500 Index average annual total returns would have shown that the S&P 500 Index significantly outperformed Destiny during the more current time periods.

Finally, the broker-dealers used the performance of Destiny Plan Class O shares in these charts, when new Plan investors could only purchase Class N shares. Class N shares did not perform as well as Class O shares because of higher ongoing expenses. The broker-dealers prepared and sent over 10,000 copies of these brochures to Destiny retail brokers or their registered representatives to use them with both prospective investors as well as current Plan holders.

NASD also found that in May 2003, the Fidelity broker-dealers prepared and distributed a misleading Destiny newsletter to over 325,000 Destiny Plan holders. The newsletter included a mountain chart showing Destiny I Plan performance. While the chart showed Plan performance, Fidelity disclosed the average annual total returns for the underlying mutual fund portfolio, rather than for the Plan. Because Plan holders paid a 50 percent upfront sales charge on each of the first year's payments and a continuing sales charge on each additional payment until plan payments were completed, the average annual total returns for the Plans were significantly lower than that of the underlying funds. NASD further found that Fidelity did not adequately supervise the review of this Destiny sales literature in light of the unusual features of the Destiny products.

The \$400,000 fine will be paid to the NASD Investor Education Foundation (a tax-exempt, non-profit organization) to help fund its Military Financial Education Campaign, launched in February 2006. The NASD Investor Education Foundation will use the funds to support educational programs, materials and research to equip members of the United States military and their families with the knowledge and skills necessary to make informed financial decisions. More information about the ongoing, global campaign can be found at www.SaveAndInvest.org.

Fidelity Investments Institutional Services Company and Fidelity Distributors Corporation settled the action without admitting or denying the charges, but consented to the entry of NASD's findings.