

# Notices

## Regulatory Notices

- 07-33** FINRA Adopts Rule Amendments Relating to Non-Tape (or Clearing-Only) Reports for Previously Executed Trades (Including Step-outs, Reversals and Riskless Principal Transactions); **Effective Date: September 4, 2007**
- This *Notice* is superseded by *Notice 07-38*.
- 07-34** SEC Approves Amendments Relating to the Issuer-Directed Provisions of Rule 2790; **Effective Date: September 5, 2007**
- 07-35** Extension of Temporary Relief from NYSE Rule 409(f) (Statements of Accounts to Customers) to January 1, 2008
- 07-36** FINRA Clarifies Guidance Relating to SEC Regulation S-P under *Notice to Members 07-06* (Special Considerations When Supervising Recommendations of Newly Associated Registered Representatives to Replace Mutual Funds and Variable Products)
- 07-37** Extension of Pilot Program Increasing Position and Exercise Limits for Stock Options
- 07-38** FINRA Extends Implementation of Rule Amendments Relating to Non-Tape (Or Clearing-Only) Reports for Previously Executed Trades; **Revised Effective Date: November 5, 2007**
- 07-39** SEC Approves Amendments Regarding OATS Routing Method Code for Intermarket Sweep Orders; **Effective Date: February 4, 2008**
- 07-40** SEC Approves Exception to Three Quote Rule and Related Recordkeeping Requirements for Certain Foreign Securities; **Effective Date: September 28, 2007**

## Election Notice

**08/03/07** Nominees for FINRA Board of Governors

## Disciplinary and Other FINRA Actions

## Non-Tape (or Clearing-Only) Reports

### FINRA Adopts Rule Amendments Relating to Non-Tape (or Clearing-Only) Reports for Previously Executed Trades (Including Step-outs, Reversals and Riskless Principal Transactions)

Effective Date: September 4, 2007

This Notice is superseded by Notice 07-38.

August 2007

#### Notice Type

- Rule Amendment

#### Suggested Routing

- Compliance
- Legal
- Operations
- Registered Representatives
- Senior Management
- Systems
- Trading

#### Key Topic(s)

- Alternative Display Facility
- OTC Reporting Facility
- Riskless Principal
- Trade Reporting
- Trade Reporting Facilities

#### Referenced Rules & Notices

- NASD Rules 6130, 6130A, 6130C, 6130D and 6130E
- NASD Rules 4632, 4632A, 4632C, 4632D and 4632E
- NTM 05-11
- NTM 98-40

## “New Issue” Rule

### SEC Approves Amendments Relating to the Issuer-Directed Provisions of Rule 2790

Effective Date: September 5, 2007

#### Executive Summary

On June 7, 2007, the SEC approved amendments to Rule 2790 to prohibit issuer-directed allocations of new issues to broker-dealers and to provide an exemption for issuer-directed non-underwritten offerings.<sup>1</sup> The Rule, as amended, is set forth in Attachment A of this *Notice*. The amendments become effective on **September 5, 2007**.

#### Questions/Further Information

Questions concerning this *Notice* may be directed to Gary L. Goldsholle, Vice President and Associate General Counsel, Office of General Counsel (OGC), at (202) 728-8104; or Afshin Atabaki, Assistant General Counsel, OGC, at (202) 728-8902.

#### Background and Discussion

Rule 2790 (Restrictions on the Purchase and Sale of Initial Equity Public Offerings) protects the integrity of the public offering process by ensuring that:

- (1) member firms make *bona fide* public offerings of securities at the offering price;
- (2) member firms do not withhold securities in a public offering for their own benefit or use such securities to reward persons who are in a position to direct future business to member firms; and
- (3) industry insiders, including member firms and their associated persons, do not take advantage of their insider position to purchase new issues for their own benefit at the expense of public customers.

#### August 2007

##### Notice Type

- Rule Amendment

##### Suggested Routing

- Compliance
- Corporate Financing
- Executive Representatives
- Institutional
- Legal
- Operations
- Senior Management
- Syndicate
- Trading
- Market Making
- Training
- Underwriting

##### Key Topic(s)

- IPOs
- Issuer-Directed Securities
- “New Issue” Rule
- Rule 2790

##### Referenced Rules & Notices

- Rule 2790
- NTM 03-79
- “New Issue” Rule

Rule 2790 provides that, except as otherwise permitted under the Rule, a firm (or an associated person) may not sell a new issue to an account in which a restricted person has a beneficial interest; a member firm (or an associated person) may not purchase a new issue in any account in which such firm or associated person has a beneficial interest; and a firm may not continue to hold new issues acquired as an underwriter, selling group member, or otherwise.

FINRA has recognized that shares directed by an issuer do not raise the same regulatory concerns as shares allocated by a broker-dealer.<sup>2</sup> Moreover, shares directed by an issuer often further the legitimate business interests of the issuer.<sup>3</sup> Accordingly, Rule 2790 exempts, for most purchasers, securities that are specifically directed by the issuer.<sup>4</sup>

### **Prohibition of Issuer-Directed Allocations to Broker-Dealers**

Rule 2790(d)(1) generally exempts from the scope of the Rule allocations of new issue securities that are specifically directed by the issuer. However, for securities directed to an account in which broker-dealer personnel, finders or fiduciaries, or certain members of their immediate family have a beneficial interest,<sup>5</sup> the exemption is only applicable if such persons, or members of their immediate family, are employees or directors of the issuer, the issuer's parent, or a subsidiary of the issuer or the issuer's parent. These additional conditions are designed to ensure that broker-dealer personnel, finders, fiduciaries and certain members of their immediate family, who typically have the greatest potential to influence the IPO allocation process, have a demonstrated basis for being selected by the issuer to purchase shares in the IPO.

FINRA is further limiting the exemption for issuer-directed securities in Rule 2790(d)(1) to exclude new issue securities directed to a broker-dealer. To the extent that broker-dealer personnel have a beneficial interest in the broker-dealer, the broker-dealer would already be subject to the limitations in Rule 2790(d)(1). However, the amendments establish a much more direct prohibition against purchases of new issues by broker-dealers, even if the securities are directed by the issuer.

### Exemption for Issuer-Directed Non-Underwritten Offerings

In 2005, the staff received two requests for exemptive relief related to the issuer-directed exemption in Rule 2790(d)(1).<sup>6</sup> Both requests came from banks that were eligible to offer their own securities pursuant to an exemption from registration under Section 3(a)(2) of the Securities Act of 1933. Both of these offerings were entirely on a non-underwritten basis, and all decisions regarding the allocation of shares in the offerings were determined at the sole discretion of the respective issuers. These issuers argued, and the staff agreed, that the heightened requirements of Rule 2790(d)(1) would impair their ability to attract capital and served no regulatory purpose in light of the fact that no broker-dealer was underwriting or otherwise involved in allocating any of the shares that were being offered. Further, Rule 2790 generally is predicated on a member firm's involvement in the allocation process. As such, the staff granted an exemption from Rule 2790 in connection with both offerings.

FINRA has codified this position by adding new paragraph (d)(2) to Rule 2790, which provides that the prohibitions on the purchase and sale of new issues do not apply to securities that are specifically directed by the issuer to restricted persons, provided that a broker-dealer: (1) does not underwrite any portion of the offering; (2) does not solicit or sell any new issue securities in the offering; and (3) has no involvement or influence, directly or indirectly, in the issuer's allocation decisions with respect to any of the new issue securities in the offering.

New paragraph (d)(2) would not prevent an issuer from engaging a broker-dealer to provide advisory services (such as rendering advice regarding capital structure and capital raising) or other limited services, so long as the conditions set forth in paragraph (d)(2) continue to be satisfied. In addition, for purposes of compliance with new paragraph (d)(2), a member firm or associated person that wishes to purchase new issues in such offerings may rely on a written representation obtained in good faith from the issuer that the conditions in paragraph (d)(2) are satisfied. However, the firm or associated person may not rely upon any representation from the issuer that it believes, or has reason to believe, is inaccurate.

## Endnotes

- 1 See Securities Exchange Act Release No. 55878 (June 7, 2007), 72 FR 32936 (June 14, 2007) (Order Approving Proposed Rule Change Relating to the Application of Rule 2790 to Issuer-Directed Securities; File No. SR-NASD-2006-074).
- 2 See *Notice to Members 03-79* (SEC Approves New Rule 2790 (Restrictions on the Purchase and Sale of IPOs of Equity Securities); Replaces Free-Riding and Withholding Interpretation) (December 2003).
- 3 *Id.*
- 4 The issuer-directed exemption is applicable only when shares are in fact directed by an issuer (that is, a member cannot seek to have an issuer direct securities to restricted persons on the member's behalf under the exemption).
- 5 The term broker-dealer personnel includes, among others, any officer, director, general partner, associated person, and employee of a broker-dealer, as well as certain immediate family members of such persons. The term finders and fiduciaries, with respect to the security being offered, includes a finder or any person acting in a fiduciary capacity to the managing underwriter, including, but not limited to, attorneys, accountants, and financial consultants, as well as certain immediate family members of such persons. See Rules 2790(i)(10)(B) and (i)(10)(C).
- 6 See Letter to Noel M. Gruber, Kennedy & Barris, LLP, from Afshin Atabaki, OGC, dated October 18, 2005 (available at: [www.finra.org/RulesRegulation/PublicationsGuidance/ExemptiveLetters/P015421](http://www.finra.org/RulesRegulation/PublicationsGuidance/ExemptiveLetters/P015421)), and Letter to Bruce E. Lee from Afshin Atabaki, OGC, dated February 3, 2006 (available at: [www.finra.org/RulesRegulation/PublicationsGuidance/ExemptiveLetters/P016098](http://www.finra.org/RulesRegulation/PublicationsGuidance/ExemptiveLetters/P016098)).

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## Attachment A

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

### 2790. Restrictions on the Purchase and Sale of Initial Equity Public Offerings

(a) through (c) No Change.

#### (d) Issuer-Directed Securities

The prohibitions on the purchase and sale of new issues in this rule shall not apply to securities that:

(1) are specifically directed by the issuer to persons that are restricted under the rule; provided, however, that securities directed by an issuer may not be sold to or purchased by:

(A) a broker-dealer; or

(B) an account in which any restricted person specified in subparagraphs (i)(10)(B) or (i)(10)(C) of this rule has a beneficial interest, unless such person, or a member of his or her immediate family, is an employee or director of the issuer, the issuer's parent, or a subsidiary of the issuer or the issuer's parent. Also, for purposes of this paragraph (d)(1) only, a parent/subsidiary relationship is established if the parent has the right to vote 50% or more of a class of voting security of the subsidiary, or has the power to sell or direct 50% or more of a class of voting security of the subsidiary;

(2) are specifically directed by the issuer and are part of an offering in which no broker-dealer:

(A) underwrites any portion of the offering;

(B) solicits or sells any new issue securities in the offering; and

(C) has any involvement or influence, directly or indirectly, in the issuer's allocation decisions with respect to any of the new issue securities in the offering;

(3) [(2)] are part of a program sponsored by the issuer or an affiliate of the issuer that meets the following criteria:

(A) the opportunity to purchase a new issue under the program is offered to at least 10,000 participants;

(B) every participant is offered an opportunity to purchase an equivalent number of shares, or will receive a specified number of shares under a predetermined formula applied uniformly across all participants;

(C) if not all participants receive shares under the program, the selection of the participants eligible to purchase shares is based upon a random or other non-discretionary allocation method; and

(D) the class of participants does not contain a disproportionate number of restricted persons as compared to the investing public generally; or

(4) [(3)] are directed to eligible purchasers who are otherwise restricted under the rule as part of a conversion offering in accordance with the standards of the governmental agency or instrumentality having authority to regulate such conversion offering.

**(e)** through **(j)** No Change.

## Extension of Regulatory Relief

### Extension of Temporary Relief from NYSE Rule 409(f) (Statements of Accounts to Customers) to January 1, 2008

PLEASE NOTE: The FINRA rulebook currently consists of both NASD Rules and certain NYSE Rules that FINRA has incorporated, including NYSE Rule 409. The incorporated NYSE Rules apply solely to members of FINRA that are also members of NYSE on or after July 30, 2007, referred to as “Dual Members.” Dual Members also must comply with NASD Rules. Until the adoption of a consolidated rulebook, FINRA’s *Regulatory Notices* will address both NASD and the incorporated NYSE Rules.

#### Executive Summary

On March 20, 2007, NYSE granted temporary relief, until September 30, 2007, from the application of NYSE Rule 409(f) regarding the disclosure of the name of the securities market on which a transaction was effected.<sup>1</sup> FINRA is hereby extending such relief to January 1, 2008.<sup>2</sup>

Questions regarding this *Notice* may be directed to your Finance Coordinator, or the FINRA Office of General Counsel, at (202) 728-8071.

August 2007

#### Notice Type

- Guidance

#### Suggested Routing

- Compliance
- Legal
- Operations
- Senior Management
- Technology

#### Key Topic(s)

- Confirmations
- Statements of Account

#### Referenced Rules & Notices

- NYSE Rule 409
- Regulation NMS
- SEC Rule 10b-10

## Background and Discussion

NYSE Rule 409(f) requires that confirmations of all transactions (including those made “over-the-counter” and on other exchanges) in securities admitted to dealings on the NYSE, sent by FINRA members that are also members of NYSE (Dual Members) to their customers, shall indicate the settlement date of the transaction and the name of the securities market on which the transaction was effected. This requirement also applies to confirmations or reports from a Dual Member to a correspondent, but does not apply to reports made by floor brokers to the Dual Member from which the orders were received.<sup>3</sup>

With the adoption of Regulation NMS (Reg NMS), an increasing number of orders routed to a given market for execution are rerouted to other markets which at that time display a better quotation. This process, required under the Reg NMS Order Protection Rule,<sup>4</sup> may often lead to relatively small orders receiving executions in multiple market centers. This has created an operational challenge for Dual Members to capture the name of the market of execution on a timely basis for inclusion on the transaction confirmation.

As a result of these challenges, and given that Reg NMS requires Dual Members to comply with their “best execution” obligations to exercise diligence to obtain the best price when routing customer trades for execution, the relief from the application of NYSE Rule 409(f), with respect to the name of the market of execution, is extended until January 1, 2008. During this interim period, FINRA will continue to reassess the utility of NYSE Rule 409(f) in the current regulatory environment.

## Endnotes

- 1 See NYSE Information Memorandum 07-28 (March 20, 2007).
- 2 See also NYSE Information Memorandum 07-84 (August 2, 2007).
- 3 See also SEC Rule 10b-10.
- 4 See Rule 611 under Reg NMS, 17 CFR 242.611. The Order Protection Rule requires all market participants, including broker-dealers that execute, route or otherwise trade equity securities, to establish, maintain and enforce written policies and procedures reasonably designed to protect against “trade-throughs” of protected quotations in Reg NMS stocks.

## Supervision of Recommendations after a Registered Representative Changes Firms

**FINRA Clarifies Guidance Relating to SEC Regulation S-P under *Notice to Members 07-06* (Special Considerations When Supervising Recommendations of Newly Associated Registered Representatives to Replace Mutual Funds and Variable Products)**

### Executive Summary

In February 2007, FINRA (f/k/a NASD) issued *NTM 07-06*, which describes special considerations firms should use to supervise recommendations of newly hired registered representatives to replace mutual funds and variable products. This *Notice* clarifies the guidance in *NTM 07-06* regarding SEC Regulation S-P.

Questions concerning this *Notice* should be directed to Patricia Albrecht, Assistant General Counsel, Office of General Counsel, at (202) 728-8026; or Kosha K. Dalal, Associate General Counsel, Office of General Counsel, at (202) 728-6903.

August 2007

### Notice Type

- Guidance

### Suggested Routing

- Compliance
- Executive Representatives
- Legal
- Operations
- Senior Management

### Key Topic(s)

- SEC Regulation S-P
- Mutual Funds
- Registered Representatives
- Supervision
- Variable Products

### Referenced Rules & Notices

- NTM 07-06
- SEC Regulation S-P

## Background and Discussion

As stated in *Notice to Members (NTM) 07-06*, registered representatives with an established customer base may change their association from one firm to another from time to time, and may wish to bring with them customer assets, including mutual funds and variable products. However, there may be impediments to the representative's ability to continue servicing or selling these investments, as well as receiving trail commissions from the sponsor for products the representative previously serviced or sold, such as the new firm not having a dealer or servicing agreement with the product sponsor or the products being proprietary to the prior firm. In such cases, *NTM 07-06* states that representatives may be tempted to recommend to customers that they replace their existing mutual funds or variable products with other investments, without adequately considering the customer's best interests and the suitability for the customer of those recommendations.

As a result, the *NTM* recommends that firms should have procedures in place, including supervisory procedures, that are specifically designed to review and evaluate investment recommendations relating to mutual funds and variable products that are made by newly associated persons to their existing customers. Specifically, the *NTM* recommends that these procedures provide that when a firm conducts due diligence concerning a prospective new registered representative, the new firm should seek to learn the nature of the representative's business and the extent to which he or she offers investment products for which the new firm would need a dealer or servicing agreement in order for the representative to sell and provide service.

Some firms have questioned the scope of due diligence described in the *NTM*, and have specifically asked whether any such due diligence procedures may conflict with a firm's obligations under SEC Regulation S-P (Privacy of Consumer Financial Information), which imposes restrictions on the ability of financial institutions to disclose or share nonpublic personal information about consumers.<sup>1</sup> The obligations set forth in *NTM 07-06* do not conflict with a firm's obligations under SEC Regulation S-P. Indeed, in establishing due diligence procedures, *NTM 07-06* does not recommend, nor does it suggest, that a firm obtain nonpublic personal information about any customers the prospective registered representative may seek to bring to the new firm. FINRA expects firms to keep in mind that the goal of such due diligence procedures is for the firm and its prospective new registered representative to understand the extent to which there exist mutual funds and variable products currently held in the representative's customer accounts that may not be serviced or sold by the new firm.

Therefore, in conducting reasonable due diligence of the prospective registered representative's customer base, the new firm needs to learn only the identity of the various mutual fund and variable products held by the registered representative's customer base. Detailed, nonpublic, personal information about individual customers and their particular investments is not necessary or relevant to meet the objectives of this review. Finally, it is incumbent upon firms to educate their prospective representatives in understanding that a change of employment is not by itself a suitable basis for recommending a switch from one product to another and to supervise with respect to such conduct.

## Endnote

1 17 CFR Part 248; Release No. 34-42974.

## Options Position and Exercise Limits

### Extension of Pilot Program Increasing Position and Exercise Limits for Stock Options

#### Executive Summary

SEC amendments to NASD Rule 2860 extend until March 1, 2008, a pilot program increasing certain stock options position and exercise limits. The pilot program was scheduled to expire on September 1, 2007.

The rules, as amended, are set forth in Attachment A. The amendments become effective September 1, 2007.

Questions concerning this *Notice* may be directed to Gary L. Goldsholle, Vice President and Associate General Counsel, Office of General Counsel (OGC), at (202) 728-8104; or James L. Eastman, Assistant General Counsel, OGC, at (202) 728-6961.

#### Background and Discussion

On July 31, 2007, FINRA filed for immediate effectiveness with the Securities and Exchange Commission (SEC) amendments to NASD Rule 2860 extending until March 1, 2008, a pilot program increasing certain stock options position and exercise limits ("Pilot Program").<sup>1</sup> The Pilot Program was scheduled to expire on September 1, 2007.<sup>2</sup> FINRA extended the Pilot Program to allow it to continue without interruption.

#### August 2007

##### Notice Type

- Rule Amendment

##### Suggested Routing

- Compliance
- Institutional
- Legal
- Options
- Senior Management
- Trading
- Training

##### Key Topic(s)

- Exercise Limits
- Options
- Position Limits

##### Referenced Rules & Notices

- NASD Rule 2860
- NTM 06-46
- NTM 06-09
- NTM 05-56
- NTM 05-31

NASD Rule 2860(b)(3)(A) imposes a ceiling or position limit on the number of conventional and standardized equity options contracts in each class on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls) that can be held or written by a member, a person associated with a member, a customer or a group of customers acting in concert.<sup>3</sup> The rule provides that the position limits for stock options are determined according to a five-tiered system in which more actively-traded stocks with larger public floats are subject to higher position limits.

Pursuant to the Pilot Program, which began March 30, 2005, and now ends March 1, 2008, unless extended ("Pilot Period"), the limits for each of the tiers remains increased as follows:

- (a) 13,500 contracts has been increased to 25,000 contracts;
- (b) 22,500 contracts has been increased to 50,000 contracts;
- (c) 31,500 contracts has been increased to 75,000 contracts;
- (d) 60,000 contracts has been increased to 200,000 contracts; and
- (e) 75,000 contracts has been increased to 250,000 contracts.

These tiers apply to both conventional and standardized options. Options exercise limits, which are set forth in NASD Rule 2860(b)(4), and which incorporate by reference the position limits in NASD Rule 2860(b)(3), also have been increased during the Pilot Period.

## Endnotes

- 1 Securities Exchange Act Release No. 56265 (August 15, 2007), 72 FR 47102 (August 22, 2007) (SR-FINRA-2007-002).
- 2 See Securities Exchange Act Release No. 55225 (February 1, 2007), 72 FR 6634 (February 12, 2007) (SR-NASD-2007-007); Securities Exchange Act Release No. 54334 (August 18, 2006), 71 FR 50961 (August 28, 2006) (SR-NASD-2006-097) (extending Pilot Program); *NASD Notice to Members 06-46* (August 2006); Securities Exchange Act Release No. 53346 (February 22, 2006), 71 FR 10580 (March 1, 2006) (SR-NASD-2006-025) (extending Pilot Program); *NASD Notice to Members 06-09* (March 2006); Securities Exchange Act Release No. 52271 (August 16, 2005), 70 FR 49344 (August 23, 2005) (SR-NASD-2005-097) (extending Pilot Program); *NASD Notice to Members 05-56* (August 2005); Securities Exchange Act Release No. 51520 (April 11, 2005), 70 FR 19977 (April 15, 2005) (SR-NASD-2005-040) (establishing Pilot Program); *NASD Notice to Members 05-31* (April 2005).
- 3 A “standardized equity option” is an equity options contract issued, or subject to issuance by, The Options Clearing Corporation that is not a FLEX Equity Option. NASD Rule 2860(b)(2)(VV). A “conventional option” is an option contract not issued, or subject to issuance by, The Options Clearing Corporation. NASD Rule 2860(b)(2)(O). The limits on standardized equity options in NASD Rule 2860 are applicable only to those FINRA member firms that are not also members of the exchange on which the option is traded; the limits on conventional options are applicable to all FINRA member firms. NASD Rule 2860(b)(1)(A).

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## ATTACHMENT A

New text is underlined; deletions are in brackets.

### 2800. SPECIAL PRODUCTS

#### 2860. Options

(a) No Change.

(b) Requirements.

(1) and (2) No Change.

(3) Position Limits

(A) Stock Options—Except in highly unusual circumstances, and with the prior written approval of NASD pursuant to the Rule 9600 Series for good cause shown in each instance, no member shall effect for any account in which such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, non-member broker, or non-member dealer, an opening transaction through Nasdaq, the over-the-counter market or on any exchange in a stock option contract of any class of stock options if the member has reason to believe that as a result of such transaction the member or partner, officer, director or employee thereof, or customer, non-member broker, or non-member dealer, would, acting alone or in concert with others, directly or indirectly, hold or control or be obligated in respect of an aggregate equity options position in excess of:

(i) 13,500 (or 25,000 during the pilot period from March 30, 2005 through [September 1, 2007]March 1, 2008 (“Pilot Period”)) option contracts of the put class and the call class on the same side of the market covering the same underlying security, combining for purposes of this position limit long positions in put options with short positions in call options, and short positions in put options with long positions in call options;

(ii) through (viii) No Change.

(B) through (D) No Change.

(4) through (24) No Change.

## Non-Tape (Or Clearing-Only) Reports

### FINRA Extends Implementation of Rule Amendments Relating to Non-Tape (Or Clearing-Only) Reports for Previously Executed Trades

Revised Effective Date: November 5, 2007

#### Executive Summary

FINRA is issuing this *Notice* to extend the effective date of the new trade reporting requirements relating to non-tape (or clearing-only) reports. This *Notice* supersedes *Regulatory Notice 07-33* (August 2007) and replaces the guidance provided in that *Notice*.

As revised, on November 5, 2007, member firms will be prohibited from submitting to a FINRA Facility any report (including but not limited to reports of step-outs and reversals) associated with a previously executed trade that was not reported to that FINRA Facility, except where such report is submitted to reflect the offsetting portion of a riskless principal transaction or an agency transaction where a firm acts as agent on behalf of another member firm.

The text of the amended rule language is available at [www.finra.org/rulefilings/2007-040](http://www.finra.org/rulefilings/2007-040).

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.

August 2007

#### Notice Type

- Rule Amendment

#### Suggested Routing

- Compliance
- Legal
- Operations
- Registered Representatives
- Senior Management
- Systems
- Trading

#### Key Topic(s)

- Agency
- Alternative Display Facility
- OTC Reporting Facility
- Riskless Principal
- Step-Outs
- Reversals
- Trade Reporting
- Trade Reporting Facilities

#### Referenced Rules & Notices

- NASD Rules 6130, 6130A, 6130C, 6130D and 6130E
- NASD Rules 4632, 4632A, 4632C, 4632D and 4632E
- NASD Rule 5000
- Regulatory Notice 07-33
- NTM 05-11
- NTM 98-40

## Background & Discussion

On June 22, 2007, FINRA filed with the Securities and Exchange Commission (SEC) for immediate effectiveness a proposed rule change amending the trade reporting requirements relating to the submission of non-tape reports (*i.e.*, the transaction is not reported to the tape for publication) and clearing-only reports (*i.e.*, the transaction is not reported to the tape but may be submitted for clearing purposes).<sup>1</sup> In *Notice 07-33*, FINRA announced that the effective date of the rule amendments would be September 4, 2007. In response to feedback from firms, FINRA is extending implementation of the rule amendments until November 5, 2007.

As amended, with certain exceptions (discussed below), the trade reporting rules prohibit firms from submitting to a FINRA Facility (*i.e.*, the Alternative Display Facility, a Trade Reporting Facility (TRF)<sup>2</sup> or the OTC Reporting Facility) any report (including but not limited to reports of step-outs<sup>3</sup> and reversals) associated with a previously executed trade that was not reported to that FINRA Facility.<sup>4</sup> Among other things, this means that a firm cannot use a FINRA Facility to step-out of an exchange trade.<sup>5</sup> For example, a clearing-only entry for a step-out relating to a trade executed on and reported through the NASDAQ Exchange cannot be submitted to the FINRA/NASDAQ TRF.<sup>6</sup> Clearing-only reports that provide for the re-allocation or cancellation of a transaction that was previously reported to an exchange can make it more difficult for FINRA to tabulate accurately the aggregate dollar amount of its covered sales for purposes of Section 31 fees.<sup>7</sup> Entry of these transactions in a FINRA Facility, when the original transaction was reported and assessed a Section 31 fee by an exchange, can result in the misalignment of Section 31 fees with the appropriate market and market participants.

Similarly, under the amended rules, firms are not permitted to report a trade to a FINRA Facility for submission to the National Securities Clearing Corporation (NSCC) for clearance and settlement purposes, if the trade was not reported to that same FINRA Facility for public dissemination or regulatory transaction fee assessment purposes. For example, except as discussed below, a member firm cannot tape report a trade to TRF A and use TRF B to clear that same trade.

Under the amended rules, there is an exception to the above-referenced prohibition for reports that reflect the offsetting, "riskless" portion of a riskless principal transaction and firms may continue to report such transactions as they do today.<sup>8</sup> For example, where the initial leg of the transaction is executed on and reported through an exchange, a tape report will not be submitted to FINRA to reflect the initial leg; however, a firm may (but is not required to) submit a non-tape (or clearing-only) report for the second leg of the transaction to FINRA. Similarly, this exception applies if a firm is acting in an agency capacity on behalf of another member firm and the report is necessary to reflect the offsetting portion of the agency transaction.<sup>9</sup> Thus, for example, similar to the riskless principal reporting structure, where Firm A, as agent for Firm B, executes a trade on an exchange (and that trade is reported to the tape through the exchange), Firm A may submit a non-tape (or clearing-only) report to FINRA to reflect the offsetting portion of the agency trade between Firm A and Firm B.

With respect to any transactions that do not fall within this exception, FINRA believes that the extended implementation date will provide sufficient time for firms to make alternative clearing arrangements, if necessary (*e.g.*, via Qualified Service Representative (QSR) agreements with NSCC).

Finally, FINRA has amended the trade reporting rules to clarify that where a tape and non-tape report for a riskless principal transaction (or, similarly, an agency transaction where a firm acts as agent on behalf of another member firm) are submitted to FINRA, firms are not required to submit both reports to the same FINRA Facility.<sup>10</sup> As discussed in FINRA's filing, the current trade reporting rules could have the unintended consequence of requiring firms to be participants in all TRFs in order to comply with the trade reporting rules.<sup>11</sup> FINRA expects that where possible, firms will submit related tape and non-tape reports to the same FINRA Facility.

## Endnotes

- 1 See Securities Exchange Act Release No. 55962 (June 26, 2007), 72 FR 36536 (July 3, 2007) (notice of filing and immediate effectiveness of SR-NASD-2007-040).
- 2 Currently, there are four TRFs in operation: the FINRA/NASDAQ TRF, the FINRA/NSX TRF, the FINRA/BSE TRF and the FINRA/NYSE TRF.
- 3 A step-out allows firms to allocate all or part of a previously executed trade to another broker-dealer. In other words, a step-out functions as a position transfer, rather than a trade; the parties are not exchanging shares and funds. The step-out function was designed and implemented to facilitate the clearing process for firms involved in these types of transactions. See, *e.g.*, *Notice to Members 05-11* (February 2005) and *Notice to Members 98-40* (May 1998).
- 4 See amendments to NASD Rules 6130 (new paragraph (i)), 6130A (new paragraph (d)), 6130C (new paragraph (h)), 6130D (new paragraph (h)) and 6130E (new paragraph (h)).
- 5 Exchange trades generally are considered trades executed on or through an exchange and are submitted for public dissemination purposes by that exchange. Trades executed by FINRA firms otherwise than on an exchange must be reported to a FINRA Facility for public dissemination purposes. See NASD Rule 5000.
- 6 Firms should consult the relevant exchanges to determine if they support such step-out functionality.
- 7 For example, as explained in *Notice to Members 05-11* (February 2005), as part of the step-out function, the transaction fee associated with a trade can be moved to the ultimate seller of the security when the trade is allocated.
- 8 For purposes of over-the-counter trade reporting requirements applicable to equity securities, a "riskless principal" transaction is a transaction in which a firm, after having received an order to buy (sell) a security, purchases (sells) the security as principal and satisfies the original order by selling (buying) as principal at the same price (the offsetting, "riskless" leg). A riskless principal transaction can be submitted as a single trade report marked as riskless principal, or as two separate reports: (1) a report that is submitted to the tape to reflect the initial leg of the transaction and (2) a non-tape (or clearing-only) report to reflect the offsetting, "riskless" leg of the transaction. See NASD Rules 4632(d)(3)(B), 4632A(e)(1)(C)(ii), 4632C(d)(3)(B), 4632D(e)(3)(B), 4632E(e)(3)(B) and 6620(d)(3)(B).

## Endnotes

- 9 Since a riskless principal transaction is the functional equivalent of this type of agency transaction, the exception for riskless principal transactions under the amended rules extends to agency transactions where a firm acts as agent on behalf of another member firm.
- 10 See amendments to NASD Rules 4632(d), 4632A(e), 4632C(d), 4632D(e) and 4632E(e).
- 11 For example, assume Firm A is only a participant of TRF A and it executes the first leg of a riskless principal transaction otherwise than on exchange with Firm B, which is only a participant of TRF B. Assume further that Firm B has the reporting obligation under the trade reporting rules. The initial leg of the riskless principal trade will be reported by Firm B to TRF B. Firm A must report the second leg of the riskless principal transaction to FINRA, but because it is not a participant of TRF B, it cannot report the second leg to TRF B. The amended rules allow Firm A to report the second leg of the transaction to TRF A.

## Order Audit Trail System (OATS)

### SEC Approves Amendments Regarding OATS Routing Method Code for Intermarket Sweep Orders

Effective Date: February 4, 2008

#### Executive Summary

Effective February 4, 2008, firms that transmit an intermarket sweep order (ISO), as defined in Regulation NMS, in an OATS-eligible security to another member firm, electronic communications network, non-member or exchange, must record and report the fact that the order was an ISO in their OATS reports.<sup>1</sup> The amendments to the OATS rules are attached to this *Notice* as Exhibit A.

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

#### Discussion

NASD Rules 6950 through 6958 (OATS Rules) impose obligations on member firms to record in electronic form and report to OATS on a daily basis certain information regarding orders in NASDAQ-listed securities originated, received, transmitted, modified, canceled or executed by FINRA member firms.<sup>2</sup> FINRA integrates the OATS information with quote and transaction information to create a time-sequenced record of orders, quotes and transactions. This information is used by FINRA in conducting surveillance and investigations of firms for violations of NASD rules and the federal securities laws.

August 2007

#### Notice Type

- Guidance

#### Suggested Routing

- Compliance
- Internal Audit
- Legal
- Operations
- Registered Representatives
- Senior Management
- Systems
- Trading

#### Key Topic(s)

- Intermarket Sweep Orders
- OATS
- Regulation NMS

#### Referenced Rules & Notices

- NASD Rules 6950 through 6958 (OATS Rules)
- NTM 06-70
- SEC Rule 611 (Order Protection Rule)

On June 9, 2005, the SEC adopted Regulation NMS, which established new substantive rules designed to modernize and strengthen the regulatory structure of the U.S. equities markets.<sup>3</sup> Among other things, Regulation NMS adopted an Order Protection Rule (SEC Rule 611) that requires trading centers to establish, maintain and enforce written policies and procedures reasonably designed to prevent the execution of trades at prices inferior to protected quotations displayed by automated trading centers, subject to applicable exceptions. One of the exceptions from the Order Protection Rule is when the transaction that constitutes a trade-through<sup>4</sup> is “effected by a trading center that simultaneously routed an intermarket sweep order to execute against the full displayed size of any protected quotation in the NMS stock that was traded through.”<sup>5</sup>

The purpose of the new amendments to the OATS rules is to require firms to record the fact that an order in an OATS-eligible security is an ISO when the firm routes an ISO to another member or non-member firm. Firms will be required to include this information in the Route Report that it submits to OATS by designating ISOs with a routing method code of “I.”<sup>6</sup> This requirement will ensure that FINRA knows that the order was an ISO and can utilize that information when reviewing audit trails to ensure compliance with Regulation NMS.

The new ISO routing method code applies only to those orders required to be recorded and reported to FINRA pursuant to the OATS Rules. The new requirements do not require firms to submit Route Reports for all ISOs.

Firms are required to use the ISO routing method code of “I” on Route Reports beginning February 4, 2008. However, the routing method code is already currently available for use by firms, and firms are encouraged to use the code on their Route Reports as soon as possible to facilitate FINRA’s ability to determine whether a trade is made in reliance on an ISO exception from the Order Protection Rule.<sup>7</sup>

In addition, FINRA is reminding firms of the current requirement to identify ISOs in OATS New Order Reports. Specifically, NASD Rule 6954(b)(15) requires firms to include in New Order Reports any “special handling requests, specified by [FINRA] for purposes of this Rule.” Pursuant to that provision, the *OATS Reporting Technical Specifications* now include a new special handling code (“ISO”) for ISOs in New Order Reports, which must be used when a firm relies on the exception from the Order Protection Rule for a transaction that “was the execution of an order identified as an intermarket sweep order.”

## Endnotes

- 1 Securities Exchange Act Release No. 56003 (July 2, 2007), 72 FR 37287 (July 9, 2007) (SR-NASD-2007-028).
- 2 Beginning on February 4, 2008, member firms also will be required to record and report order information regarding all OTC equity securities, as defined in NASD Rule 6951. *See* Securities Exchange Act Release No. 54585 (October 10, 2006); 71 FR 61112 (October 17, 2006) (SR-NASD-2005-101); NASD *Notice to Members 06-70* (December 2006); *see also* Securities Exchange Act Release No. 55440 (March 9, 2007), 72 FR 12852 (March 19, 2007) (SR-NASD-2007-019).
- 3 Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).
- 4 A “trade-through” is “the purchase or sale of an NMS stock during regular trading hours, either as principal or agent, at a price that is lower than a protected bid or higher than a protected offer.” *See* 17 CFR 242.600(b)(77).
- 5 *See* 17 CFR 242.611(b)(6). The phrase “intermarket sweep order” is defined in SEC Rule 600(b)(30) as “a limit order for an NMS stock that meets the following requirements: (i) When routed to a trading center, the limit order is identified as an intermarket sweep order; and (ii) Simultaneously with the routing of the limit order identified as an intermarket sweep order, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the NMS stock with a price that is superior to the limit price of the limit order identified as an intermarket sweep order. These additional routed orders must also be marked as intermarket sweep orders.” The amendments to the OATS Rules adopt this same definition of intermarket sweep order.
- 6 When a member firm transmits an order in an OATS-eligible security to another member, electronic communications network, non-member, or exchange for handling or execution, the routing member is required to submit a Route Report to FINRA. The categories of information that a firm must include in a Route Report are set forth in NASD Rule 6954(c) and in the *OATS Reporting Technical Specifications* published by FINRA.
- 7 For further guidance on the use of the “I” routing method code and the “ISO” special handling code, see “Additional Guidance Regarding the OATS Routing Method Code of ‘I’ and Special Handling Code of ‘ISO,’” which is available on FINRA’s OATS Web page at [www.finra.org/RegulatorySystems/OATS/OATSReportIndex/p019397](http://www.finra.org/RegulatorySystems/OATS/OATSReportIndex/p019397). Firms may also wish to consult the *OATS Reporting Technical Specifications* for further information.

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## EXHIBIT A

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

### 6950. ORDER AUDIT TRAIL SYSTEM

#### 6951. Definitions

For purposes of the Rule 6950 Series:

(a) through (g) No change.

(h) “Intermarket sweep order” shall have the same meaning as contained in SEC Rule 600(b)(30) adopted pursuant to the Act.

(h) through (n) are designated as (i) through (o).

\* \* \* \* \*

#### 6954. Recording of Order Information

(a) through (b) No change.

##### (c) Order Transmittal

Order information required to be recorded under this Rule when an order is transmitted includes the following.

(1) No change.

(2) When a member electronically transmits an order to another member, other than an order transmitted electronically for execution on an Electronic Communications Network:

(A) the transmitting Reporting Member shall record:

(i) through (iv) No change.

(v) the date and time the order is transmitted, [and]

(vi) the number of shares to which the transmission applies,[:] and

(vii) whether the order is an intermarket sweep order;  
and

(B) No change.

(3) When a member electronically transmits an order for execution on an Electronic Communications Network:

(A) the transmitting Reporting Member shall record:

(i) through (v) No change.

(vi) the date and time the order is transmitted, [and]

(vii) the number of shares to which the transmission applies, [;] and

(viii) whether the order is an intermarket sweep order; and

(B) No change.

(4) When a member manually transmits an order to another member, other than to an Electronic Communications Network:

(A) the transmitting Reporting Member shall record:

(i) through (vi) No change.

(vii) the number of shares to which the transmission applies, [and]

(viii) for each order to be included in a bunched order, the bunched order route indicator assigned to the bunched order by the Reporting Member, [;] and

(ix) whether the order is an intermarket sweep order; and

(B) No change.

(5) When a member manually transmits an order to an Electronic Communications Network:

(A) the transmitting Reporting Member shall record:

(i) through (vi) No change.

(vii) the number of shares to which the transmission applies, [and]

(viii) for each order to be included in a bunched order, the bunched order route indicator assigned to the bunched order by the Reporting Member, [;] and

(ix) whether the order is an intermarket sweep order; and

(B) No change.

(6) When a member transmits an order to a non-member, including but not limited to a national securities exchange, the Reporting Member shall record:

(A) through (G) No change.

(H) the routed order identifier or other unique identifier required by the non-member receiving the order, as applicable, [and]

(I) identification of the non-member where the trade was transmitted, and[.]

(J) whether the order is an intermarket sweep order.

## Three Quote Rule

### SEC Approves Exception to Three Quote Rule and Related Recordkeeping Requirements for Certain Foreign Securities

Effective Date: September 28, 2007

#### Executive Summary

Effective September 28, 2007, transactions in non-exchange-listed securities of a foreign issuer that is part of the FTSE All-World Index will be excluded from the application of Rule 2320(g) (Three Quote Rule) and Rule 3110(b) (Marking of Customer Order Tickets).<sup>1</sup> Also as of September 28, 2007, customer transactions in non-exchange-listed securities listed on a Canadian exchange will be excluded from the application of Rules 2320(g) and 3110(b), subject to certain conditions. NASD Rules 2320(g) and 3110(b), as amended, are set forth in Attachment A of this *Notice*.

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.

#### Discussion

The Three Quote Rule originally was adopted on May 2, 1988,<sup>2</sup> as an amendment to FINRA's best execution rule and generally requires that firms that execute transactions in non-exchange-listed securities<sup>3</sup> on behalf of customers contact a minimum of three dealers (or all dealers if three or less) and obtain quotations, if there are fewer than two quotations displayed on an inter-dealer quotation system that permits quotation updates on a real-time basis. The Three Quote Rule further defined a firm's best execution obligation to customers by setting forth additional requirements for transactions in non-exchange-listed securities, particularly transactions involving relatively illiquid securities with non-transparent prices.

#### August 2007

##### Notice Type

- Rule Amendment

##### Suggested Routing

- Compliance
- Executive Representatives
- Legal
- Operations
- Senior Management
- Systems
- Trading
- Training

##### Key Topic(s)

- Books and Records
- Foreign Securities
- Three Quote Rule

##### Referenced Rules & Notices

- NASD Rule 2320
- NASD Rule 2310
- NASD Rule 3110
- NASD Rule 6610

Since the adoption of the Three Quote Rule, the market for non-exchange-listed securities has changed significantly. FINRA has found that under certain circumstances, the Three Quote Rule can hinder, rather than further, compliance with the duty of best execution by causing significant delays in obtaining executions of customer orders, particularly orders in securities of foreign issuers. Accordingly, FINRA proposed, and the SEC approved, amendments that exclude from the application of the Three Quote Rule transactions effected in non-exchange-listed securities of foreign issuers that are part of the FTSE All-World Index.<sup>4</sup>

As amended, a firm is not subject to the Three Quote Rule in connection with transactions in non-exchange-listed securities of a foreign issuer that are part of the FTSE All-World Index. To qualify for the exception, the transaction must be executed during regular business hours of the foreign market for the security and no trading halt or other similar trading or quotation restriction may be in effect in any foreign market on which such foreign security is listed.

The amendments also codify existing exemptive relief relating to the application of the Three Quote Rule for customer transactions in Canadian securities executed on a Canadian exchange. As amended, a member firm is not subject to the Three Quote Rule in connection with any transaction for or with a customer in a non-exchange-listed security executed on a Canadian exchange, provided that (i) the firm or person associated with the firm conducts, pursuant to Rule 2320(a) and the duty of best execution, regular and rigorous reviews of the quality of the execution of such orders in such securities, and (ii) the orders are executed either in an agency or riskless principal capacity.

The amendments also provide a corresponding exclusion to the recordkeeping requirements set forth in Rule 3110(b) if the member can establish and document its reliance on the exclusions to the Three Quote Rule.<sup>5</sup> Firms continue to be required to comply with, among other rules, their best execution obligations under Rule 2320(a), and to the extent applicable, their suitability obligations under Rule 2310 (Recommendations to Customers).

The amendments to Rules 2320(g) and 3110(b) become effective on September 28, 2007.

## Endnotes

- 1 See Securities Exchange Act Release No. 56004 (July 2, 2007), 72 FR 37285 (July 9, 2007) (order approving SR-NASD-2004-130).
- 2 See Securities Exchange Act Release No. 25637 (May 2, 1988), 53 FR 16488 (May 9, 1988).
- 3 A non-exchange-listed security is defined in Rule 6610 as generally any equity security that is not traded on any national securities exchange.
- 4 The Financial Times and the London Stock Exchange operate the FTSE All-World Index. The FTSE All-World Index includes 48 different countries and approximately 3,000 securities. Securities included in the FTSE All-World Index can be obtained from the monthly FTSE All-World Review under the "Country Details" section of the review. The FTSE All-World Review is available for free on the on FTSE's Web site at <http://www.ftse.com> by registering to access the data. Daily updated constituent lists are also available to paying subscribers from FTSE and other data vendors. See Exhibit 2 to Amendment No. 2 to SR-NASD-2004-130 for a detailed description. Additional information also is available on FTSE's Web site at <http://www.ftse.com>.
- 5 Rule 3110(b) requires that members indicate on the order ticket for each transaction in a non-exchange-listed security the name of each dealer contacted and the quotations received to determine the best inter-dealer market as required by the Three Quote Rule.

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## ATTACHMENT A

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

### 2320. Best Execution and Interpositioning

(a) through (f) No Change.

(g) (1) Except as provided in subparagraph (3) below, [Unless two or more priced quotations for a non-exchange-listed security (as defined in the Rule 6600 Series) are displayed in an inter-dealer quotation system that permits quotation updates on a real-time basis,] in any transaction for or with a customer pertaining to the execution of an order in a non-exchange-listed security (as defined in the Rule 6600 Series), a member or person associated with a member shall contact and obtain quotations from three dealers (or all dealers if three or less) to determine the best inter-dealer market for the subject security.

(2) No Change.

(3) The requirements described in subparagraph (1) above shall not apply:

(A) when two or more priced quotations for a non-exchange-listed security are displayed in an inter-dealer quotation system that permits quotation updates on a real-time basis; or

(B) to any transaction for or with a customer pertaining to the execution of an order in a non-exchange-listed security of a foreign issuer that is part of the FTSE All-World Index if such transaction is executed during the regular business hours of the foreign market for the foreign security and no trading halt or other similar trading or quoting restriction is in effect in any foreign market on which such foreign security is listed; or

(C) to any transaction for or with a customer pertaining to the execution of an order in a non-exchange-listed security that is listed on a Canadian exchange, provided that (i) such order is executed by the member or a person associated with the member on a Canadian exchange in an agency or riskless principal capacity; and (ii) the member or a person associated with the member conducts, pursuant to NASD Rule 2320(a) and the duty of best execution, regular and rigorous reviews of the quality of the execution of such orders in such securities.

(4) Definitions

For purposes of this paragraph (g):[,]

(A) I[t]he term “inter-dealer quotation system” means any system of general circulation to brokers or dealers that regularly disseminates quotations of identified brokers or dealers.

(B) [(4) For purposes of this paragraph,] I[t]he term “quotation medium” means any inter-dealer quotation system or any publication or electronic communications network or other device that is used by brokers or dealers to make known to others their interest in transactions in any security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell.

(5) No Change.

\* \* \* \* \*

### **3110. Books and Records**

(a) No Change.

**(b) Marking of Customer Order Tickets**

A person associated with a member shall indicate on the memorandum for each transaction in a non-exchange-listed security, as that term is defined in the Rule 6600 Series, the name of each dealer contacted and the quotations received to determine the best inter-dealer market; however, the requirements of this subparagraph shall not apply if the member can establish and has documented that:

(1) two or more priced quotations for the security are displayed in an inter-dealer quotation system, as defined in Rule 2320(g), that permits quotation updates on a real-time basis for which NASD [Regulation] has access to historical quotation information; or

(2) the transaction is effected in compliance with Rule 2320(g)(3)(B) or (C).

(c) through (j) No Change.

# Election Notice

## Nominees for FINRA Board of Governors

August 2007

### Suggested Routing

- Executive Representatives
- Senior Management

### Executive Summary

The first Annual Meeting of the Financial Industry Regulatory Authority (FINRA) members will be October 26, 2007.

The formal notice of the meeting, including the time and location, will be mailed on or about September 21, 2007. The individuals nominated by the former NASD Board of Governors and/or the Board of Directors of NYSE Group, Inc. for election to the FINRA Board of Governors (FINRA Board) are identified in this *Election Notice*.

Pursuant to Article VII, Section 10 of the FINRA By-Laws, a person who has not been so nominated for election to the FINRA Board may be included on the ballot for the election of governors if:

- within 45 days after the date of this *Election Notice*, such person presents to the Corporate Secretary petitions in support of such nomination, duly executed by at least three percent of FINRA members entitled to vote for such nominee's election. Members may only endorse persons for the category in which they are entitled to vote. No member may endorse more than one such nominee. If, however, a candidate's name appears on a petition in support of a slate of more than one nominee, the slate must be endorsed by 10 percent of FINRA's voting members entitled to vote for such nominees' election; and
- the Corporate Secretary certifies that such petitions have been duly executed by the executive representatives of the requisite number of FINRA members entitled to vote for such person's election, and the person being nominated satisfies the classification of the governorship to be filled based on the information provided by the person as is reasonably necessary for the Corporate Secretary to make the certification.

The number of FINRA Small, Mid-Size and Large Firms as of close of business on August 2, 2007, as well as the requisite number of firms required to meet the above-referenced thresholds, can be found on FINRA's Web site at [www.finra.org/notices/election/080307](http://www.finra.org/notices/election/080307).

Persons submitting petitions must provide information sufficient for the Corporate Secretary to determine the person's status with respect to the category for which he or she is nominated. Please note that if a petition slate includes persons from different firm size categories, signatures of 10 percent of each respective firm class size are required.

## Composition of the Board

Pursuant to Article XXII, Section 2 of the FINRA By-Laws, during the Transitional Period,<sup>1</sup> the FINRA Board shall consist of 23 members, including:

- ▶ the Chief Executive Officer of FINRA;
- ▶ the Chief Executive Officer of NYSE Regulation, Inc.<sup>2</sup>;
- ▶ 11 Public Governors;
- ▶ one Floor Member Governor;
- ▶ one Independent Dealer/Insurance Affiliate Governor;
- ▶ one Investment Company Affiliate Governor;
- ▶ three Small Firm Governors;
- ▶ one Mid-Size Firm Governor; and
- ▶ three Large Firm Governors.

Of the 23 Board members, the three Small Firm Governors, one Mid-Size Firm Governor and three Large Firm Governors will be elected as Governors at the first Annual Meeting of members following the Closing (the Annual Meeting will be October 26, 2007), and, subject to certain qualifications,<sup>3</sup> will hold office until the first Annual Meeting of members following the Transitional Period.

To be eligible to serve, Large Firm Governors must be registered with Large Firms, Small Firm Governors must be registered with Small Firms, and the Mid-Size Firm Governor must be registered with a Mid-Size Firm. In order for the Board to maintain compliance with the compositional requirements of the FINRA By-Laws, the seven elected Board members have a continuing obligation to satisfy the firm-size classification throughout the entire term for which the Governor is elected. Pursuant to Article I of FINRA's By-Laws, firm sizes are defined as follows:

- ▶ a Large Firm is defined as a member that employs 500 or more registered persons<sup>4</sup>;
- ▶ a Mid-Size Firm is defined as a member that employs at least 151 and no more than 499 registered persons<sup>5</sup>; and
- ▶ a Small Firm is defined as a member that employs at least one and no more than 150 registered persons.<sup>6</sup>

The By-Laws expressly provide that the term of office of a Governor shall terminate immediately upon a determination by the Board, by a majority vote of the remaining Governors, that the Governor no longer satisfies the classification for which the Governor was elected. Individuals seeking nomination for the Large, Small and Mid-Size Firm seats also have an obligation to satisfy the firm-size classification on the date the petition is circulated, the date the petition is certified by the Corporate Secretary and the date of the Annual Meeting. Individuals who fail to meet this requirement will be disqualified from election.

### Voting Eligibility

Member firms are eligible to vote for the industry nominees who are running for seats that are in the same size category as their own firm. Therefore, Small Firms and Large Firms may vote only for the candidates running for the seats reserved for their firm size, and Mid-Size Firms will likewise vote only for the Mid-Size Firm seat.

The size of each firm will be verified on the day the ballots are mailed. Each firm eligible to vote will receive a ballot containing the nominees for their voting class.

### Questions/Further Information

Questions regarding this *Election Notice* may be directed to:

**Barbara Z. Sweeney**

Senior Vice President and Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506  
(202) 728-8062

or

**T. Grant Callery**

Executive Vice President and General Counsel  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506  
(202) 728-8285

## FINRA Board of Governors Nominees

The following seven persons (see profiles below) have been nominated by the NASD Board of Governors and/or NYSE Group Board of Directors pursuant to Article XXII, Section 4 of the FINRA By-Laws to serve on the FINRA Board. The elected individuals will serve until the first Annual Meeting of members following the Transitional Period, or until their successors are duly elected or qualified, or until death, resignation, disqualification or removal.<sup>7</sup>

The Transitional Period will conclude on July 30, 2010.

### Small Firm

<b>Robert A. Muh</b>	CEO, Sutter Securities, Inc.
<b>G. Donald Steel</b>	President, Planned Investment Company, Inc.
<b>Duncan F. Williams</b>	President, Duncan-Williams, Inc.

### Mid-Size Firm

<b>W. Dennis Ferguson</b>	Executive Vice President and Director of Clearing, Sterne, Agee & Leach, Inc.
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### Large Firm

<b>Richard F. Brueckner</b>	CEO, Pershing LLC
<b>Robert J. McCann</b>	President, Merrill Lynch Global Private Client Group
<b>Thomas A. Russo</b>	Vice Chairman and Chief Legal Officer, Lehman Brothers Inc.

## Profiles of FINRA Board Nominees for Small Firm Governors

**Robert A. Muh** is a co-founder and CEO of Sutter Securities Inc., which was founded in 1992 and is located in San Francisco, California. Sutter Securities is a full-service investment banking company that assists clients in the areas of financial advisory services, mergers and acquisitions, fairness opinions, litigation support and securities trading. From 1988 until founding Sutter Securities, Mr. Muh was a private investor serving on numerous public and private boards of directors. From 1978 to 1987, he was with Bear, Stearns & Co., where he started the corporate finance department in Los Angeles, became a general partner, and then headed the firm's San Francisco region where he oversaw all trading, retail and corporate finance activities of over 200 people. Prior to joining Bear, Stearns, Mr. Muh was Chairman of Newburger, Loeb & Co. from 1971 to 1973 and a management consultant with McKinsey & Company from 1966 to 1969. He received a Bachelor of Science from Massachusetts Institute of Technology in 1959, a Master of Business Administration and a Master of Philosophy from Columbia University in 1965.

**G. Donald Steel** is the President of Planned Investment Company, Inc., a small Broker-Dealer and RIA firm based out of Indianapolis, Indiana. Mr. Steel has been a Producing Manager since 1980 and the firm's President since 1987. Planned Investment Company conducts fund and variable annuity direct business and listed business clearing through Mesirow Financial, Inc. Mr. Steel was a member of the NASD District 8 Committee from 1990 to 1991 and was Chairman of that committee in 1992. He is an Industry/Non-Public FINRA Arbitrator and is a member of the FINRA Membership Committee and the FINRA Small Firm Advisory Board. Mr. Steel previously served on the Net Capital Task Force in 2005 and on the Small Firm Business Continuity Task Force from 2006 to 2007. Mr. Steel served for 30 years in the U.S. Navy both as an active and reserve Naval Flight Officer. He retired in 2002 as a Captain. Mr. Steel has been the Board Chairman of three United Way Agencies, including The Salvation Army. He chaired the building of the USS Indianapolis (CA-35) National Memorial, and was a National Vice President of the Navy League of the U.S. He is a past President of the Kiwanis Club of Indianapolis. Mr. Steel graduated with a Bachelor's degree in Soviet Studies and General Engineering in 1975 from the U.S. Naval Academy. He received his Naval Flight Officer Wings in 1977, and attended the Naval Justice School.

**Duncan F. Williams** is the President of Duncan-Williams, Inc. of Memphis, Tennessee. Mr. Williams has been with the firm since 1993 and has served as President since 2000. Duncan-Williams, Inc. is a regional investment-banking firm. Since its founding in 1969 as a municipal bond dealer, the company has expanded in sales, finance and underwriting of all fixed income securities to the general public and financial institutions. Mr. Williams is a current member of the FINRA Small Firm Advisory Board, a member of the FINRA Small Firms Impact Task Force and the FINRA Small Firm Emergency Partner Program Working Group. He served on the NASD District Nominating Committee from 2002 to 2004. From 1999 to 2002, he served on the NASD District Business Conduct Committee and was the committee's chairman in 2002. He is currently a Board Member of the Leadership Academy in Memphis, a member of the Memphis Economic Club, and an Advisory Board Member of SunTrust Bank. Mr. Williams graduated from the University of Alabama in 1990 and is a member of the President's Cabinet, Commerce Executive Society and the Board of Visitors at the University of Alabama.

## Profile of FINRA Board Nominee for Mid-Size Firm Governor

**W. Dennis Ferguson** is Executive Vice President and Director of Clearing for Sterne, Agee & Leach, Inc. in Boca Raton, Florida. He is also President of Sterne Agee Capital Markets, which provides execution and fully disclosed clearing services. Mr. Ferguson is also Chairman of the FINRA National Adjudicatory Council (NAC). He started in the securities industry in 1970. Since 1982, he has worked in the clearing services arena and has served the industry through the Securities Industry and Financial Markets Association (SIFMA) as a member of the Clearing Firms Committee and the Membership Committee, both of which he has previously chaired. From 1995 to 1996 he was President of the Florida Securities Dealers Association. Mr. Ferguson previously has served NASD as Chairman of the District Committee for District 7 and as a member of the Membership, Financial Responsibility, and Uniform Practice Code Committees. Mr. Ferguson graduated from Florida Southern College and did graduate work at Florida Atlantic University.

## Profile of FINRA Board Nominees for Large Firm Governors

**Richard F. Brueckner** is Chairman and Chief Executive Officer of Pershing LLC, a wholly owned subsidiary of The Bank of New York Mellon Corporation (BNY). Pershing offers an extensive range of investment products and services that enable financial organizations and their investment professionals to compete successfully in the marketplace. Mr. Brueckner joined BNY in May 2003 when BNY acquired Pershing from Credit Suisse First Boston. He served as CEO of Pershing and as a member of the CSFB Executive Board after CSFB's acquisition of Donaldson, Lufkin and Jenrette (DLJ) and Pershing in November 2000. Mr. Brueckner joined DLJ in 1978 and held a variety of senior management positions in administration, finance, marketing and operations at DLJ and Pershing. Prior to 1978, he was in the management group of the Investment Services Department of KPMG Peat Marwick. Mr. Brueckner served as Chairman of the Securities Industry Foundation for Economic Education and is a trustee of its successor organization, Foundation for Investor Education. He is an officer and a director of the Securities Industry and Financial Markets Association (SIFMA) and has served as the founding Chairman of the Clearing Firms Committee, Chairman of the Membership Committee and Chairman of the New York District. He has also served on various boards and committees of the NASD and as Chairman of the NAC. Mr. Brueckner holds a B.A. in Economics from Muhlenberg College, where he is Chairman of the Board of Trustees. He is also a CPA.

**Robert J. McCann** is President of Merrill Lynch's Global Private Client Group, which provides investment, insurance, banking and retirement services for individuals and businesses. He was appointed to this position in 2005. He joined Merrill in 1982 as an associate in the M.B.A. Sales & Trading program. From August 2003 until June 2005, he served as Vice Chairman of the firm's Wealth Management Group, overseeing Global Private Client, Merrill Lynch Investment Managers and Global Securities Research and Economics. Previously, Mr. McCann was head of Global Securities Research and Economics, responsible for all equity, fixed income and macro analysts and strategists worldwide. During this time, he led efforts to restructure and refocus the company's research activities. From September 2000 to October 2001, he served as Chief Operating Officer of the Global Markets and Investment Banking Group and was head of the Global Institutional Client Division prior to that. Additionally, Mr. McCann led the Global Equity Markets division from 1995 to 1998. Mr. McCann is a member of the Board of Trustees of Bethany College and the Board of Directors of the Securities Industry and Financial Markets Association (SIFMA). He serves on the Executive Committee of the Board of Directors of the American Ireland Fund and as a consultant to the Administration of the Patrimony of the Apostolic See (A.P.S.A). Mr. McCann is also Chairman of the Sponsors for Educational Opportunity (SEO) Executive Advisory Board. Mr. McCann received his Bachelor's degree from Bethany College and a M.B.A. from Texas Christian University.

**Thomas A. Russo** is Vice Chairman and Chief Legal Officer of Lehman Brothers Inc. He is responsible for the Firm's Corporate Advisory Division, which includes Legal, Compliance, Corporate Audit, Government Relations and Transaction Management. Prior to joining Lehman Brothers in 1993, Mr. Russo was a partner at Cadwalader, Wickersham & Taft. Previously, Mr. Russo was the Director of the Commodity Futures Trading Commission's Division of Trading and Markets and worked as an attorney in the Division of Market Regulation at the Securities and Exchange Commission. He is Chairman of the Executive Committee of the Board of Trustees of the Institute of International Education, a member of the Executive Committee of the March of Dimes, Vice Chairman of the Board of Trustees of The Institute for Financial Markets and a member of the Committee on Capital Markets Regulation. Mr. Russo earned a B.A. (Phi Beta Kappa) from Fordham University, a J.D. from Cornell Law School and an M.B.A. from Cornell University's Johnson School of Management.

## Endnotes

- 1 Pursuant to Article I (zz) of the FINRA By-Laws, the Transitional Period means the period commencing on the date of the Closing and ending on the third anniversary of the date of the Closing; however, the initial member-elected Governors shall hold office, subject to certain qualifications, until the first Annual Meeting of members following the Transitional Period. *See* Article XXII, Section 3 of the FINRA By-Laws.
- 2 During the Transitional Period, the Chairman of the Board shall be the Chief Executive Officer of NYSE Regulation, Inc. as of Closing.
- 3 *See* Article XXII, Section 3 of the FINRA By-Laws.
- 4 *See* Article I (y) of the FINRA By-Laws.
- 5 *See* Article I (cc) of the FINRA By-Laws.
- 6 *See* Article I (ww) of the FINRA By-Laws.
- 7 *See* Article XXII, Section 3 of the FINRA By-Laws.

# Disciplinary and Other FINRA Actions

NASD investigated and/or settled the following disciplinary actions prior to the creation of FINRA, which consolidated NASD and the member regulation functions of the New York Stock Exchange.

## Firm and Individual Sanctioned

**K.W. Chambers & Co. (CRD #1432, Clayton, Missouri) and Greg Alfred Overschmidt (CRD #1160877, Registered Principal, Union, Missouri)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, ordered to pay \$40,000 in partial restitution to public customers and required to revise its written supervisory procedures relating to public appearances, opening new customer accounts and exercising discretion in executing customer orders. Overschmidt was fined \$5,000 and suspended from association with any NASD member in a principal or supervisory capacity for 10 business days. Without admitting or denying the findings, the firm and Overschmidt consented to the described sanctions and to the entry of findings that they failed to establish, implement and maintain a supervisory system reasonably designed to achieve compliance with applicable securities laws and regulations to supervise the types of business in which the firm engages, and to supervise the activities of its registered representatives relating to public appearances, opening new customer accounts and exercising discretion in executing customer orders.

The suspension in a principal or supervisory capacity was in effect from July 16, 2007, through July 27, 2007. (NASD Case #20050002644-01)

## Firm Fined, Individuals Sanctioned

**Brookstreet Securities Corporation (CRD #14667, Irvine, California) Stanley Clifton Brooks (CRD #31684, Registered Principal, San Clemente, California) and Kathleen Margaret McPherson (CRD #1526361, Registered Principal, San Diego, California)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$200,000, of which \$25,000 was jointly and severally with McPherson, and required to retain an independent examiner to conduct an audit to assess the effectiveness of its system and procedures for ensuring the timely filing of amendments to Uniform Applications for Securities Industry Registration or Transfer (Forms U4) and Uniform Termination Notices for Securities Industry Registration (Forms U5) and initial U5 termination filings, and required to implement and certify changes in its supervisory system and personnel. Brooks was fined \$35,000 and suspended from association with any NASD (and now, FINRA) member in any supervisory capacity for 60 days and McPherson was suspended from association with any NASD (and now, FINRA) member in any principal capacity for 45 days.

## Reported for August 2007

FINRA® 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).

Without admitting or denying the findings, the firm, Brooks and McPherson consented to the described sanctions and to the entry of findings that the firm failed to file, in a timely manner, Form U4/U5 amendments and initial Form U5 termination filings as NASD By-Laws require. The findings stated that the firm did not have adequate policies or procedures designed to ensure reportable items were forwarded to the firm's registration department and filed in a timely manner with NASD. The findings also stated that the firm's policies and procedures failed to enumerate which types of events are reportable, had no system to monitor timely filing of Forms U4/U5 and to provide for supervisory reviews for compliance. The findings also included that Brooks and McPherson assigned responsibility for filing amendments to a non-registered clerical employee, and the firm did not have adequate policies or procedures with respect to the individual's duties. NASD found that the firm submitted Form U4/U5 amendments with electronic signatures before a registered principal of the firm received, reviewed and approved the amendments. NASD also found that Brooks signed U4/U5 amendments although he did not supervise registration functions related to filing of Forms U4/U5 or amendments, and approved of the firm's registration department submitting Form U4/U5 filings with his electronic signature before he received, reviewed or signed these filings.

Brooks' suspension in any supervisory capacity will be in effect from March 6, 2008, through May 4, 2008. McPherson's suspension in any principal capacity is in effect from July 16, 2007, through August 29, 2007. (NASD Case #EAF0400570001)

### Firms and Individuals Fined

**Boening & Scattergood, Inc. (CRD #100, West Conshohocken, Pennsylvania), Thomas John Chanler (CRD #44417, Registered Principal, Glenside, Pennsylvania) and James Still (CRD #5083890, Registered Principal, Oreland, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent in which the firm, Chanler and Still were censured. The firm was fined \$20,000, \$15,000 of which was jointly and severally with Chanler. Still was fined \$10,000. Without admitting or denying the findings, the firm, Chanler and Still consented to the described sanctions and to the entry of findings that the firm, acting through Chanler, permitted Still to engage in the firm's investment banking and securities business without being registered with NASD. The findings stated that the firm, acting through Chanler, permitted Still to head its Investment Banking Department and to engage in conduct that required registration as a general securities principal, even though he was not registered with NASD in any capacity. The findings also stated that the firm failed to timely report transactions in Trade Reporting and Compliance Engine (TRACE) eligible securities. (NASD Case #2006003777301)

**Gem Advisors, Inc. (CRD #20624, New York, New York) and Julio Alfonso Marquez (CRD #2261430, Registered Principal, New York, New York)** submitted an Offer of Settlement in which the firm and Marquez were censured and fined \$15,000, jointly and severally. The firm was fined an additional \$2,500. Without admitting or denying the allegations, the firm and Marquez consented to the described sanctions and to the entry of findings that they failed to employ a registered Financial and Operations Principal (FINOP). The findings stated that the firm was deficient in that it had failed to employ at least two registered general securities principals with respect to each aspect of the firm's investment banking and securities business for more than two years and 10 months

before applying for a waiver of the requirement. The findings also stated that the firm failed to timely file a Financial and Operational Combined Uniform Single (FOCUS) report. (NASD Case # 20050024626-02)

**Park Financial Group, Inc., (CRD #30582, Maitland, Florida) and Gordon Charles Cantley (CRD #1453986, Registered Principal, Winter Park, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which the firm and Cantley were censured and fined \$12,500, jointly and severally. Without admitting or denying the findings, the firm and Cantley consented to the described sanctions and to the entry of findings that the firm, acting through Cantley, conducted a securities business while failing to maintain its minimum required net capital. The findings stated that the firm, acting through Cantley, failed to timely file notice pursuant to Securities and Exchange Commission (SEC) Rule 17a-11 that the firm's net capital had fallen below its required net capital, and filed a materially inaccurate notice stating that the firm was below its required net capital. The findings also stated that the firm, acting through Cantley, filed materially inaccurate FOCUS Reports, Part II. The findings also included that the firm, acting through Cantley, prepared and maintained materially inaccurate net capital computations. (NASD Case #2005002871201)

**Source Capital Group, Inc. (CRD #36719, Westport, Connecticut), John Philip Boesel III (CRD #714245, Registered Principal, Phoenix, Arizona) and Joseph Ezekiel Blankenship II (CRD #1176131, Registered Representative, Scottsdale, Arizona)** submitted a Letter of Acceptance, Waiver and Consent in which the firm, Boesel and Blankenship were censured and the firm was fined \$20,000, \$10,000 of which was jointly and severally with Boesel and \$10,000 was jointly and severally with Blankenship. Blankenship was fined an additional \$5,000. Without admitting or denying the findings, the firm, Boesel and Blankenship consented to the described sanctions and to the entry of findings that the firm, acting through Blankenship, sent drafts of a research report prior to its issuance to the subject company that included the research summary, research rating and price target. The findings stated that Blankenship, as the author of the research report, was restricted from purchasing the company's stock 30 days prior to the issuance of the report but acquired stock from the company prior to issuance. The findings also stated that Blankenship, inconsistent with his buy recommendation in the research report, then sold his shares. The findings also included that the firm, acting through Blankenship, issued the research report and failed to disclose Blankenship's acquisition of the shares of stock from the company. NASD found that the firm, acting through Boesel, failed to implement the firm's written supervisory procedures to ensure that the firm and its employees complied with the provisions of NASD Rule 2711. (NASD Case #2006003803601)

## Firms Fined

**Abner Herrman & Brock, LLC aka Abner Herrman & Brock, Inc. (CRD #8517, Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it effected TRACE-eligible securities transactions without a TRACE participant application agreement in place and did not report any of the transactions securities to TRACE. (NASD Case #2006003810002)

**ABN Amro Incorporated (CRD #15776, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$20,000 and required to revise its written supervisory procedures regarding registration, handling of customer orders in Consolidated Quotations Services System (CQS) securities, best execution, anti-competitive practices, short sales, trading halts, the Order Audit Trail System (OATS), trade reporting, Chinese Walls and SEC Rules 605 and 606. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to provide written notification disclosing to its customers that transactions were executed at an average price. The findings stated that the firm transmitted reports related to orders that contained inaccurate, incomplete or improperly formatted data to OATS. 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 registration, handling of customer orders in CQS securities, best execution, anti-competitive practices, short sales, trading halts, OATS, trade reporting, Chinese Walls and SEC Rules 605 and 606. **(NASD Case #20050033029-01)**

**ADP Clearing & Outsourcing Services, Inc. nka Ridge Clearing & Outsourcing Solutions, Inc. (CRD #13071, Lake Success, 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 that contained inaccurate, incomplete or improperly formatted data to OATS. The findings stated that the firm failed to enforce its written supervisory procedures with regard to OATS. **(NASD Case #20050032231-01)**

**American Skandia Marketing, Inc. (CRD 21570, Shelton, Connecticut)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$75,000 and required to review its procedures regarding Web CRD searches 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 it failed to maintain and preserve all of its electronic communications as SEC Rule 17a-4 requires. The findings stated that the firm's supervisory system and procedures were not reasonably designed to ensure that the required written consent for Web CRD searches was retained by the firm. **(NASD Case #E112005005201)**

**Assent LLC (CRD #104162, Hoboken, New Jersey)** 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 failed to submit accurate trading information through the submission of electronic blue sheets in response to NASD requests. 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 the submission of electronic blue sheet data. **(NASD Case #20050017652-02)**

**Axiom Capital Management, Inc. (CRD #26580, 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, while engaged in options trading, it failed to

designate a Compliance Registered Options Principal (CROP) who had no sales functions. The findings stated that the firm failed to maintain securities order memoranda containing the required time stamps. **(NASD Case #E1020050032-01)**

**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 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 repair Reportable Order Events (ROEs) that OATS rejected for context and syntax errors. **(NASD Case #20050017881-01)**

**BMO Capital Markets Corp. (CRD #16686, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to immediately display customer limit orders in NASDAQ securities in its public quotation when each order was at a price that would have improved the firm's bid or offer in each security; 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 failed, within 90 seconds after execution, to transmit last sale reports of transactions in NASDAQ securities through the NASDAQ Market Center (NMC) or Trade Reporting and Comparison Service (TRACS). The findings also stated that the firm incorrectly designated last sale reports of transactions in NASDAQ securities reported to the NMC within 90 seconds of execution as "SLD" through the NMC or TRACS. The findings also included that the firm failed, within 90 seconds after execution, to transmit last sale reports of transactions in Over-the-Counter (OTC) equity securities through the NMC, and failed to designate some reports as late through the NMC. NASD found that the firm incorrectly designated last sale reports of transactions in OTC equity securities executed during normal market hours as "T" through the NMC. **(NASD Case #20050016413-02)**

**brokersXpress, LLC (CRD #127081, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$50,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it executed transactions in municipal securities that were not reported to the MSRB within 15 minutes of execution time, and transaction information was reported inaccurately. The findings stated that the firm failed to establish written supervisory procedures to ensure the timely and accurate reporting of municipal securities transactions within 15 minutes of trade execution. The findings also stated that the firm failed to enforce its written supervisory procedures that required that a principal of the firm print and review all incoming electronic correspondence; that the firm provide notifications to NASD prior to implementing electronic storage media for primary record retention purposes for its electronic correspondence and capture, retain and preserve, in a readily accessible location, originals of all electronic communications originating from and received by one of its branch offices; and enforce its written supervisory procedures regarding email retention and review at one of its branch offices. **(NASD Case #2006003865601)**

**BTIG, LLC (CRD #122225, San Francisco, California)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$42,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to submit orders to OATS and transmitted execution reports that contained inaccurate, incomplete or improperly formatted data to OATS. The findings stated that the firm effected short sales in a security for the firm's proprietary account and failed to make an affirmative determination that the firm could borrow the security or otherwise provide for the security's delivery by settlement date. The findings also stated that the firm failed to preserve brokerage order memoranda for a period of not less than three years, the first two in an accessible place, and failed to show the entry and/or execution time on brokerage order memoranda. 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 OATS reporting. **(NASD Case #20050006510-01)**

**Cambridge Investment Research, Inc. (CRD #39543, Fairfield, Iowa)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$12,500 and required to revise its written supervisory procedures concerning TRACE reporting. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report transactions in TRACE-eligible securities executed on a business day during TRACE system hours to TRACE within 45 minutes of the execution time. The findings stated that the firm failed to report the correct time of trade execution for transactions securities to TRACE, and reported transactions in TRACE-eligible securities that it was not required to report. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning TRACE reporting. **(NASD Case #20050001786-01)**

**Cantella & Co., Inc. (CRD #13905, Boston, Massachusetts)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$15,000 and required to review its procedures regarding order ticket review for accuracy and completeness in compliance with federal securities laws, regulations, and with MSRB and NASD rules. Without admitting or denying the findings, Cantella consented to the described sanctions and to the entry of findings that it failed to note accurate execution times on order tickets. The findings stated that the time of order receipt from public customers did not appear on the customer trade tickets. The findings also stated that Cantella failed to have a supervisory system or written supervisory procedures in place to address the review of municipal bond order tickets for accuracy and completeness. **(NASD Case #2006003875801)**

**Citigroup Global Markets, Inc. (CRD #7059, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$87,000 and required to revise its written supervisory procedures regarding best execution, sales transaction reporting and OATS. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it effected short sales in a common stock for the firm's proprietary account(s) and failed to make/annotate an affirmative determination that the firm could borrow the security or otherwise provide for the security's delivery by the settlement date. The findings stated

that the firm accepted customer short sale orders in a security 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. The findings also stated that the firm failed to immediately display customer limit orders in NASDAQ securities in its public quotation when each order was at a price that would have improved the firm's bid or offer in each security; 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 also included that the firm failed to contemporaneously or partially execute customer limit orders in NASDAQ securities after it traded each security for its own market-making account at a price that would have satisfied each customer's limit order. NASD found that the firm effected transactions during a trading halt initiated by the NASDAQ Stock Market and published quotations for a non-exchange-listed security in the Pink Sheets and did not have in its records the documentation SEC Rule 15c2-11a (Paragraph (a) information) required; did not have a reasonable basis for believing that the Paragraph (a) information was accurate in all material respects and that the sources of the Paragraph (a) information were reliable. NASD also found that the firm failed to file a Form 211 with NASD at least three business days before the firm's quotations were published or displayed in a quotation medium, and submitted Route or Combined Order/Route Reports to OATS that the OATS system was unable to link to the corresponding new order submitted by the destination member firm due to inaccurate, incomplete or improperly formatted data.

In addition, NASD determined that the firm submitted ROEs to OATS that OATS rejected for context or syntax errors, and failed to timely report ROEs to OATS. Moreover, 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 best execution sales transaction reporting and OATS. The findings stated that the firm failed to report the correct execution time to the Automated Confirmation Transaction Service (ACT) nka NMC in last sale reports of transactions in designated securities. Furthermore, the findings stated that the firm failed to report to SuperMontage the correct symbol indicating whether transactions were short sale exempt or short sale for transactions in reportable securities, and failed to properly mark proprietary sell orders with a "short exempt" indicator on its trading records. (NASD Case #20041000048-01)

**Deutsche Bank Securities, Inc. (CRD #2525, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$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 submit to the Trade Reporting Facility fka NASDAQ Market Center, for the offsetting, "riskless" portion of "riskless" principal transactions in designated securities, either a clearing order report with a capacity indicator of "riskless principal" or a non-tape, non-clearing report with a capacity indicator of "riskless principal," and failed to report last sale report of transactions in designated securities to the Trade Reporting Facility. The findings stated that the firm failed to report to the Trade Reporting Facility the correct symbol

indicating whether transactions were buy, sell, sell short, sell short exempt or cross for transactions in reportable securities. The findings also stated that the firm executed long sale transactions and incorrectly marked the firm's ledger as "short" or "short exempt" for the orders. The findings also included that the firm failed to submit to OATS combined order route reports, route reports and any order information for a single order. NASD found that the firm failed to provide written notification disclosing to its customers its correct capacity in transactions and failed to provide written notification disclosing the correct average price to a customer. **(NASD Case #20060054835-01)**

**EK Riley Investments, LLC (CRD #121003, Seattle, Washington)** 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 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 failed to report the correct time of trade execution for transactions in TRACE-eligible securities to TRACE. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning TRACE reporting. The findings also included that the firm failed to report information about purchase and sale transactions effected in municipal securities to the Real-time Transaction Reporting System (RTRS) in the manner prescribed by MSRB Rule G-14 RTRS Procedures and the RTRS Users Manual. NASD found that the firm failed to report the correct execution time to the RTRS in reports of transactions in municipal securities. **(NASD Case #20060040643-01)**

**First American Capital and Trading Corporation fka STC Securities, Inc. (CRD #118812, Boca Raton, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$30,000 and required to have all its registered persons register for three hours of anti-money laundering (AML) training. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to implement an adequate AML compliance program in that it failed to provide, or to document that it had provided, adequate AML training for either the firm's designated AML officers or the firm's employees. The findings stated that the firm failed to establish and implement an adequate customer identification program (CIP). The findings also stated that while the firm was conducting internal testing of its AML compliance program, such testing was not independent. NASD found that the firm failed to establish and implement an adequate CIP in that the firm did not establish or implement adequate policies or procedures to conduct additional due diligence for their higher risk accounts, including foreign account-holders. NASD also found that the firm failed to establish and implement adequate suspicious activity reporting (SAR) procedures in that it failed to monitor for, identify and analyze unusual activity for possible SAR filing. In addition, NASD determined that the firm's procedures identified various AML "red flags," including large wire transfers and deposit of large amounts of low-priced securities, but failed to identify and analyze these transactions to determine if they were in fact suspicious and were required to be reported on a SAR-SF. **(NASD Case #SAF2004044701)**

**Grant Bettingen, Inc. (CRD #16944, Newport Beach, 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 participated in private placement offerings of stock and failed to transmit investor funds to an unaffiliated bank to hold in escrow until the offering contingency was met but, instead, investor checks were either made payable to and held by a law firm as escrow agent or were made payable to the firm and deposited into a bank account without a written agreement with the bank to hold the funds in escrow. The findings stated that the firm utilized the instrumentalities of interstate commerce to engage in the securities business while failing to maintain required minimum net capital. **(NASD Case #E0220050073-02)**

**HSBC Securities (USA) Inc. (CRD #19585, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$27,500. 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 an equity security from another person, or effected a short sale in an equity security for its own account, without documenting that it borrowed the security, or entered into a *bona fide* arrangement to borrow the security, or that it had reasonable grounds to believe that the security could be borrowed so that it could be delivered on the delivery due date. The findings stated that the firm failed to correctly report sale transactions to ACT as long, short or short exempt; failed to report the correct execution time and reported its capacity as principal when it was acting as agent. The findings also stated that the firm reported execution reports that contained inaccurate, incomplete or improperly formatted data to OATS, and executed short sale orders and failed to properly mark the order tickets as short for the orders. The findings also included that the firm failed to preserve, for a period of not less than three years, the first two in an accessible place, brokerage order memoranda and a customer confirmation, and failed to show the time of receipt on a brokerage order memoranda. NASD found that the firm failed to disclose the correct capacity and the average price on customer confirmations. 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 relating to compliance with order handling, best execution, anti-intimidation and coordination, sales transactions, books and records and for monitoring use of the firm's affiliated bank. **(NASD Case #20060055677-01)**

**Janco Partners, Inc. (CRD #40055, Greenwood Village, Colorado)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$60,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it permitted associated persons to function as research analysts without being properly registered with NASD and issued research reports the unregistered analysts prepared. The findings stated that the firm's written supervisory procedures were not reasonably designed to achieve compliance with NASD Rule 2711 in that the procedures did not include steps to monitor and achieve compliance with the rule. The findings also stated that the firm failed to retain its emails in an easily accessible place. The findings also included that the firm failed to implement its CIP in connection with new customer accounts as part of the firm's compliance with the requirements of the Bank Secrecy Act, and the firm's written

supervisory procedures relating to the CIP did not accurately describe its AML program as implemented. NASD found that the firm's implementation of its independent testing was inadequate in that it failed to retain all documentation evidencing areas that had been reviewed and tested, and it failed to detect the deficiencies with its CIP. NASD also found that the firm's written procedures did not address how often its independent tests needed to be conducted and did not address how the firm would handle situations in which independent testing was conducted by a person who reported to a person whose activities he or she was testing. **(NASD Case #2006003976301)**

**Keefe, Bruyette & Woods, Inc. (CRD #481, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$10,000 and required to revise the firm's written supervisory procedures concerning riskless principal and third-party trade reporting, short sales trade report input and trading halts. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to provide written notification disclosing to its customers its correct capacity in transactions. 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 riskless principal and third-party trade reporting; short sales trade report input and trading halts. **(NASD Case #20060051885-01)**

**Leerink Swann & Co., Inc. (CRD #39011, Boston, Massachusetts)** 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 firm personnel registration and qualifications, order handling, best execution, anti-intimidation and coordination, trade reporting, order marking and short sales requirements, trading halts, OATS reporting, and books and records requirements. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report last sale reports of transactions in designated securities to the NMC.

The findings stated that the firm failed to submit to the NMC, for the offsetting, "riskless" portion of "riskless" principal transactions in designated securities, either a clearing-only report with a capacity indicator of "riskless principal," or a non-tape, non-clearing report with a capacity indicator of "riskless principal." The findings also stated 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 reportable securities. The findings also included that the firm failed to report to the NMC the correct symbol indicating whether it executed transactions in reportable securities in a principal or agency capacity. NASD found that the firm failed to provide written notification disclosing its correct capacity in transactions to its customers, and failed to submit required information to OATS. 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 firm personnel registration and qualifications, order handling, best execution, anti-intimidation and coordination, trade reporting, order marking and short sales requirements, trading halts, OATS reporting, and books and records requirements. **(NASD Case #20050010097-01)**

**Merrill Lynch, Pierce, Fenner & Smith, Incorporated (CRD #7691, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$40,000 and ordered to pay \$927.90, plus interest, in restitution to public customers. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that in transactions for or with a public customer, it failed to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy or sell in such market so that the resultant price to its customer was as favorable as possible under prevailing market conditions. The findings stated that the firm failed to report to ACT the correct symbol indicating whether transactions in eligible securities were a buy, sell, sell short, sell short exempt or cross. The findings also stated that the firm transmitted reports that contained inaccurate, incomplete or improperly formatted data to OATS. **(NASD Case #20050002612-01)**

**Merrill Lynch, Pierce, Fenner & Smith, Incorporated (CRD #7691, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. 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 quotations for publication in a quotation medium and did not have the documentation required by SEC Rule 15c2-11(a) (Paragraph (a) information); did not have a reasonable basis under the circumstances for believing that the Paragraph (a) information was accurate in all material respects and that the sources of the information were reliable. The findings stated that the firm failed to file a Form 211 with NASD at least three business days before the firm's quotations were published or displayed in a quotation medium. The findings also stated that the firm failed to enforce its written supervisory procedures with respect to quotation of non-NASDAQ OTC securities. **(NASD Case #20050021177-01)**

**Merrill Lynch Professional Clearing Corporation fka Pax Clearing Corporation (CRD #16139, 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 had a fail-to-deliver position in a threshold security for 13 consecutive settlement days and failed to timely allocate its fail-to-deliver position to the registered broker-dealer that maintained the position and for whom the firm cleared. The findings stated that the firm failed to immediately close out the fail-to-deliver position by purchasing securities of like kind and quantity. 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 relating to threshold securities. **(NASD Case #20060041382-01)**

**Northeast Securities, Inc. (CRD #25996, Mitchelfield, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$23,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to create and maintain order memoranda for transactions; failed to include a second time stamp on order tickets; failed to identify whether a trade was solicited or unsolicited on order tickets and failed to identify the trade type (long or short) on trades. The findings stated that the firm failed to amend the Forms U4 of registered representatives regarding their outside business activities within 30 days after learning of the facts or circumstances giving

rise to the amendment. The findings also stated that the firm failed to establish, maintain and enforce written supervisory procedures designed to achieve reasonable compliance with securities regulations, including the supervisory system, financial operations, customer accounts, personnel matters and trade reporting. The findings also included that the firm effected options trades without a signed options agreement and executed options transactions in discretionary accounts where the customer had not provided specific written authorization for options transactions in the account. NASD found that the firm failed to file its Web site advertisement for a private placement memorandum with NASD's Advertising Department prior to placing it on its Web site. **(NASD Case #ELI2003002003)**

**The Oak Ridge Financial Services Group, Inc. (CRD #42941, Golden Valley, Minnesota)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$41,500, ordered to pay \$5,005, plus interest, in restitution to public customers and required to revise its written supervisory procedures concerning fair pricing and mark ups, suitability, books and records and TRACE. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it bought/sold securities for its own account from/to another broker-dealer and failed to sell/buy the security to/from a firm's customer at a price that was fair, taking into consideration all relevant circumstances, including market conditions with respect to the security at the time of the transaction, the expense involved and that the firm was entitled to a profit. The findings stated that the firm failed to show the correct entry time on brokerage order memoranda and failed to report the correct execution time in transactions in TRACE-eligible securities. 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 fair pricing and mark-ups, suitability, books and records and TRACE. The findings also included that the firm failed to provide evidence of a review for fair pricing and suitability. NASD found that the firm, acting through a registered representative, recommended to retail accounts the purchase of bonds that were below investment grade and speculative, and were not suitable for the customers given their investment objectives and financial status. **(NASD Case #20050001712-01)**

**Olympia Asset Management, Ltd. (CRD #126331, 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 include time stamps on order tickets showing the order receipt time. The findings stated that the firm failed to report statistical and summary information for customer complaints through the NASD Conduct Rule 3070 reporting system and failed to timely report information for an additional customer complaint. The findings also stated that the firm failed to maintain the required minimum net capital while conducting a securities business. **(NASD Case #E1020050327-01)**

**Perrin Holden and Davenport Capital Corp. aka PHD Capital (CRD #38785, 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, or to timely report, to NASD statistical and summary information relating to customer complaints the firm received. **(NASD Case #E102002046001)**

**Questar Capital Corporation (CRD #43100, Minneapolis, Minnesota)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$12,500 and required to revise its written supervisory procedures concerning TRACE reporting. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report 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. **(NASD Case #20050021347-02)**

**Robert Van Securities, Inc. (CRD #29581, Oakland, California)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it inaccurately reported municipal trades to the MSRB and failed to report one trade to the MSRB. The findings stated that the firm's written supervisory procedures that covered municipal securities trade reporting were inadequate in that they failed to indicate the records the firm would review to ensure that all municipal trades were timely and accurately reported to the MSRB, the frequency of the reviews and how the reviews would be evidenced. The findings also stated that the firm failed to timely file Forms U5. **(NASD Case #E0120050073-01)**

**Ryan Beck & Co. (CRD #3248, Florham Park, New Jersey)** 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 in transactions for or with public customers, it failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions. **(NASD Case #20050001585-01)**

**STG Secure Trading Group, Inc. (CRD #41216, Boca Raton, Florida)** 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 accepted customer short sale orders and for each order, failed to make/annotate an affirmative determination that the firm would receive delivery of the security on the customer's behalf, or that the firm could borrow the security on the customer's behalf for delivery by settlement date. The findings stated that the firm executed short sale orders and failed to properly mark the order tickets as short. The findings also stated that the firm effected short sales of securities registered on a national securities exchange at or below the price at which the last sale of each security, regular way, was reported pursuant to an effective transaction reporting plan. The finds 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 relating to compliance with short sales rules. **(NASD Case #20041000267-01)**

**SWS Financial Services (CRD #17587, Dallas, Texas)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$10,000 and required to revise its written supervisory procedures concerning TRACE reporting. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report 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 regarding TRACE reporting. **(NASD Case #20050032148-01)**

**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 \$15,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it accepted customer short sale orders and, for each order, failed to make an affirmative determination that the firm would receive delivery of the security on the customer's behalf, or that the firm could borrow the security on the customer's behalf for delivery by settlement date. The findings stated that the firm executed short sale orders and failed to properly mark the order tickets as short for the orders. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with NASD Rule 3370 (Prompt Receipt and Delivery of Securities) and NASD Rule 3350 (Bid Test). **(NASD Case #20041000071-01)**

**Trillium Trading LLC (CRD #120064, Edison, 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 NASD Interpretative Material 2110-5, Regulation SHO, information barriers (aka "Chinese Walls") and books and records. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it executed short sale transactions in NMC securities at or below the current inside bid when the current inside bid was below the preceding inside bid in the security. The findings stated that the firm effected short sales in securities for the firm's proprietary accounts and failed to make/annotate an affirmative determination that the firm could borrow the securities or otherwise provide for delivery of the securities by settlement date. The findings also stated that the firm failed to report to ACT the correct symbol indicating whether transactions were a buy, sell, sell short, sell short exempt or cross for transactions in eligible securities. 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 regarding IM-2110-5, Regulation SHO, information barriers (aka "Chinese Walls") and books and records. **(NASD Case #20050003058-01)**

**Weeden & Co., L.P. (CRD #16835, Greenwich, Connecticut)** 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 report to ACT the correct symbol indicating whether transactions were buy, sell, sell short, sell short exempt or cross for transactions in reportable securities. The findings stated that the firm failed to report to ACT the correct symbol indicating whether the firm executed transactions in

reportable securities in a principal or agency capacity, and failed to report to ACT one last sale report of a transaction in a NASDAQ security. The findings also stated that the firm failed, within 90 seconds after execution, to transmit to ACT one last sale report of a transaction in an OTC equity security and failed to designate to ACT the last sale report as late. The findings also included that the firm failed to report to ACT one last sale report of a transaction in an OTC equity security and one last sale report of a transaction in a CQS security. NASD found that the firm submitted order reports that were not in the prescribed electronic form to OATS. NASD also found that the firm executed short sale transactions and failed to accurately reflect the transactions as short sales on the firm's ledger. **(NASD Case #20050017046-01)**

**Westrock Advisors, Inc. (CRD #114338, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$42,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it effected both a 100 percent change in its direct ownership and a material expansion of its business operations without seeking and obtaining approval for these changes as NASD Rule 1017 required. The findings stated that the firm added branch offices without notifying NASD within 30 days of their opening as NASD By-Laws required, and failed to have reasonably written supervisory procedures in place to ensure compliance with NASD Rule 2711. The findings also stated that the firm conducted a securities business when the firm's capital was below the minimum amount required. The findings also included that the firm failed to timely report customer complaints and did not report additional complaints as NASD Rule 3070(c) required. NASD found that the firm failed to amend, and timely amend, Forms U4 or U5 for registered representatives to reflect customer complaints. NASD also found that the firm conducted an options business at a branch office with a supervisor who was not registered as either an options principal or as a limited principal – general securities sales supervisor. **(NASD Case #20060037272-01)**

## Individuals Barred or Suspended

**Michael Clark Behrend (CRD #4401272, Registered Representative, Sioux Falls, South Dakota)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD (and now, FINRA) member in any capacity. Without admitting or denying the findings, Behrend consented to the described sanction and to the entry of findings that he created phony correspondence and forged signatures on requests for disbursements of funds from insurance and investment accounts held at his member firm and its affiliate in order to obtain money and property by false means. The findings stated that Behrend requested that checks drawn on customer accounts be sent directly to him, forged the customers' signatures on the back of the checks and added his own signature on the back of the checks. The findings also stated that Behrend deposited \$20,460.99 into his own bank accounts through this scheme and never returned any of the funds to customer accounts. The findings also included that Behrend failed to respond to NASD requests for information. **(NASD Case #20060069702-01)**

**Glenn Edward Best (CRD #1552930, Registered Principal, Dunedin, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000, suspended from association with any NASD (and now, FINRA) member in any financial and operations principal (FINOP) capacity for 30 business days, and required to requalify by examination as a FINOP prior to reassociation with any member firm in that capacity. Without admitting or denying the findings, Best consented to the described sanctions and to the entry of findings that a member firm, acting through Best, used the instrumentalities of interstate commerce to conduct a securities business while failing to maintain its minimum required net capital.

The suspension in a FINOP capacity was in effect from July 2, 2007, through August 13, 2007. **(NASD Case #2006004125201)**

**Howard Brett Berger (CRD #2284367, Registered Principal, Roslyn Heights, New York)** was barred from association with any NASD (and now, FINRA) member in any capacity. The SEC sustained the sanction imposed by the National Adjudicatory Council (NAC) following appeal of an Office of Hearing Officers (OHO) decision. The sanction was based on findings that Berger failed to appear for NASD on-the-record interviews.

This decision has been appealed to the United States Court of Appeals, and the sanction is in effect pending review. **(NASD Case #C9B20040069)**

**Porter Bernard Bingham (CRD #1450227, Registered Principal, Roswell, Georgia) and Hal Butts Jr. (CRD #4029277, Registered Principal, Marietta, Georgia)** submitted an Offer of Settlement in which Bingham was fined \$10,000, suspended from association with any NASD (and now, FINRA) member as a general securities principal for one year and required to requalify by examination as a general securities principal prior to acting again in that capacity. The fine must be paid before Bingham reassociates with any FINRA member following the suspension, or prior to any application or request for relief from statutory disqualification is filed. Butts was fined \$5,000 and suspended from association with any NASD (and now, FINRA) member as a FINOP for 15 business days. Without admitting or denying the allegations, Bingham and Butts consented to the described sanctions and to the entry of findings that they failed to cause their member firm to maintain its required minimum net capital. The findings stated that Bingham and Butts prepared and/or were responsible for the preparation of inaccurate net capital computations, trial balances and general ledgers for their member firm. The findings also stated that Bingham and Butts prepared and/or caused the preparation of inaccurate FOCUS reports for their member firm and filed the inaccurate reports with NASD. The findings also included that Bingham and Butts failed to submit timely notice to NASD of their firm's net capital deficiency. NASD also found that Bingham failed to file his member firm's annual audit report in a timely manner.

Bingham's suspension as a general securities principal is in effect from July 2, 2007, through July 1, 2008. Butt's suspension as a FINOP was in effect from July 16, 2007, through August 3, 2007. **(NASD Case #E072005021301)**

**Alfred Blair Blaikie III (CRD #2466528, Registered Representative, Colts Neck, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD (and now, FINRA) member in any capacity for 15 business days. Without admitting or denying the findings,

Blaikie consented to the described sanctions and to the entry of findings that he opened accounts at his member firm in the names of public customers and effected securities transactions in the accounts without the customers' knowledge, authorization or consent.

The suspension in any capacity was in effect from July 2, 2007, through July 23, 2007. **(NASD Case #20050005805-01)**

**Joanne Elizabeth Blain (CRD #1703215, Registered Principal, Pompano Beach, Florida)** was barred from association with any NASD (and now, FINRA) member in any capacity. The sanction was based on findings that Blain failed to provide testimony as NASD requested. **(NASD Case #2005002411701)**

**John Charles Burch (CRD #708996, Registered Supervisor, Racine, Wisconsin)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD (and now, FINRA) member in any capacity. Without admitting or denying the findings, Burch consented to the described sanction and to the entry of findings that he deposited \$6,000 into a bank account for purposes of avoiding a transaction reporting requirement under federal law, knowing that the property involved in the financial transaction represented the proceeds of some form of unlawful activity. **(NASD Case #2006004468101)**

**Jeffrey Jay Cahn (CRD #4030416, Registered Representative, South Plainfield, New Jersey)** was barred from association with any NASD (and now, FINRA) member in any capacity. The sanction was based on findings that Cahn failed to respond to NASD requests for information and documents. The findings stated that Cahn borrowed funds from a public customer in violation of his firm's policy prohibiting registered employees from borrowing from, or lending to, public customers with the limited exception of immediate family members. The findings also stated that Cahn settled a customer complaint without his member firm's knowledge or authorization. **(NASD Case #2006005134301)**

**Mary Ann Castro (CRD #4778391, Registered Representative, Temecula, California)** submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$5,000 and suspended from association with any NASD (and now, FINRA) member in any capacity for two months. The fine must be paid before Castro reassociates with any FINRA member following the suspension, or prior to any application or request for relief from statutory disqualification is filed. Without admitting or denying the findings, Castro consented to the described sanctions and to the entry of findings that she caused a public customer's name to be signed on an Individual Retirement Account (IRA) opening form without the customer's knowledge, authorization or consent.

The suspension in any capacity is in effect from July 2, 2007, through September 1, 2007. **(NASD Case #2006007131201)**

**Dennis Paul Cooper (CRD #2250395, Registered Principal, Ballwin, Missouri)** was barred from association with any NASD (and now, FINRA) member in any capacity. The NAC imposed the sanction following appeal of an OHO decision. The sanction was based on findings that Cooper forged the signature of another principal on numerous customer documents without the manager's knowledge or consent. **(NASD Case #C0420050014)**

**Michael L. Dilk (CRD #4833880, Registered Representative, Indianapolis, Indiana)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD (and now, FINRA) member in any capacity for 30 business days. The fine must be paid before Dilk reassociates with any FINRA member following the suspension or prior to any application or request for relief from statutory disqualification is filed. Without admitting or denying the findings, Dilk consented to the described sanctions and to the entry of findings that he engaged in outside business activities, for compensation, without prior written notice to his member firm.

The suspension in any capacity was in effect from July 2, 2007, through August 13, 2007. **(NASD Case #2006004813901)**

**Brian James Dunn (CRD #3056636, Registered Representative, Gilbert, Arizona)** was barred from association with any NASD (and now, FINRA) member in any capacity. The sanction was based on findings that Dunn submitted false expense reports to his member firm and was reimbursed for the expenses, thereby converting firm funds for his own use. The findings stated that Dunn failed to respond to NASD requests for information. **(NASD Case #2006004809201)**

**Donald Fred Ehrenberg Jr. (CRD #1180718, Registered Representative, Monaca, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD (and now, FINRA) member in any capacity. Without admitting or denying the findings, Ehrenberg consented to the described sanction and to the entry of findings that he borrowed \$120,000 from a public customer and failed to inform his member firm. The findings stated that Ehrenberg willfully failed to amend his Form U4 to disclose material information. The findings also stated that Ehrenberg failed to respond to NASD requests for information. **(NASD Case #2006007413501)**

**John William Eugster (CRD #2776666, Registered Representative, San Francisco, California)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000, suspended from association with any NASD (and now, FINRA) member in any capacity for two months, and required to demonstrate to FINRA that he has relinquished his entitlement to any profits realized by a limited liability company (LLC) he formed and managed upon the distribution to its members securities acquired in a private placement and any document pertaining to the LLC requiring revision or amendment to effect his relinquishment of his entitlement to any portion of profit has been revised or amended as evidenced by the submission to NASD of the document(s) in their original and revised or amended forms. Without admitting or denying the findings, Eugster consented to the described sanctions and to the entry of findings that he participated in a private securities transaction for compensation without prior written notice to, and written permission from, his member firm.

The suspension in any capacity is in effect from June 18, 2007, through August 17, 2007. **(NASD Case #20050022712-01)**

**Anthony Mario Faiola (CRD #2681693, Registered Representative, Cherry Hill, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD (and now, FINRA) member in any capacity. Without

admitting or denying the findings, Faiola consented to the described sanction and to the entry of findings that he and another registered representative sold \$2,050,000 worth of limited partnership interests in a hedge fund that Faiola co-owned and controlled to public customers without prior written notice to, or prior written approval from, his member firm. **(NASD Case #2006005577001)**

**Alfred James Feronti (CRD #1013847, Registered Principal, Avon Lake, Ohio)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD (and now, FINRA) member in any capacity for six months. The fine must be paid before Feronti reassociates with any FINRA member following the suspension or prior to any application or request for relief from statutory disqualification is filed. Without admitting or denying the findings, Feronti consented to the described sanctions and to the entry of findings that he willfully failed to disclose, or willfully failed to timely disclose, material information on his Form U4.

The suspension in any capacity is in effect from July 2, 2007, through January 1, 2008. **(NASD Case #2005002402101)**

**George Edward Floore Jr. (CRD #4297344, Registered Representative, Twinsburg, Ohio)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD (and now, FINRA) member in any capacity for six months. The fine must be paid before Floore reassociates with any FINRA member following the suspension or prior to any application or request for relief from any statutory disqualification is filed. Without admitting or denying the findings, Floore consented to the described sanctions and to the entry of findings that he willfully failed to disclose material information on his Form U4.

The suspension in any capacity is in effect from July 2, 2007, through January 1, 2008. **(NASD Case #2006005781001)**

**Dana Niles Frankfort (CRD #2243930, Registered Representative, Marina Del Rey, California)** was barred from association with any NASD (and now, FINRA) member in any capacity. The NAC imposed the sanction following appeal of an OHO decision. The sanction was based on findings that Frankfort engaged in fraudulent misconduct by failing to disclose to public customers that an investment fund, that had engaged in trading and investing in put options on securities or various indices, had realized substantial market losses. The findings stated that Frankfort made an unsuitable recommendation to a public customer and engaged in private securities transactions without prior written notification to his member firm. **(NASD Case #C0220040032)**

**Steven Wayne Grossman (CRD #2306258, Registered Representative, Cortlandt Manor, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD (and now, FINRA) member in any capacity. Without admitting or denying the findings, Grossman consented to the described sanction and to the entry of findings that he churned and excessively traded public customers' accounts that resulted in commission-to-equity ratios in excess of 30 percent. The findings stated that Grossman recommended and effected securities transactions in customers' accounts without reasonable grounds for believing that the transactions were suitable in view of the size and frequency of the transactions, the

nature of the accounts and the customers' financial situation, investment objectives and needs. The findings also stated that Grossman altered his member firm's record relating to a joint account of customers by deleting certain securities positions from the customers' Form 1099 and provided the altered document to their accountant. The findings also included that Grossman created a schedule of gains and losses for the customers' account that contained false information. **(NASD Case #2005001180201)**

**James Edward Hynes (CRD #2469092 Registered Representative, Nesconset, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the findings, Hynes consented to the described sanctions and to the entry of findings that he exercised discretion in a public customer account without written authorization from the customer and acceptance of the account as discretionary by his member firm.

The suspension in any capacity was in effect from June 18, 2007, through June 29, 2007. **(NASD Case #2007008093901)**

**David S. Jarnot (CRD #3259785, Registered Representative, Lancaster, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD (and now, FINRA) member in any capacity. Without admitting or denying the findings, Jarnot consented to the described sanction and to the entry of findings that he signed a family member's name on change of address forms for individual accounts she held at his member firm without her permission or knowledge. The findings stated that Jarnot was attempting to change her home address to his address. **(NASD Case #2007007962001)**

**Alan Edward Kuzma (CRD #1066138, Registered Representative, Lincoln, Nebraska)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD (and now, FINRA) member in any capacity for 20 business days. The fine must be paid before Kuzma reassociates with any FINRA member following the suspension or prior to any application or request for relief from statutory disqualification is filed. Without admitting or denying the findings, Kuzma consented to the described sanctions and to the entry of findings that he conducted financial services workshops and engaged a mail house to mail workshop invitations to prospective customers without advising his member firm that he was conducting the workshops or having invitations sent. The findings stated that Kuzma failed to request approval for the invitations by a registered principal of his firm prior to use. The findings also stated that the workshop invitations did not include all relevant information, were incomplete, and were not fair and balanced.

The suspension in any capacity was in effect from July 2, 2007, through July 30, 2007. **(NASD Case #20050033591-01)**

**Frank Enrique Lumpuy (CRD #2108307, Registered Principal, Miami, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD (and now, FINRA) member in any capacity for 10 business days. The fine must be paid before Lumpuy reassociates with any FINRA member following the suspension or prior to any application or request for relief from statutory disqualification is filed. Without admitting or denying the findings, Lumpuy

consented to the described sanctions and to the entry of findings that he shared in a public customer's loss without prior written authorization from his member firm or the customer before making the deposit into the customer's bank account.

The suspension in any capacity was in effect from July 2, 2007, through July 16, 2007. **(NASD Case #2006005568401)**

**Andrew Joseph Lynch (CRD #835050, Registered Representative, Rhinebeck, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD (and now, FINRA) member in any capacity for three months. The fine must be paid before Lynch reassociates with any FINRA member following the suspension or prior to any application or request for relief from statutory disqualification is filed. Without admitting or denying the findings, Lynch consented to the described sanctions and to the entry of findings that he received an insurance application from joint applicants who signed their names on the wrong line of the application, crossed out the misplaced signatures, signed the customers' names on the correct line of the application, without the customers' authorization or consent, and submitted the application to the insurance company.

The suspension in any capacity is in effect from July 16, 2007, through October 15, 2007. **(NASD Case #2006006900201)**

**Joshua Ansel Mabee (CRD #4667977, Registered Representative, Wells, Maine)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD (and now, FINRA) member in any capacity for 60 days. The fine must be paid before Mabee reassociates with any FINRA member following the suspension or prior to any application or request for relief from statutory disqualification is filed. Without admitting or denying the findings, Mabee consented to the described sanctions and to the entry of findings that he signed public customers' signatures on documents related to the purchase of various insurance policies without their knowledge, authorization or consent.

The suspension in any capacity is in effect from June 18, 2007, through August 16, 2007. **(NASD Case #2006006142201)**

**Dawn Anita Martin (CRD #3192507, Registered Representative, Chicago, Illinois)** was fined \$5,000 and suspended from association with any NASD (and now, FINRA) member in any capacity for 90 days. The sanctions were based on findings that Martin borrowed \$10,000 from a public customer in contravention of her member firm's written supervisory procedures prohibiting borrowing money from customers, absent written authorization.

The suspension in any capacity is in effect from June 18, 2007, through September 15, 2007. **(NASD Case #2006004392801)**

**Kevin McCurdy (CRD #834747, Registered Representative, Muttontown, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD (and now, FINRA) member in any capacity for 30 days. The fine must be paid before McCurdy reassociates with any FINRA member following the suspension or prior to any application or request for relief

from statutory disqualification is filed. Without admitting or denying the findings, McCurdy consented to the described sanctions and to the entry of findings that he failed to timely amend his Form U4 to disclose material facts.

The suspension in any capacity was in effect from June 18, 2007, through July 17, 2007. **(NASD Case #20060043571-01)**

**Brian Eugene McLain (CRD #1646092, Registered Representative, Tinley Park, Illinois)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any NASD (and now, FINRA) member in any capacity for 12 months. The fine must be paid before McLain reassociates with any FINRA member following the suspension or prior to any application or request for relief from statutory disqualification is filed. Without admitting or denying the findings, McLain consented to the described sanctions and to the entry of findings that he signed the names of public customers, without written authorization, on documentation that required customer signatures. The findings stated that McLain willfully failed to disclose material information on his Form U4.

The suspension in any capacity is in effect from July 2, 2007, through July 1, 2008. **(NASD Case #2006004686701)**

**Peter John Murphy (CRD #1104802, Registered Representative, Huntington, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any NASD (and now, FINRA) member in any capacity for 90 days. In light of Murphy's financial status, the fine imposed was \$10,000. The fine must be paid upon re-entry. Without admitting or denying the findings, Murphy consented to the described sanctions and to the entry of findings that he aided and abetted an individual's fraudulent and manipulative bond parking scheme involving pre-arranged, non-*bona fide* sales and purchases of zero coupon subordinate municipal bonds with a face value of two million dollars. The findings stated that Murphy obtained permission from his member firm to make a proprietary purchase but did not inform his supervisor that he would hold the bonds as a favor until his friend repurchased the bonds and did not disclose that he had been guaranteed a profit when the bonds were repurchased. The findings also stated that Murphy was directed to purchase the bonds from a third party with a same-day settlement rather than the standard settlement of three business days after the trade, and did not inform his supervisor that he made the purchase from a third party instead of his friend. The findings also included that the bonds were repurchased at an increased price generating a profit to the firm and Murphy.

The suspension in any capacity is in effect from July 16, 2007, through October 13, 2007. **(NASD Case #20050003239-06)**

**Long Hoang Nguyen (CRD #2975865, Registered Representative, East Brunswick, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD (and now, FINRA) member in any capacity. Without admitting or denying the findings, Nguyen consented to the described sanction and to the entry of findings that while taking the Regulation Element of NASD's Continuing Education Requirement exam at a testing center, he reviewed email messages and

made telephone calls on his wireless hand-held device contrary to the exam instruction's Rules of Conduct. The findings stated that Nguyen failed to respond to an NASD request for information. **(NASD Case #2006006999401)**

**Ronald Dale Patterson (CRD #1939799, Registered Principal, Houston, Texas)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD (and now, FINRA) member in any capacity for 30 business days. Without admitting or denying the findings, Patterson consented to the described sanctions and to the entry of finding that he willfully failed to disclose material information on his Form U4.

The suspension in any capacity is in effect from August 6, 2007, through September 17, 2007. **(NASD Case #2006006092601)**

**Kim Phan (CRD #4194927, Registered Representative, Elk Grove, California)** submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$5,000 and suspended from association with any NASD (and now, FINRA) member in any capacity for six months. The fine must be paid before Phan reassociates with any FINRA member following the suspension or prior to any application or request for relief from statutory disqualification is filed. Without admitting or denying the findings, Phan consented to the described sanctions and to the entry of findings that she willfully failed to disclose a material fact on her Form U4.

The suspension in any capacity is in effect from June 18, 2007, through December 17, 2007. **(NASD Case #20060069935-01)**

**Jonathan David Poland (CRD #4456200, Registered Representative, Fort Lauderdale, Florida)** was barred from association with any NASD (and now, FINRA) member in any capacity. The sanction was based on findings that Poland failed to respond to NASD requests to appear for on-the-record testimony. The findings stated that Poland engaged in unauthorized transactions in a public customer's account without the customer's knowledge or consent. **(NASD Case #2005000895501)**

**Douglas Anthony Poole (CRD #5134326, Associated Person, Carmel, Indiana)** was barred from association with any NASD (and now, FINRA) member in any capacity. The sanction was based on findings that Poole failed to respond to NASD requests for information. The findings stated that Poole failed to disclose material information on his Form U4. **(NASD Case #2006005430901)**

**Bruce Allan Proulx Jr. (CRD #5186667, Associated Person, Portland, Oregon)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD (and now, FINRA) member in any capacity for six months. The fine must be paid before Proulx reassociates with any FINRA member following the suspension or prior to any application or request for relief from statutory disqualification is filed. Without admitting or denying the findings, Proulx consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on his Form U4.

The suspension in any capacity is in effect from July 2, 2007, through January 1, 2008. **(NASD Case #2006006088801)**

**Karl Edmund Roesler Jr. (CRD #2455080, Registered Representative, Louisville, Kentucky)** was barred from association with any NASD (and now, FINRA) member in any capacity. The sanction was based on findings that Roesler knowingly submitted wire transfer documents to his member firm for a total of \$127,549.56 that contained the signature of a family member that had been forged by another family member. The findings stated that Roesler did not provide full disclosure of the facts concerning the wire transfers when first questioned by his member firm's AML unit, and attempted to conceal the forgeries from his supervisors when they contacted him about the wire transfers. **(NASD Case #20050026124-01)**

**Charles Jace Sanderson (CRD #2810543, Registered Supervisor, Texarkana, Texas)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD (and now, FINRA) member in any capacity. Without admitting or denying the findings, Sanderson consented to the described sanction and to the entry of findings that he received \$10,700 from a public customer to be deposited into securities accounts to be established and maintained at his member firm, failed to open the accounts as directed and, instead, converted the funds to his own use and benefit without the customer's authorization or knowledge. The findings stated that Sanderson failed to respond to an NASD request for information. **(NASD Case #2006006720901)**

**Frank Sculco (CRD #5123671, Associated Person, Cliffside Park, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD (and now, FINRA) member in any capacity. Without admitting or denying the findings, Sculco consented to the described sanction and to the entry of findings that he processed overdraft fee returns totaling \$379 for a fellow employee's bank account without authorization from the bank. The findings stated that Sculco failed to respond to NASD requests for information. **(NASD Case #2006006363601)**

**Joseph W. Seddon (CRD #4394833, Registered Principal, Manchester, New Hampshire)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD (and now, FINRA) member in any capacity. Without admitting or denying the findings, Seddon consented to the described sanction and to the entry of findings that he received \$10,000 from a public customer for the purpose of depositing the funds into a new account, but failed to deposit the check until a later date. The findings stated that Seddon created a false account statement indicating that the funds had been deposited into a new account and sent the falsified account statement to the customer. The findings also stated that Seddon failed to respond to an NASD request for information. **(NASD Case #2006005696901)**

**Jack Bruce Smoak (CRD #1060257, Registered Principal, Wyoming, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD (and now, FINRA) member in any capacity. Without admitting or denying the findings, Smoak consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. **(NASD Case #2006005932401)**

**Brett Steven Spitalny (CRD #2966804, Registered Representative, Boca Raton, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$30,945, of which \$20,945 represents disgorgement of commissions, and suspended from association with any NASD (and now, FINRA) member in any capacity for one year. The fine must be paid before Spitalny reassociates with any FINRA member following the suspension, or prior to any application or request for relief from statutory disqualification is filed. Without admitting or denying the findings, Spitalny consented to the described sanctions 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 Spitalny engaged in outside business activities without prior written notice to his member firm.

The suspension in any capacity is in effect from July 2, 2007, through July 1, 2008. (NASD Case #2005003286802)

**Jeffrey Andrew Stillittano (CRD #4004626, Registered Representative, Redondo Beach, California)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD (and now, FINRA) member in any capacity for six months. The fine must be paid before Stillittano reassociates with any FINRA member following the suspension, or prior to any application or request for relief from statutory disqualification is filed. Without admitting or denying the findings, Stillittano consented to the described sanctions and to the entry of findings that he willfully failed to disclose material facts on his Form U4.

The suspension in any capacity is in effect from June 18, 2007, through December 17, 2007. (NASD Case #2006006457401)

**Tamarah N. Taylor (CRD #4340435, Registered Representative, Washington, DC)** submitted a Letter of Acceptance, Waiver and Consent in which she was suspended from association with any NASD (and now, FINRA) member in any capacity for six 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 she faxed account-related documentation to public customers using a fax cover sheet that contained the photocopied initials of her supervisor. The findings stated that Taylor's supervisor had neither approved nor initialed the faxed documentation.

The suspension in any capacity is in effect from June 18, 2007, through December 17, 2007. (NASD Case #2005003361901)

**Eldon Bracton Thoma III (CRD #4884158, Registered Representative, Tullahoma, Tennessee)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD (and now, FINRA) member in any capacity for 60 days. The fine must be paid before Thoma reassociates with any FINRA member following the suspension or prior to any application or request for relief from statutory disqualification is filed. Without admitting or denying the findings, Thoma consented to the described sanctions and to the entry of findings that he failed to disclose a material fact on his Form U4.

The suspension in any capacity is in effect from June 18, 2007, through August 16, 2007. (NASD Case #2005003314601)

**Kim L. Thomas (CRD #5067127, Associated Person, Mitchellville, Maryland)** submitted a Letter of Acceptance, Waiver and Consent in which she was suspended from association with any NASD (and now, FINRA) member in any capacity for six months. In light of Thomas' financial status, no monetary sanctions have been imposed. Without admitting or denying the findings, Thomas consented to the described sanction and to the entry of findings that she faxed account-related documentation to public customers using a fax cover sheet that contained her supervisor's photocopied initials. The findings stated that Thomas' supervisor had neither approved nor initialed the faxed documentation.

The suspension in any capacity is in effect from June 18, 2007, through December 17, 2007. **(NASD Case #2006005567801)**

**William Edward Thomas (CRD #1122415, Registered Representative, Mt. Pleasant, 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 10 business days. The fine must be paid before Thomas reassociates with any FINRA member following the suspension, or prior to any application or request for relief from statutory disqualification is filed. Without admitting or denying the findings, Thomas consented to the described sanctions and to the entry of findings that he accepted \$2,600 in loans from a public customer in violation of his member firm's written procedures prohibiting registered persons from borrowing from customers, except for immediate family members for non-securities purposes. The findings stated that the customer was not an immediate family member.

The suspension in any capacity was in effect from June 18, 2007, through June 29, 2007. **(NASD Case #2005003297801)**

**Damon Cordell Timberlake (CRD #5190462, Associated Person, Newark, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD (and now, FINRA) member in any capacity for six months. The fine must be paid before Timberlake reassociates with any FINRA member following the suspension, or prior to any application or request for relief from statutory disqualification is filed. Without admitting or denying the findings, Timberlake consented to the described sanctions and to the entry of findings that he willfully failed to disclose material information on his Form U4.

The suspension in any capacity is in effect from June 18, 2007, through December 17, 2007. **(NASD Case #2006006133501)**

**James T. Valentine (CRD #5238557, Associated Person, Fremont, California)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD (and now, FINRA) member in any capacity for three months. The fine must be paid before Valentine reassociates with any FINRA member following the suspension, or prior to any application or request for relief from statutory disqualification is filed. Without admitting or denying the findings, Valentine consented to the described sanctions and to the entry of findings that he failed to disclose a material fact on his Form U4.

The suspension in any capacity is in effect from July 16, 2007, through October 15, 2007. **(NASD Case #20060070181-01)**

**Tomy Vuksanaj (CRD #4267663, Registered Representative, New Rochelle, New York)** was barred from association with any NASD (and now, FINRA) member in any capacity. The sanction was based on findings that Vuksanaj forged public customers' signatures on bank withdrawal slips to obtain \$83,600 from their bank accounts without their knowledge, consent or authorization, and converted the funds to his own use and benefit. **(NASD Case #20060042995-01)**

**Bradley Dean Webster (CRD #3096362, Registered Representative, Libertyville, Illinois)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD (and now, FINRA) member in any capacity for 18 months. The fine must be paid before Webster reassociates with any FINRA member firm following the suspension, or prior to any application or request for relief from statutory disqualification is filed. Without admitting or denying the findings, Webster consented to the described sanctions and to the entry of findings that he willfully failed to disclose material information on his Form U4. The findings stated that Webster failed to timely respond to NASD requests for information and documents.

The suspension in any capacity is in effect from July 2, 2007, through January 1, 2009. **(NASD Case #2006005102501)**

**Andrew Robert Wilderotter (CRD #4832201, Registered Representative, Centennial, Colorado)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD (and now, FINRA) member in any capacity for six months. The fine must be paid before Wilderotter reassociates with any FINRA member following the suspension, or prior to any application or request for relief from statutory disqualification is filed. Without admitting or denying the findings, Wilderotter consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on his Form U4.

The suspension in any capacity is in effect from July 16, 2007, through January 15, 2008. **(NASD Case #2006006850101)**

**Jennifer Susan Wilkov (CRD #4318913, Registered Representative, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any NASD (and now, FINRA) member in any capacity. Without admitting or denying the findings, Wilkov consented to the described sanction and to the entry of findings that she failed to respond to NASD requests for information and failed to comply with an NASD request for an on-the-record interview. **(NASD Case #2006006886201)**

**Curtis Fitzgerald Williams Sr. (CRD #2846731, Registered Principal, Westbury, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$7,500 and suspended from association with any NASD (and now, FINRA) member in any capacity for six months. The fine must be paid before Williams reassociates with any FINRA member following the suspension or prior to any application or request for relief from statutory disqualification is filed. Without admitting or denying the findings, Williams consented to the described sanctions and to the entry of findings that he engaged in a pattern of trading activity in a public customer's account that was excessive in light of the customer's objectives, financial situation and needs. The findings stated that Williams failed to timely respond to NASD requests for information.

The suspension in any capacity is in effect from June 18, 2007, through December 17, 2007. **(NASD Case #2006004815601)**

**Cecilia Lara Wilson (CRD #4075109, Registered Representative, El Paso, Texas)** submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$5,000 and suspended from association with any NASD (and now, FINRA) member in any capacity for 60 days. The fine must be paid before Wilson reassociates with any FINRA member following the suspension, or prior to any application or request for relief from statutory disqualification is filed. Without admitting or denying the findings, Wilson consented to the described sanctions and to the entry of findings that she forged a public customer's signature on a 1035 exchange form completed in connection with the surrender of an annuity and purchase of another annuity.

The suspension in any capacity is in effect from June 18, 2007, through August 16, 2007. **(NASD Case #2006005891901)**

**Melvin Leonard Wimmer Jr. (CRD #1888431, Registered Principal, Greenwood, South Carolina)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD (and now, FINRA) member in any capacity. Without admitting or denying the findings, Wimmer consented to the described sanction and to the entry of findings that he misappropriated \$299,500 of a public customer's funds. **(NASD Case #2006006503901)**

**John Griffin Wise (CRD #1708281, Registered Principal, Bethesda, Maryland)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$8,500 and suspended from association with any NASD (and now, FINRA) member in any capacity for nine months. The fine must be paid before Wise reassociates with any FINRA member following the suspension, or prior to any application or request for relief from statutory disqualification is filed. Without admitting or denying the findings, Wise consented to the described sanctions and to the entry of findings that while he acted as escrow agent for money-market escrow accounts, he did not disburse the additional interest earnings that were received into the escrow account after the transaction closed and escrowed funds had already been disbursed to the parties. The findings stated that Wise transferred \$44,000 in post-closing earnings to a single consolidated account in his name, with his member firm identified as the registered dealer on the

account statements. The findings also stated that Wise did not have the authorization or consent of the parties in transferring funds from the individual escrow accounts to the consolidated account. The findings also included that Wise guaranteed his own signature on wire transfer instruction letters he transmitted to mutual fund companies which required him to obtain a signature guarantee for letters that requested transfer of funds held in escrow in order to verify the authenticity of the escrow agent's signature.

NASD found that Wise fabricated a signature guarantee on wire transfer instruction letters by altering the appearance of his signature and applying the bank's medallion guarantee stamp. NASD also found that Wise opened securities accounts at other brokerage firms without notifying his member firm in writing that he had opened the accounts and also failed to disclose his affiliation with his member firm to the other brokerage firms.

The suspension in any capacity is in effect from July 2, 2007, through April 1, 2008.  
**(NASD Case #2006004364001)**

**Kevin Irving Zinn (CRD #2544354, Registered Representative, Boca Raton, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD (and now, FINRA) member in any capacity. Without admitting or denying the findings, Zinn consented to the described sanction and to the entry of findings that he participated in a private securities transaction without prior written notice to, or prior approval from, his member firm. The findings stated that Zinn engaged in an outside business activity without providing prompt written notice to his member firm. The findings also stated that Zinn failed to respond to NASD requests for documents and information. **(NASD Case #2005003286801)**

## Decision Issued

**The Office of Hearing Officers (OHO) issued the following decision, which has been appealed to or called for review by the NAC as of June 30, 2007. The NAC may increase, decrease, modify or reverse the findings and sanctions imposed in the decision. Initial decisions which time for appeal has not yet expired will be reported in the next FINRA Notices.**

**Roy Matthew Strong (CRD #2340863, Registered Representative, Indianapolis, Indiana)** was fined \$25,000 and suspended from association with any NASD (and now, FINRA) member in any capacity for one year. The sanctions were based on findings that Strong participated in private securities transactions without prior written notice to, and written permission from, his member firm.

This decision has been appealed to the NAC and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #E8A2003091501)**

## Complaint Filed

**FINRA issued the following complaint. Issuance of a disciplinary complaint represents FINRA'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 this complaint is unadjudicated, you may wish to contact the respondent before drawing any conclusions regarding these allegations in the complaint.**

**North American Clearing, Inc. (CRD #39118, Longwood, Florida)** was named as a respondent in a FINRA (fka NASD) complaint alleging that from about October 29, 2004, through about March 11, 2005, the firm prepared and maintained inaccurate customer reserve formula computations, failed to make required deposits to its Special Reserve Account and failed to notify NASD of its failures to make the required deposits. The complaint alleges that from about March 31, 2005, until about July 22, 2005, the firm prepared and maintained inaccurate customer reserve formula computations, failed to promptly make required deposits to its Special Reserve Account and failed to notify NASD of its failure to make the required customer reserve deposits. The complaint also alleges that the firm prepared and maintained an inaccurate net capital computation, trial balance and general ledger as of January 31, 2005, and filed a materially inaccurate FOCUS report for January 2005. The complaint further alleges that the firm conducted an inaccurate box count as of February 28, 2005, in that certificates in the box for positions that were not on the firm's stock record and the amount of shares in the box did not match the firm's stock record.

In addition, the complaint alleges that the firm prepared and maintained inaccurate position records as of March 4 and 9, 2005, and from about January 2005 through about March 2005, it failed to take steps to obtain physical possession or control of securities failed-to-receive by initiating buy-in procedures or otherwise involving ACATS failures and customer-related fails. Moreover, the complaint alleges that from about January 1, 2004, through about February 28, 2005, the firm failed to liquidate, or failed to timely liquidate, unpaid-for customer securities positions in cash accounts; permitted public customers to purchase securities in accounts that were frozen pursuant to Section 220.8(c) of Regulation T without having cash on deposit to pay for the purchases; and from about late October 2004 until about early January 2005, failed to liquidate customer positions in a timely manner in customer margin accounts that fell below the maintenance margin requirements prescribed by NASD Rule 2520(c)(1). Furthermore, the complaint alleges that from about April 2003 through about February 2005, the firm permitted an individual to act as its Operations Manager and to perform functions requiring registration as a Financial and Operations Principal, when she was not so registered. The complaint alleges that as of March 7, 2005, the firm had not conducted independent testing of its AML compliance program, failed to provide prompt notification to NASD of the change of its AML compliance officer until on or about July 25, 2005, failed to update the NASD Contact System to designate a new AML compliance officer, and during 2003 and 2004, failed to conduct ongoing AML training for appropriate personnel. The complaint also alleges that the firm's compliance program was inadequate, in that it failed to establish policies and procedures reasonably designed to detect and cause the reporting of suspicious transactions required under 31 U.S.C. 5318(g) and the implementing regulations thereunder.

The complaint further alleges that from October 1, 2003, through at least April 1, 2005, the firm failed to maintain all internal electronic correspondence on non-erasable, non-rewriteable media and its supervisory system and written procedures regarding internal electronic communications were deficient in that registered persons could delete emails at will, and its written procedures merely stated that the firm retains electronic communications in accordance with regulatory requirements with no further details or explanation. In addition, the complaint alleges that during 2003 and 2004, the firm failed to maintain a continuing and current firm element continuing education program. The complaint also alleges that from about April 2003 through about February 2005, the firm failed to establish and maintain a reasonable supervisory system to monitor its financial and credit risk management relating to its correspondent business. The complaint also alleges that from about April 2003 through about February 2005, the firm, acting through an individual, failed to reasonably supervise the firm's operations system conversion and its operations activities to detect and/or prevent violations, including, but not limited to, inaccurate box counts, position records, buy-in procedures, Regulation T and NASD Rule 2520, maintenance of electronic correspondence and customer account transfers.

The complaint further alleges that from about March 2004 through about March 2005, the firm engaged in the practices of improperly liquidating public customer money market fund positions, and failing to sweep customer free credit balances into customer-designated money market funds or a bank deposit account, in order to create cash flow to meet the firm's daily settlement obligations and, at the time, did not have a bank line of credit to provide cash for its daily settlement obligations. In addition, the complaint alleges that on numerous occasions, the firm failed to sweep customers' free credit balances to a money market fund or a bank deposit account and/or liquidated shares in the designated money market fund without the customer's permission, thereby using the free credit balances to meet its daily settlement obligations and improperly using customer funds and securities. Moreover, the complaint alleges that the firm failed to respond fully to NASD requests to provide account documentation because it failed to maintain the customer new account documentation for some accounts. Furthermore, the complaint alleges that from November 2004 through January 2005, the firm failed to comply with the account validation and transfer requirements of NASD UPC Rule 11870 and validated some transactions late; and from about February 12, 2004, through about May 13, 2004, failed to report to NASD, for itself or for any of its correspondent firms, INSITE information required by NASD Rule 3150(a). In addition, the complaint alleges that from about July 8, 2004, until about February 20, 2005, the firm, acting through an individual, employed and designated on Schedule A of its Form BD a chief compliance officer who was not registered with the firm as a general securities principal or registered in any capacity. **(NASD Case #E072005017201)**

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

**First Hudson Financial Group, Inc.**  
New York, New York  
(June 12, 2007)

**Trautman Wasserman & Company, Inc.**  
New York, New York  
(June 12, 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.)*

**Partner Connections, LLC**  
Brea, California  
(June 4, 2007)

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

**Joseph John Azzata**  
Boca Raton, Florida  
(June 12, 2007)

**Lu Verne Aloys Meyer**  
Sauk Centre, Minnesota  
(June 12, 2007)

**William Neal Sunshine**  
Houston, Texas  
(June 12, 2007)

**Gregory Owen Trautman**  
New York, New York  
(June 12, 2007)

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

**John Rholtz Blot**  
Brooklyn, New York  
(June 18, 2007)

**Kathy Ann Bowling**  
Midland, Texas  
(June 27, 2007)

**Vince Morgan Brotherton**  
Friday Harbor, Washington  
(June 20, 2007)

**Robert Joseph Crawford**  
Port Jefferson, New York  
(June 25, 2007)

**Robert Dane Freeman**  
Travelers Rest, South Carolina  
(June 26, 2007)

**Chad Eric Steiner**  
Dunlap, Illinois  
(June 11, 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.)*

**Wesley Arthur Bennett Jr.**

Jersey City, New Jersey  
(June 11, 2007)

**John Mark Gorts**

Boynton Beach, Florida  
(June 18, 2007)

**Dempsey Bennett Hammond Jr.**

Destin, Florida  
(June 25, 2007)

**Mario Morales**

Chicago, Illinois  
(June 18, 2007)

**Shon Charles Prejean**

Houston, Texas  
(June 11, 2007)

**Barry Ray Stokes**

Dickson, Tennessee  
(June 11, 2007)

**Vinh Chi Tu**

Hercules, California  
(June 26, 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.)*

**Robert James Cuillo**

Kings Park, New York  
(June 19, 2007)

**Christopher Raymond Janish**

West Orange, New Jersey  
(June 20, 2007)

**Sean Fitzgerald Mescall**

Denver, North Carolina  
(June 19, 2007)

**George Michael Tamborello**

Wantagh, New York  
(February 13, 2007 – June 26, 2007)

**Stephen Jon Toussaint**

Wellesley, Massachusetts  
(June 5, 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.)*

**Dwight Keith Hazelwood**

Little Rock, Arkansas  
(June 4, 2007)

## **Citigroup Global Markets to Pay Over \$15 Million to Settle Charges Relating to Misleading Documents and Inadequate Disclosure in Retirement Seminars, Meetings for BellSouth Employees**

**NASD Fines Citigroup \$3 Million, Orders \$12.2 Million in Restitution to Over 200 Customers, to Be Paid Through Related Class Action Settlement**

**Three Brokers, Two Managers Receive Suspensions and Fines Totaling \$295,000**

NASD fined Citigroup Global Markets, Inc., \$3 million to settle charges relating to the use of misleading materials in retirement seminars and meetings for BellSouth employees in North Carolina and South Carolina. NASD also ordered Citigroup to pay approximately \$12.2 million in restitution to more than 200 former BellSouth employees.

Specifically, NASD found that Citigroup failed to adequately supervise a team of brokers based in Charlotte, NC, who used misleading sales materials during dozens of seminars and meetings for hundreds of employees of BellSouth Corporation. As a result of these presentations, more than 400 BellSouth employees opened over 1,100 accounts with the Citigroup brokers. Most of these employees were unsophisticated investors with minimal experience in the financial markets who retired in their mid-50s, well before the BellSouth retirement age of 62. They generally were of modest means, with retirement savings of less than \$350,000. These employees typically cashed out their pensions and 401(k) accounts, and invested these proceeds and other retirement assets with the Citigroup brokers.

“NASD remains strongly committed to protecting investors as they make critical decisions about how to provide for their retirement years,” said James S. Shorris, NASD Executive Vice President and Head of Enforcement. “The improperly supervised brokers in this case used misleading documents that made exaggerated and unwarranted projections of future earnings without fully explaining the risks involved. Many BellSouth employees gave up secure pensions, believing they could afford to retire early, but ended up losing substantial amounts from their retirement nest eggs. We are pleased that this settlement helps ensure that the injured investors will receive the restitution to which they are entitled.”

NASD also disciplined three brokers and two managers at the Charlotte branch office. Those sanctions include:

- A \$125,000 fine and an 18-month suspension for Jeffrey Sweitzer, the broker who developed the sales campaign, led over 40 seminars, directed the activities of the other brokers and drafted or directed the drafting of the misleading sales materials.
- A \$50,000 fine and a 9-month suspension for broker Matthew Muller, for his role at 25 seminars and numerous face-to-face meetings.
- A \$30,000 fine and a 30-day suspension for Joseph Zentner, a junior broker who helped Sweitzer prepare some of the misleading sales materials.

- In addition, Sweitzer, Muller and Zentner must each complete 40 hours of continuing education relating to compliance with NASD rules and federal securities laws, including courses that cover communications with the public and the use of sales materials.
- A \$60,000 fine and a 90-day suspension from acting in a supervisory capacity for the brokers' branch office manger, Randall Matz.
- A \$30,000 fine and a 45-day suspension from acting in a supervisory capacity for branch operations manager Elizabeth Harris.

In addition, before Matz and Harris can return to work at a broker-dealer in a supervisory or principal capacity, they must each pass the appropriate NASD Qualification Examination.

NASD found that from 1994 to 2002 Sweitzer conducted more than 40 seminars, alone or with Muller, without obtaining firm approval for the seminars or seminar sales materials. Following the seminars, Sweitzer and Muller, alone or together, met with BellSouth employees. Using charts, graphs, handouts and other documents at the seminars and meetings, the brokers' sales presentations led the employees to expect that for 30 years they could earn approximately 12 percent annually on their investments and withdraw approximately 9 percent annually.

One document projected the amount a generic 53-year-old BellSouth employee would earn from an initial investment of \$300,000. The projection sheet suggested that this typical employee would earn more than \$1.8 million, could withdraw from \$27,000 to \$69,000 annually, and still have more than \$770,000 in principal remaining 30 years later, at age 83. During their face-to-face meetings, many employees received a customized version of this document, which projected the amount of money the employee could expect to have after 30 years, based upon the employee's current age, assets and monthly expenses. Sweitzer told one couple: "I'm going to tell you by way of expectations that you should be able to expect 12%. That is not guaranteed, but I feel like good times, bad times, ugly times, beautiful times, we should be able to average 12... We expect to earn 12%. We pay out 9%... [b]asically, 10 years down the road you are looking at doubling your money... We may do 15, may do 18 or 20. But good times, bad times, I think that we would do 12%."

NASD found that the brokers' sales materials and presentation failed to adequately disclose that the recommended investments exposed the BellSouth employees to greater market risk than the employees would have faced had they opted to retain their fixed annuity pension payments from BellSouth. The brokers' materials also failed to adequately disclose that the customers would pay fees of two to three percent, requiring them to earn 14 to 15 percent annually to achieve the expected 12 percent return. It was not adequately explained that the expected 12 percent annual net returns exceeded the historical average return of the Standard & Poor's 500 index over 70 years, and that for many periods during that time the S&P 500 returned far less than 12 percent. The brokers also did not adequately disclose that the recommended investments could decline in value so much as to reduce the customers' principal. In

addition, various pieces of the sales materials overstated the brokers' credentials and experience and omitted necessary disclaimers. NASD found that as a result of Sweitzer's and Muller's sales presentations many of the BellSouth employees came to believe that they could afford to retire early by relying upon monthly withdrawals from their retirement savings pursuant to the provisions of Internal Revenue Code Section 72(t). Under Section 72(t), a person under the age of 59 ½ can withdraw a fixed stream of regular and equal payments from their retirement accounts without having to pay the usual 10 percent tax penalty for early withdrawals. Relying on this IRS provision, many of Sweitzer's and Muller's customers cashed out their nearly risk-free BellSouth pensions, their 401(k) accounts and other retirement assets and invested the proceeds with the brokers. Fees and commissions from those BellSouth employee accounts comprised a majority of the compensation earned by Sweitzer and Muller.

Over 200 BellSouth employees saw the principal in their accounts decline by a total of approximately \$12.2 million. NASD found that when the customer accounts began losing value, Sweitzer and Muller held a series of telephone conference calls to retain their clients' accounts. In a December 2000 call, Sweitzer told his clients that he believed that the Dow Jones Industrial Average (DJIA) could rise above 11,000 and that it might get "closer to 12,000" by the end of 2001. He also told clients that he believed the DJIA would double in six years, rising to 20,000 or 21,000 by 2006. Sweitzer had no reasonable basis for making these statements (in fact, the DJIA ended 2001 at 10,021).

Citigroup failed to follow up on various red flags arising from the brokers' conduct. During most of the relevant years, Sweitzer indicated to Citigroup in branch audit questionnaires that he was holding seminars, but the auditors did not require him to produce samples of the materials he was using at his seminars or to confirm that the seminars and related documents had been approved by a principal, as required by Citigroup's procedures. Furthermore, Citigroup's compliance officials had an opportunity to review one of the team's seminar handouts in 2001, but failed to detect, correct and follow up on some of the misstatements and omissions contained in the documents, after having sent the documents back to the branch for revision and resubmission. Matz and Harris failed to supervise the activities of the brokers even though they should have known the brokers were holding seminars and using misleading, unapproved sales materials.

NASD ordered Citigroup to pay \$12.2 million in restitution to former BellSouth employees through the recently approved settlement of a North Carolina state court class action brought on behalf of the BellSouth customers of Citigroup, entitled *Victoria T. McPhatter, et. al. v. Citigroup Global Markets, Inc., et al.* The state court judge has certified the class and approved the settlement of the class action, Citigroup has deposited the money into an escrow account, and an administrator will process compensation claims from the brokers' customers subject to court approval.

Citigroup, Sweitzer, Muller, Zentner, Matz, and Harris settled the action announced today without admitting or denying the charges, but consented to the entry of NASD's findings.

Sweitzer's suspension in any capacity is in effect from June 18, 2007, through December 17, 2008. Muller's suspension in any capacity is in effect from June 18, 2007, through March 17, 2008. Zentner's suspension in any capacity was in effect from July 2, 2007, through July 31, 2007. Matz' suspension in any supervisory or principal capacity is in effect from July 2, 2007 through September 29, 2007. Harris' suspension in any supervisory or principal capacity is in effect from July 2, 2007 through August 15, 2007.

## **NASD Fines Wachovia Securities \$2 Million for Fee-Based Account Violations**

### **NASD Also Orders Firm to Identify and Pay Restitution to Approximately 1,300 Customers**

NASD fined Wachovia Securities LLC of Richmond, VA, \$2 million for failing to adequately supervise its fee-based brokerage business between 2001 through 2004.

In addition, NASD ordered Wachovia to identify and pay restitution to approximately 1,300 customers who were inappropriately allowed to continue maintaining fee-based accounts, or who were inappropriately charged account fees on Class A mutual fund share holdings for which they had already paid a sales load.

The firm also is required to retain an outside consultant to review its process of identifying and paying restitution to customers.

"Firms must have systems and procedures which are tailored to reasonably supervise their business activities," said NASD James Shorris, Executive Vice President and Head of Enforcement. "In the case of fee-based accounts, firms had an obligation to their customers to assess the appropriateness of such accounts both when the accounts were opened and periodically thereafter. Here, Wachovia failed to implement a system designed to ensure that an assessment of the appropriateness of the fee-based account occurred. This failure was compounded by the firm's failure to prevent certain fee-based customers from being charged both an account fee and a sales charge for the same mutual fund investments."

In fee-based brokerage accounts, customers are charged an annual fee that is either fixed or a percentage of the assets in the account, rather than a commission for each transaction, as in a traditional brokerage account. These accounts first became available in 1999 as a result of a proposed Securities and Exchange Commission (SEC) rule that exempted stockbrokers from certain elements of the Investment Advisers Act of 1940. In March, a federal court struck down the final version of that SEC rule.

Wachovia began offering a fee-based brokerage account, now called "Pilot Plus," to its customers in 1999. In 2001, Wachovia had just over 18,000 Pilot Plus customers who paid more than \$55 million in Pilot Plus fees. By the end of 2004, that number had grown to more than 41,000 customers who paid more than \$110 million in Pilot Plus fees.

NASD found that during 2001 through 2004, Wachovia failed to establish and maintain an adequate supervisory system, including written procedures, reasonably designed to review and monitor its Pilot Plus accounts. While the firm informed its brokers that a Pilot Plus account was not appropriate for customers who made a limited number of trades, buy-and-hold customers, and customers with assets below \$50,000, Wachovia failed to put in place a system and procedures reasonably designed to determine whether Pilot Plus accounts were appropriate for its customers.

NASD's investigation revealed that 594 Wachovia customers, who conducted no trades in their Pilot Plus accounts for at least two consecutive years, paid the firm approximately \$1.9 million in fees. Also, 620 Pilot Plus customers held assets of less than \$25,000 for at least one full year and paid at least the minimum annual fee of \$1,000. This fee represented twice the firm's stated top rate of 2 percent allowed under the Pilot Plus agreement. During the time that these customers' eligible assets averaged below \$25,000 for at least one full year, they paid a total of approximately \$1 million in Pilot Plus fees. All of these customers will be entitled to restitution under the settlement.

In addition, Wachovia failed to reasonably enforce its written procedures designed to protect Pilot Plus customers from being assessed both an initial sales charge and an on-going asset-based fee on the purchases of Class A shares of mutual funds. Ordinarily, when a customer purchases Class A shares of a mutual fund, the customer pays a front end sales charge or "load" at the time of purchase. Under Wachovia's procedures, customers who purchased Class A shares outside of a Pilot Plus account and paid a front end sales charge on the purchase were not allowed to transfer those shares into a Pilot Plus account for at least 13 months so as to avoid duplicative charges for the fund shares. But Wachovia failed to enforce these procedures. Consequently, Wachovia charged more than 110 customers both a load and Pilot Plus fees on the purchase of Class A shares of mutual funds. These customers also will receive restitution pursuant to the settlement.

NASD also found that Wachovia failed to adequately supervise certain high revenue-producing brokers, who were members of the firm's "Red Carpet Club." The Red Carpet Club members were exempted from some of the firm's review and approval processes. Whereas most Pilot Plus accounts were opened only after review and approval by both a branch manager and a representative from the unit responsible for the oversight of all of the firm's fee-based programs, only branch manager approval was required for customers of Red Carpet Club members. This less vigorous review resulted in Red Carpet Club members opening Pilot Plus accounts for customers with total assets which were below the firm's stated \$50,000 minimum account balance. This resulted in Red Carpet Club members' customers constituting approximately 99 percent of those accounts in Pilot Plus that held less than \$25,000 in assets for at least one full year.

Additionally, two brokers, who were recruited from another firm and immediately became Red Carpet Club members, brought more than 340 of their customers to Wachovia and opened Pilot Plus accounts for them. In recommending Pilot Plus accounts to these customers, the two brokers incorrectly told them that Pilot Plus was an advisory account rather than a fee-based brokerage account. Wachovia failed to adequately supervise these brokers' communications with their customers. Moreover,

once the firm discovered that these brokers had incorrectly described Pilot Plus as an advisory account, it failed to respond in a timely manner to correct the inaccurate representations made to these customers.

NASD also determined that Wachovia violated NASD rules governing communications with the public by providing its brokers with an optional letter they could send to customers which inaccurately stated at one point that Pilot Plus was “a fee-based, investment advisory service.” In fact, Pilot Plus was not an advisory service or advisory account, which would be subject to a different regulatory regime, but was in fact a fee-based brokerage account.

In settling this matter, the firm neither admitted nor denied the charges, but consented to the entry of NASD’s findings.

### **NASD Fines Wells Fargo Securities \$250,000 for Failing to Disclose Analyst’s Employment with Covered Company in Research Report**

#### **NASD Also Suspends Former Director of Research, Files Complaint Against Analyst**

NASD censured and fined Wells Fargo Securities, LLC of San Francisco \$250,000—and imposed a \$40,000 fine and 60-day supervisory suspension against its former Director of Research, Douglas van Dorsten—for failing to disclose in a research report that the lead analyst on the report had accepted a job at Cadence Design Systems, a San Jose, CA, company that was the subject of the report.

NASD also filed a complaint against Jennifer Jordan, the former Wells Fargo research analyst, for failing to disclose in a series of three research reports that she was pursuing employment and then had accepted a job with Cadence, which was the subject of all three reports. As part of her compensation package with Cadence, Jordan was to receive 15,000 shares of Cadence stock, along with the option to purchase an additional 75,000 shares, once she started working at Cadence.

“The actions announced today should remind brokerage firms and research analysts of the importance of full disclosure of conflicts of interest in research reports,” said James S. Shorris, NASD Executive Vice President and Head of Enforcement. “There is no doubt that, where a research analyst is pursuing employment or has accepted a job with a covered company, NASD rules require that information concerning such a clear conflict of interest must be disclosed in research reports.”

NASD’s disciplinary actions concern three research reports issued by Wells Fargo in February, March, and April of 2005. The subject of the research reports, Cadence, designs semi-conductors for use in the global electronics market. In each report, Jordan was listed as the lead analyst.

NASD alleged in its complaint that from January through April 2005, Jordan applied for, interviewed for, and then accepted a job at Cadence. On February 4, 2005, according to NASD’s complaint, after Jordan had applied for a job at Cadence, Wells Fargo issued a research report covering Cadence that increased the price target for the company from \$16 per share to \$18 per share. The report did not disclose that Jordan had applied for a job at Cadence.

The complaint further alleges that on March 2, 2005—after Jordan had met with Cadence senior management twice to interview for a job with the company—Wells Fargo issued a research report reiterating the \$18 per share price target. That report did not disclose that Jordan had applied for a job at Cadence or that she was in employment discussions with the company.

After Wells Fargo issued the March 2, 2005 report, Jordan was offered a position at Cadence as Corporate Vice President of Investor Relations. As part of the offer, Cadence agreed to pay Jordan over \$300,000 in salary and bonuses, provide her with 15,000 shares of Cadence stock and an option to purchase 75,000 additional shares, and provide her a \$1 million interest-free loan. Shortly after she accepted the offer on April 9, 2005, Jordan told van Dorsten and others at Wells Fargo that she had accepted a job at Cadence.

On April 28, 2005, Wells Fargo published another research report concerning Cadence. That report raised revenue estimates for Cadence for the second quarter of fiscal year 2005 and increased both revenue and price-per-share estimates for the company for fiscal years 2005 and 2006. On the morning the report was issued, Jordan flew to Cadence's offices to attend a management meeting as a future employee of the company.

Although Wells Fargo and van Dorsten had learned nearly three weeks prior to the April 28 report that Jordan had accepted a position at Cadence as Vice President of Investor Relations, that information was not disclosed in the report. In his position as Director of Research, van Dorsten approved the April 28 report without requiring that the report disclose that Jordan had accepted a position with Cadence.

In its settlement with Wells Fargo and van Dorsten, NASD found that Jordan's acceptance of a job at Cadence constituted material information, a material conflict of interest, and a financial interest in the securities of Cadence that should have been disclosed in the April 28, 2005 report. NASD found that Wells Fargo and van Dorsten violated NASD rules by publishing the April 28 report without disclosing that information. Wells Fargo and van Dorsten neither admitted nor denied the findings, but consented to the entry of NASD's findings.

All three research reports are the subject of NASD's complaint against Jordan, which alleges that her acceptance of a job at Cadence constituted material information, a material conflict of interest, and a financial interest in Cadence securities that was required to be disclosed in the April 28, 2005 Cadence research report. The complaint further alleges that Jordan violated NASD rules by failing to disclose that she had applied for a job with Cadence and that she was in employment discussions with Cadence in the two earlier reports.

Because this complaint is unadjudicated, interested persons may wish to contact the respondent before drawing any conclusions regarding the allegations in the complaint.

Van Dorsten's suspension in any capacity was in effect from June 4, 2007, through August 2, 2007.

## **NASD Settles Cases Against MML Investors Services, NYLIFE Securities, Securities America and Northwestern Mutual Investment Services for Fines Totaling over \$1.2 Million for Failures Relating to Mutual Fund Sales**

### **MML and Northwestern Receive Credit for Remedial Efforts**

NASD settled cases against four firms involving mutual fund sales violations.

NASD imposed a \$473,000 fine against MML Investors Services, Inc., of Springfield, MA, and a \$354,000 fine against NYLIFE Securities LLC, of New York, NY for improper Class B share sales. Securities America, Inc., of Omaha, NE was fined \$322,000 for improper Class B and Class C share sales.

NASD also fined Northwestern Mutual Investment Services, LLC, of Milwaukee, WI, \$100,000 for failure to have adequate supervisory systems and procedures to ensure that clients received Net Asset Value (NAV) pricing when appropriate under NAV transfer programs. MML's settlement included similar findings without a fine.

In resolving the Class B and Class C share cases, MML, NYLIFE and Securities America have agreed to remediation plans that cover over 10,200 transactions and at least 1,080 households.

In resolving the NAV cases, MML and Northwestern will provide additional remediation to customers who qualified for, but did not receive the benefit of, available NAV transfer programs. Total NAV remediation for MML, including remediation already paid to customers, is estimated at approximately \$2.56 million. For Northwestern, total remediation is estimated at \$2 million, in addition to the previous conversion of approximately \$2.0 million in Class B shares to Class A shares. "The cases announced today are the result of NASD's continuing commitment to help ensure that sales of mutual funds—the investment product most commonly held by investors—are made appropriately and with the benefit of full consideration of all available share classes and pricing features," said James S. Shorris, NASD Executive Vice President and Head of Enforcement. "These firms failed to implement reasonable supervisory procedures to ensure that these considerations were addressed on a consistent basis."

### **Improper Sales of Class B and Class C Mutual Fund Shares**

Class A shares generally charge a front-end sales charge and impose an asset-based sales charge that generally is lower than the asset-based sales charge imposed by Class B or Class C shares. Class B shares typically do not charge a front-end sales charge, but they do impose asset-based sales charges that are generally higher than those associated with Class A shares, and also impose a contingent deferred sales charge (CDSC) which the investor may pay at the time of sale. Class B share CDSCs generally decline over the time that an investor holds the shares and usually ultimately expire after a period of years, at which time Class B shares often convert to Class A shares. Class C shares usually do not impose a front-end sales charge upon purchase, but are often subject to a CDSC if sold within a short time of purchase, usually one year, and typically impose higher asset-based sales charges than Class A shares. Unlike Class B shares, Class C shares generally do not convert to Class A shares.

In recommending the purchase of mutual funds, a member firm must assess the suitability of the class of shares to be purchased as well as the suitability of the particular fund. Primary considerations include the investment amount, the expected term of the investment, the applicable sales loads, fees and expenses associated with each class and the effect of such factors on the ultimate return on investment to the investor. NASD found that, on certain occasions during January 2003 through July 2004, Securities America recommended and sold Class B and Class C share mutual funds and NYLIFE and MML recommended and sold Class B share mutual funds to their clients and did not adequately consider, on a consistent basis, the foregoing factors. These firms also had inadequate supervisory and compliance policies and procedures relating to these mutual fund sales.

### **Supervisory Failures Relating to Mutual Fund Sales Charge Waivers**

MML and Northwestern were charged with failing to have adequate supervisory systems and procedures to identify opportunities for investors to purchase Class A mutual fund shares at NAV, without a front-end sales charge, and to ensure that all eligible investors received the benefit of available NAV transfer programs. During the period 2001 through 2004, many mutual fund families offered NAV transfer programs that eliminated front-end mutual fund sales charges for certain customers. Under an NAV transfer program, customers who redeemed fund shares for which they paid a sales charge were permitted to use those proceeds within prescribed time periods to purchase Class A shares of a new mutual fund at NAV—that is, without paying another sales charge.

NASD found that MML and Northwestern failed to have systems and procedures reasonably designed to identify opportunities for clients to purchase mutual funds at NAV and ensure that clients received the benefit of available NAV transfer programs when appropriate. As a result, certain investors who were eligible to purchase Class A shares under NAV transfer programs purchased Class A shares and incurred front-end sales charges that they should not have paid, and/or purchased other fund share classes that unnecessarily subjected them to higher fees and the potential of contingent deferred, or back-end, sales charges.

NASD imposed no fine against MML, however, for its failure to have an adequate supervisory system for its NAV transfer programs in light of MML's proactive remedial actions taken prior to NASD's detection of the violative conduct. MML discovered on its own that it failed to provide certain eligible customers with NAV pricing under available NAV transfer programs and proactively took prompt remedial action to investigate the situation and correct its system and procedures. As part of this process, MML conducted a self-review to identify clients who were eligible for, but did not receive, NAV pricing between 2001 and 2004 and paid more than \$1.8 million in restitution to these clients.

NASD imposed a reduced fine of \$100,000 against Northwestern in recognition of its prompt remedial steps after an NASD examination to assess client harm and provide remediation to eligible clients. Northwestern paid partial remediation of approximately \$242,000 and converted approximately \$2.0 million in Class B shares to Class A shares.

“We hope that NASD’s decision not to fine MML for supervisory system violations related to its NAV program, and to reduce the fine for Northwestern, will encourage other firms to increase their efforts to proactively identify compliance problems, promptly assess and correct underlying supervisory deficiencies and timely compensate any customers harmed,” Shorris said.

Each firm settled the matter without admitting or denying the allegations, but consented to the entry of NASD’s findings.