

Disciplinary and Other NASD Actions

REPORTED FOR APRIL

NASD® has taken disciplinary actions against the following firms and individuals for violations of NASD rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this *Notice* is current as of the end of March 2004.

Firm and Individuals Sanctioned

Day International Securities (CRD #23405, San Jose, California), Douglas Conant Day (CRD #1131612, Registered Principal, San Jose, California), and Ronald Winston Wood (CRD #1446452, Registered Principal, Lincoln, California). The firm was fined \$53,000, jointly and severally with Day and Wood, and suspended from association with any NASD member in any capacity for 90 business days. Day was fined \$33,000, jointly and severally, and suspended from association with any NASD member in any capacity for 60 business days. Wood was fined \$53,000, jointly and severally, and suspended from association with any NASD member in any capacity for 90 business days. The sanctions were based on findings that the firm, acting through Day and Wood, held customer funds and securities, failed to establish a Special Reserve Bank Account for the Exclusive Benefit of Customers, and failed to make computations of the amounts of funds required to be deposited in such an account. The findings also stated that the respondents engaged in a securities business without maintaining the required minimum net capital. In addition, NASD found that Wood performed, and the firm and Day permitted him to perform, duties requiring registration when he was deemed inactive for failing to complete NASD's Regulatory Element of Continuing Education.

Day's suspension began March 1, 2004, and will conclude at the close of business May 24, 2004. Day International's and Wood's suspensions began March 1, 2004, and will conclude at the close of business July 7, 2004. (NASD Case #C01020023)

Firm Fined, Individual Sanctioned

Sterling Financial Investment Group, Inc. (CRD #41506, Boca Raton, Florida) and Brian Frederick Gimelson (CRD #2262474, Registered Principal, Fort Washington, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which they were fined \$5,000, jointly and severally. The firm was also censured and fined \$7,500 and Gimelson was suspended from association with any NASD member in any capacity for 20 business days. Without admitting or denying the allegations, the firm and Gimelson consented to the described sanctions and to the entry of findings that Gimelson recklessly and/or intentionally effected agency cross transactions in a stock at or near the close of the trading day at prices higher than the prevailing national best offer, causing market appreciation in the margin accounts of several of his customers at his member firm, and, by virtue of the

manner in which Sterling's clearing firm calculated margin liabilities, decreased the amount of margin exposure in those accounts. The findings also stated that the firm failed to establish a supervisory system reasonably designed to achieve compliance with applicable securities laws and regulations concerning quotation and trading activity at or near the close of the trading day. NASD also found that the firm was unable to provide order tickets and/or confirmations for transactions in response to NASD requests. In addition, NASD found that order tickets did not indicate the account for which the trade was entered and several were not properly stamped with the time of receipt or the time of execution.

Gimelson's suspension will begin April 19, 2004, and will conclude at the close of business May 14, 2004. (NASD Case #C07040018)

Firm and Individual Fined

Dome Securities Corp. (CRD #38036, New York, New York) and Gregory Alan Joseph (CRD #1726706, Registered Principal, Bronxville, New York) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$10,000, jointly and severally. Without admitting or denying the allegations, the firm and Joseph consented to the described sanctions and to the entry of findings that the firm, acting through Joseph, permitted Joseph and another individual to act in capacities requiring registration while their registration status with NASD was inactive due to their failure to complete the Regulatory Element of NASD's Continuing Education Requirement. The findings also stated that the firm, acting through Joseph, permitted an individual to park his registration with the firm when he was not actively involved in the firm's securities business or otherwise functioning as a representative of the firm. (NASD Case #C10040015)

Firms Fined

ABN Amro Incorporated (CRD #15776, Chicago, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$32,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit through the Automated Confirmation Transaction ServiceSM (ACTSM) last sale reports of transactions in NASDAQ National Market[®] (NNM[®]), SmallCapSM (SCSM), and OTC Equity securities. The findings also stated that the firm failed to designate through ACT last sale reports in NNM securities as late. In addition, NASD found that the firm incorrectly designated as ".T" through ACT last sale reports of transactions in OTC Equity securities executed during normal

market hours. Furthermore, NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning ACT reporting obligations. (NASD Case #CMS040010)

AXA Advisors, LLC (CRD #6627, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000, \$7,500 of which was jointly and severally. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it allowed an individual, while not registered with NASD as a principal, to act in that capacity by actively engaging in the management of the firm. (NASD Case #C10040012)

Domestic Securities, Inc. a/k/a Attain-ENC (CRD #34721, Montvale, New Jersey) 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 with respect to applicable securities laws, regulations, and NASD rules concerning SEC Rule 11Ac1-5 within 30 business days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it made available a report on the covered orders in national market system securities that it received for execution from any person. This report included incorrect information as to the number of covered orders, the cumulative number of shares of covered orders, and the average realized spread for execution of covered orders. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning SEC Rule 11Ac1-5. (NASD Case #CMS040011)

Ladenburg Capital Management, Inc. (CRD #14623, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$42,500, and ordered to pay \$911, plus interest, in restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to file, and to timely file, amended Uniform Applications for Securities Industry Registration or Transfer (Forms U4) concerning customer complaints and arbitration statements of claim against registered representatives employed by the firm. The findings also stated that the firm failed to file, and to timely file, amended Uniform Termination Notices for Securities Industry Registration (Forms U5). NASD found that the firm failed to report arbitration awards rendered against the firm and a registered representative within 10 business days to NASD's 3070 Complaint Reporting System. In addition, NASD found that the firm did not properly accept transactions in ACT in which it acted as the contra-party to the transaction by failing to accept trades in ACT with the required ".S" short sale

indicator. Moreover, NASD found that the firm failed to obtain best execution in sale transactions, resulting in losses to public customers. Furthermore, NASD found that the firm failed to establish, maintain, and enforce adequate written supervisory procedures reasonably designed to achieve compliance with NASD's By-Laws and rules addressing the filing of amended Forms U4 and Forms U5 in the event of customer complaints or arbitration claims. **(NASD Case #CLI040003)**

May, Davis Group, Inc. (CRD #35622, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$30,000. In light of the financial status of the firm, a fine of \$30,000 has been imposed. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it effected distributions of warrants in securities, and that during the course of the distributions the firm continued to bid for and induce others to purchase the securities. The findings also stated that the firm effected sales of securities to customers at prices that were unfair. **(NASD Case #C9A040003)**

Natexis Bleichroeder Inc. (CRD #1101, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$26,000, and required to revise its written supervisory procedures with respect to applicable securities laws, regulations, and NASD rules concerning riskless principal trade reporting and ACT short sale reporting within 30 business days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed short sale transactions and failed to report each of the transactions to ACT with a short sale modifier. NASD also found that the firm was a registered market maker in the securities, and, when an order was presented to the firm at the firm's published bid or published offer in an amount up to its published quotation size, it failed to execute the orders upon presentment and thereby failed to honor its published quotation. The findings also stated that the firm failed, within 90 seconds after execution, to transmit through ACT last sale reports of transactions in eligible securities. The findings further stated that the firm incorrectly reported to ACT the second leg of four "riskless" principal transaction(s) in NNM securities and incorrectly designated the capacity of such transaction(s) as principal. Furthermore, NASD found that the firm failed to report to ACT the correct symbol indicating whether a transaction was a buy, sell, sell short, sell short exempt, or cross for transactions in eligible securities. NASD determined that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning riskless principal trade reporting and ACT short sale reporting. **(NASD Case #CMS040009)**

North Coast Securities Corp. (CRD #35982, San Francisco, California) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed sales of unregistered securities on behalf of a public customer and failed to ascertain whether the stock was freely tradable. The findings also stated that the firm failed to have adequate supervisory procedures in place relating to the prevention of the sale of unregistered securities. NASD also found that the firm allowed a registered representative to engage in sales away from the firm, for compensation, without properly supervising his participation in those sales that entailed fraudulent omissions and the sale of unregistered securities. **(NASD Case #CAF040019)**

TSD Trading, LLC (CRD #23510, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$11,000, and required to revise its written supervisory procedures with respect to securities laws, regulations, and NASD rules concerning short sales within 30 business days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it effected short sales in certain securities for the firm's proprietary account(s) and failed to make or 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's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning short sales and did not include written supervisory procedures providing for an affirmative determination for Over-the-Counter Bulletin Board securities. **(NASD Case #CMS040012)**

Wellington Investment Services Corp. (CRD #23018, Brookfield, Wisconsin) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$13,500, \$7,500 of which was jointly and severally. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to maintain a Checks Received and Forwarded Blotter for a real estate lease offering. The findings also stated that the firm, acting through an individual, failed to provide a needs analysis, training plan, and proof of attendance for its Firm Element of Continuing Education for the years 2001 and 2002. NASD also found that the firm failed to establish, maintain, and enforce adequate written supervisory procedures designed to achieve compliance with applicable securities laws, regulations, and NASD rules with respect to the Firm Element of Continuing Education and the Anti-Money Laundering Compliance Program. Furthermore, NASD found that the firm failed to submit timely to NASD its quarterly customer complaint summary and failed to report timely to NASD customer complaints on its quarterly customer complaint summary. **(NASD Case #C8A040008)**

Individuals Barred or Suspended

Laurie Sue Almack (CRD #3141791, Registered Representative, Alexandria, Indiana) submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Almack consented to the described sanction and to the entry of findings that she prepared and submitted documents bearing the forged signature of a public customer of her member firm's banking affiliate in order to effect the withdrawal of \$4,500 from the customer's bank account without the customer's knowledge and consent. The findings also stated that Almack converted the customer funds and deposited the funds into her checking account for her own use or benefit, and not for the benefit of the customer. (NASD Case #C8A040005)

Joseph Daniel Benter (CRD #2169897, Registered Representative, Wichita, Kansas) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and barred from association with any NASD member in any capacity. The fine must be paid before Benter reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Benter consented to the described sanctions and to the entry of findings that he controlled the account activity for the trust account of a public customer and effected excessive transactions in the account with will and reckless disregard for the customer's interests and stated objectives in order to generate commissions for himself. (NASD Case #C04040008)

Elena Laura Bianchi (CRD #1675129, Registered Representative, Houston, Texas) submitted an Offer of Settlement in which she was fined \$7,500 and suspended from association with any NASD member in any capacity for 20 business days. Without admitting or denying the allegations, Bianchi consented to the described sanctions and to the entry of findings that she effected securities transactions in the accounts of public customers through the use of discretion. The findings also stated that Bianchi failed to obtain written authorization from the customers to use discretion in their accounts and failed to obtain acceptance in writing by her member firm of the accounts as discretionary.

Bianchi's suspension began April 19, 2004, and will conclude at the close of business May 14, 2004. (NASD Case #C06030024)

Michael Scott Blanchard (CRD #4617872, Associated Person, Denver, Colorado) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Blanchard reassociates with any member firm following the suspension or before requesting relief from any statutory disqualification. Without admitting or

denying the allegations, Blanchard consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on his Form U4.

Blanchard's suspension began April 5, 2004, and will conclude at the close of business April 4, 2005. (NASD Case #C3A040012)

Christopher John Borgo (CRD #2377439, Registered Principal, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$30,000 and suspended from association with any NASD member in any capacity for 20 business days. Without admitting or denying the allegations, Borgo consented to the described sanctions and to the entry of findings that he opened accounts for the children of a public customer and, pursuant to instructions from the customer, executed transactions in the accounts without the authorization of the account holders to accept instructions from the public customer. The findings also stated that Borgo testified falsely under oath in an NASD on-the-record interview.

Borgo's suspension began April 5, 2004, and will conclude at the close of business May 3, 2004. (NASD Case #C07040021)

Craig Alan Brandwein (CRD #2451375, Registered Principal, Smithtown, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Brandwein consented to the described sanction and to the entry of findings that he failed to supervise adequately registered representatives in the sale of unregistered stock to the investing public. The findings also stated that Brandwein failed to conduct adequate due diligence of the stock and failed to discover that there were no registration statements filed or in effect pursuant to the Securities Act of 1933. NASD also found that Brandwein failed to detect or follow up on certain red flags including a dramatic increase in the sales volume of the stock by his registered representatives. In addition, NASD found that Brandwein failed to respond to an NASD request to appear and give testimony. (NASD Case #CAF040018)

Delroy Anthony Bryan (CRD #1354165, Registered Representative, Miami, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Bryan reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Bryan consented to the described sanctions and to the entry of findings that he engaged in outside business activities, for compensation, and failed to provide written notice to his member firm.

Bryan's suspension began March 15, 2004, and will conclude at the close of business June 14, 2004. (NASD Case #C07040016)

Robert Joseph Calamunci, Sr. (CRD #1618899, Registered Principal, Tinton Falls, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$13,460.15, which represents disgorgement of commissions, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Calamunci consented to the described sanctions and to the entry of findings that he recommended numerous Class B mutual fund transactions to public customers that were unsuitable. The findings also stated that, had Class A shares been recommended instead of Class B shares, the customers would have (1) been eligible to receive breakpoints on Class A share purchases; (2) paid lower 12b-1 fees; and (3) avoided being subject to contingent deferred sales charges.

Calamunci's suspension began March 1, 2004, and concluded at the close of business March 12, 2004. (NASD Case #C9B040007)

Saleem Sadiq Chaudhry (CRD #2112352, Registered Representative, Fort Lauderdale, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Chaudhry consented to the described sanction and to the entry of findings that he failed to respond to an NASD request for information. (NASD Case #C07040019)

Rudell Chisolm (CRD #1179953, Registered Representative, Newark, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Chisolm consented to the described sanction and to the entry of findings that she created a false document when she photocopied a customer's signature from an existing firm document and affixed it to an insurance form without the customer's permission or knowledge. (NASD Case #C9B040012)

Joseph Donald Columbo (CRD #823524, Registered Principal, Melville, New York) submitted an Offer of Settlement in which he was fined \$50,000, suspended from association with any NASD member as an equity trader and as a general securities principal for six months, and required to requalify by exam as an equity trader before again serving in that capacity. Without admitting or denying the allegations, Columbo consented to the described sanctions and to the entry of findings that a member firm, acting through Columbo, participated, directly or indirectly, in undertakings involving the sale of Brady Bonds and interests in Brady Bonds with a view to the distribution of the securities, thereby acting as underwriters in the sale of unregistered securities. The findings also stated

that the firm, acting through Columbo, knowingly or recklessly charged fraudulently excessive markups in the sale of Brady Bonds. NASD also found that Columbo failed to enforce the firm's procedures related to its review of corporate debt and municipal securities transactions.

Columbo's suspensions began April 5, 2004, and will conclude at the close of business October 4, 2004. (NASD Cases #CAF030011/C10030017)

Aaron Denzil Conant (CRD #3115032, Registered Representative, Bonney Lake, Washington) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Conant reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Conant consented to the described sanctions and to the entry of findings that he effected, or caused to be effected, transactions in the accounts of public customers without the knowledge or consent of the customers and in the absence of written or oral authorization to exercise discretion in the accounts.

Conant's suspension began April 5, 2004, and will conclude at the close of business April 4, 2005. (NASD Case #C3B040005)

Charles David Condo (CRD #1089606, Registered Representative, Cleveland, Tennessee) submitted an Offer of Settlement in which he was fined \$5,000, suspended from association with any NASD member in any capacity for four months, and ordered to pay \$7,040, plus interest, in restitution to public customers. Without admitting or denying the allegations, Condo consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior notice to, and approval from, his member firm.

Condo's suspension began March 15, 2004, and will conclude at the close of business July 14, 2004. (NASD Case #C05030056)

William Joseph Dacey (CRD #1024366, Registered Representative, Melrose, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$16,500, including disgorgement of commissions received, and suspended from association with any NASD member in any capacity for 60 days. The fine must be paid before Dacey reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Dacey consented to the described sanctions and to the entry of findings that he engaged in private securities transactions, for compensation, without providing written notice to, or receiving approval from, his member firm.

Dacey's suspension began March 15, 2004, and will conclude at the close of business May 13, 2004. (NASD Case #C11040007)

Gabriel Danastor (CRD #3092123, Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Danastor consented to the described sanction and to the entry of findings that he arranged for an impostor to take the Series 65 qualification exam on his behalf. (NASD Case #C10040008)

Ralph Joelly Davila (CRD #3250349, Registered Representative, Bronx, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Davila consented to the described sanction and to the entry of findings that he plead guilty to felony charges and failed to respond to NASD requests for information. (NASD Case #C10040007)

Raymond Albert Devivo (CRD #2489322, Registered Principal, Naples, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Devivo consented to the described sanction and to the entry of findings that he failed to respond to an NASD request for information. (NASD Case #C07040014)

Chris Feriante (CRD #2711932, Registered Representative, Houston, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. In light of the financial status of Feriante, no monetary sanction was imposed. Without admitting or denying the allegations, Feriante consented to the described sanction and to the entry of findings that he operated a bill-paying service whereby he would provide accounts-payable services to clients. The findings also stated that Feriante received \$263,000 from a public customer, mishandled the customer's funds, and, with the exception of \$75,270, caused the funds to be sent to a third party for the benefit of someone other than the customer. (NASD Case #C06040004)

Kathleen Ann Fislser (CRD #857566, Registered Representative, White Bear Lake, Minnesota) submitted a Letter of Acceptance, Waiver, and Consent in which she was suspended from association with any NASD member in any capacity for one year. In light of the financial status of Fislser, no monetary sanctions were imposed. Without admitting or denying the allegations, Fislser consented to the described sanction and to the entry of findings that she gave public customers checks totaling \$275,900 in an attempt to prevent them from complaining due to losses in their securities accounts and/or to reimburse them for losses and/or margin debt.

Fislser's suspension began March 15, 2004, and will conclude at the close of business March 14, 2005. (NASD Case #C04040006)

Michael Boydd Fruin (CRD #1006912, Registered Representative, New Franklin, Missouri) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Fruin consented to the described sanction and to the entry of findings that he converted \$50,000 of public customers' funds intended for investment in non-securities products by depositing a check endorsed by the customers into his personal bank account without the knowledge, consent, or authorization of the customers. The findings also stated that Fruin failed to respond to NASD requests for information. (NASD Case #C04040009)

David Lloyd Garver (CRD #1027088, Registered Representative, Lebanon, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for three months. In light of the financial status of Garver, no monetary sanction has been imposed. Without admitting or denying the allegations, Garver consented to the described sanction and to the entry of findings that he engaged in an outside business activity, for compensation, without providing prompt written notice to his member firm.

Garver's suspension began April 5, 2004, and will conclude July 4, 2004. (NASD Case #C9A040004)

Juan Gascot-Jimenez (CRD #1385156, Registered Representative, Isla Verde, Puerto Rico) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gascot-Jimenez consented to the described sanction and to the entry of findings that he took the Series 7 exam while in possession of a piece of paper containing information relevant to the exam that he failed to turn over to the testing center staff and reviewed several times during the exam. (NASD Case #C07020018)

Thomas Edward Godfrey (CRD #4047995, Registered Representative, Sugar Hill, Georgia) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 45 days. The fine must be paid before Godfrey reassociates with any NASD member in any capacity following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Godfrey consented to the described sanctions and to the entry of findings that he recommended that a public customer purchase Class C shares of mutual funds although the customer was entitled to a free exchange into Class A shares of these funds, causing her to liquidate her existing mutual fund shares

for \$142,174 to purchase the Class C shares. The findings also stated that the customer was subjected to higher annual expenses than those charged for Class A shares of the same funds, and Godfrey and his member firm earned commissions that would not have been paid if the customer had exercised a free exchange into Class A shares of the same funds.

Godfrey's suspension began March 15, 2004, and will conclude at the close of business April 28, 2004. (NASD Case #C07040015)

Vincent John Glinski (CRD #2206595, Registered Principal, Dix Hills, New York), Howard Francis Curd (CRD #1786714, Registered Principal, Manhasset, New York), and Joseph Patrick Shanahan (CRD #836265, Registered Principal, New York, New York) submitted Offers of Settlement in which Glinski was fined \$20,000 and suspended from association with any NASD member in any capacity for six months. Curd was fined \$50,000, suspended from association with any NASD member in any capacity for one year, and required to requalify by exam for the Series 24 license before acting again in a principal capacity. Shanahan was fined \$7,500, suspended from association with any NASD member in a general securities principal capacity for 25 business days, and required to requalify by exam for the Series 24 license before acting again in a principal capacity.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Glinski prepared research reports on a company traded on the NYSE that were disseminated to the investing public through his firm's Web site, blast faxes, and mailing lists and, in each report, failed to disclose the true financial condition of the company and other material information about the company. The findings also stated that Glinski's research reports contained exaggerated, unwarranted, and misleading statements about the company, including favorable recommendations and target price projections. NASD also found that Curd and Shanahan failed to obtain the signature or initials of a firm principal indicating approval of the research reports it disseminated and failed to file any of the research reports and the actual or anticipated date of first use with NASD's Advertising Regulation Department. In addition, NASD found that Curd failed to establish, maintain, and enforce written supervisory procedures and systems to supervise the activities of registered representatives and associates reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules. Moreover, NASD found that Curd and Shanahan failed to review research reports prior to distribution and knew, or should have known, of red flags in that the reports failed to disclose material facts and contained material misrepresentations. Furthermore, NASD found that Curd, by the use of any means or instrumentality of interstate commerce or of the mails, knowingly or recklessly engaged in manipulative or deceptive devices or contrivances in connection

with the purchase or sale of securities and knowingly or recklessly effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive, or other fraudulent devices or contrivances. The findings also stated that Curd filed an SEC Form 5 and failed to report shares of the security held in which he was a beneficial owner and failed to file an SEC Form 4 disclosing changes in beneficial ownership of securities of the issuer. NASD also found that Curd failed to ensure that e-mails, order tickets, new account forms, and corporate resolutions were preserved.

Glinski's suspension began April 5, 2004, and will conclude at the close of business August 4, 2004. Curd's suspension began April 5, 2004, and will conclude at the close of business April 4, 2005. Shanahan's suspension began April 5, 2004, and will conclude at the close of business May 10, 2004. (NASD Case #CAF030056)

Isaac Charles Grossman (CRD #2905125, Registered Representative, Parkland, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Grossman consented to the described sanctions and to the entry of findings that he opened two accounts for the children of a public customer and, pursuant to instructions from the customer, executed transactions in the accounts without the authorization of the account holders to accept instructions from the public customer.

Grossman's suspension began April 5, 2004, and concluded at the close of business April 12, 2004. (NASD Case #C07040022)

Scott Philip Harris (CRD #705489, Registered Representative, Livingston, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Harris consented to the described sanction and to the entry of findings that he recommended and effected various unsuitable transactions in the account of a public customer. These transactions were unsuitable based on the concentration of speculative securities, the amount of margin utilized, and the customer's financial situation, investment objective, and needs. The findings also stated that Harris settled public customer complaints without his member firm's knowledge or approval. NASD also found that Harris submitted false and/or misleading written responses to NASD requests for information. (NASD Case #C9B040014)

David Charles Hawkinson (CRD #1963106, Registered Representative, Galesburg, Illinois) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hawkinson consented to the described sanction

and to the entry of findings that he engaged in private securities transactions without prior written notice to, and approval from, his member firm. The findings also stated that Hawkinson failed to respond to NASD requests for information. **(NASD case #C8A030104)**

Louis Anthony Helfer (CRD #859561, Registered Principal, Summit, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000, suspended from association with any NASD member in any capacity for four months, and ordered to pay \$5,975, plus interest, in restitution to public customer. Without admitting or denying the allegations, Helfer consented to the described sanctions and to the entry of findings that he knowingly and intentionally entered priced limit orders in NASDAQ securities for his own account into an electronic communications network (ECN) at prices that Helfer knew would improve, and were intended to improve, the National Best Bid or Offer (NBBO) in such securities, in that the full price and size of such orders would be reflected in the public quotation system as the best prices and sizes at which a market participant was willing to buy or sell such securities. The findings also stated that, after having entered such orders, Helfer knowingly and intentionally entered orders to buy or sell shares of such securities in his trading account at his member firm because he knew, and intended, that they would be routed to market makers whose automated execution systems were programmed to buy or sell, and did buy and sell, such securities on an automated basis at prices equal to the NBBO and in an amount greater than the NBBO. NASD also found that, by knowingly and intentionally engaging in this course of conduct, Helfer bought (sold) shares of these securities at prices that were lower (higher) than he would otherwise have been able to buy (sell) shares of these securities, but for his entry of the orders into the ECN. In addition, NASD found that immediately after Helfer received the executions of the orders he had entered for his trading account at his member firm, he intentionally and knowingly canceled 21 of the 30 priced limit orders that he had entered into the ECN, obtaining a financial benefit of approximately \$5,975.

Helfer's suspension began March 15, 2004, and will conclude at the close of business July 14, 2004. **(NASD Case #CMS040014)**

Jaime Robert Hellman (CRD #2477891, Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$17,138.75, including disgorgement of \$12,138.75 in commissions received, and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Hellman reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Hellman consented to the described sanctions and to the entry of findings that he effected securities transactions

away from his member firm, for compensation, and failed to provide written notification to, or receive approval from, his member firm.

Hellman's suspension began April 5, 2004, and will conclude July 4, 2004. **(NASD Case #C10040016)**

Daniel S. Jaume (CRD #4102156, Registered Principal, Lake Hiawatha, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Jaume reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Jaume consented to the described sanctions and to the entry of findings that he failed to respond timely to NASD requests for information.

Jaume's suspension began March 15, 2004, and will conclude at the close of business June 14, 2004. **(NASD Case #C9B040010)**

Elena Jenkins (CRD #4384862, Registered Representative, Memphis, Tennessee) submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member. Without admitting or denying the allegations, Jenkins consented to the described sanctions and to the entry of findings that she directed a \$2,900 withdrawal to be made from the account of a public customer at her member firm and instructed that the funds be deposited into her personal checking account, thereby converting the funds to her own use and benefit without the customer's knowledge or consent. The findings also stated that Jenkins gave a public customer a handwritten guarantee against losses incurred from investment in a security. **(NASD Case #C05040014)**

Michael Edward Joie (CRD #2736854, Registered Principal, North Massapequa, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Joie consented to the described sanction and to the entry of findings that he intentionally failed to attend an NASD on-the-record interview. The findings also stated that Joie informed NASD that he would not agree to participate in any future NASD on-the-record interview. **(NASD Case #CMS040025)**

Kelley Charles Judd (CRD #2307042, Registered Representative, Palm Desert, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before Judd reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Judd consented to

the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written or oral notification to, and receiving approval from, his member firm.

Judd's suspension began April 5, 2004, and will conclude at the close of business May 4, 2004. **(NASD Case #C02040009)**

Roger Angelo Kapsalis (CRD #2159293, Registered Representative, Brooklyn, New York) submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for two months. In light of the financial status of Kapsalis, no monetary sanction has been imposed. Without admitting or denying the allegations, Kapsalis consented to the described sanction and to the entry of findings that he either intentionally or recklessly failed to disclose materially adverse information to public customers in connection with his recommendations that customers purchase a security. The findings also stated that Kapsalis either intentionally or recklessly failed to disclose to public customers his financial incentive for recommending the stock.

Kapsalis' suspension began April 5, 2004, and will conclude at the close of business June 4, 2004. **(NASD Case #C3A030041)**

Brian Aaron Kerns (CRD #4339980, Registered Representative, Chicago, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kerns consented to the described sanction and to the entry of findings that he caused the transfer of \$88,340 from bank accounts of public customers of his member firm's banking affiliate without the knowledge and approval of the customers to a separate bank account over which he executed control, thereby converting the funds to his own personal use. The findings also stated that Kerns failed to respond to an NASD request for information. **(NASD Case #C8A040006)**

Cary Lee Kolopsky (CRD #2688014, Registered Principal, Huntington, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 15 months. The fine must be paid before Kolopsky reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kolopsky consented to the described sanctions and to the entry of findings that he effected the sale of securities from the account of a public customer knowing that the sale would be cancelled and allocated to another customer, an affiliate of the securities issuer, who did not have eligible shares to sell at the time of the sale but was in the process of registering a substantial number

of shares of the security that he owned with the Securities and Exchange Commission (SEC). The findings also stated that Kolopsky cancelled the sale of securities from the one customer's account and allocated the sale to the other customer's account after his shares were registered with the SEC. NASD also found that Kolopsky facilitated this cancellation and allocation by improperly writing "wrong account number on original ticket" in the "Remarks" section of the Cancel and Rebill form when that was not the actual reason why the transaction had been reversed. In addition, NASD found that Kolopsky knew, or should have known that, by allocating the sale to the one customer's account, he was enabling the customer to circumvent the requirements of SEC Rule 144 because the customer was not entitled to sell any shares because they were not yet registered.

Kolopsky's suspension began March 15, 2004, and will conclude at the close of business June 14, 2005. **(NASD Case #C10040009)**

Donald Michael Lacovazzi (CRD #1282380, Registered Representative, Burlington, Connecticut) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$9,000, \$6,222 of which represents partial disgorgement of his commissions, ordered to disgorge the balance of commissions in the amount of \$12,344, plus interest, to the estate of a public customer, and suspended from association with any NASD member in any capacity for 10 business days. Satisfactory proof of payment of the disgorgement must be made before Lacovazzi reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Lacovazzi consented to the described sanctions and to the entry of findings that he recommended to a public customer that he switch the variable annuity he had purchased to another variable annuity, resulting in surrender charges of \$12,344 to the customer. The findings also stated that Lacovazzi made this recommendation without having a reasonable basis for believing that the recommendation was suitable based upon his client's investment objectives, financial situation, and needs.

Lacovazzi's suspension began April 5, 2004, and concluded at the close of business April 16, 2004. **(NASD Case #C11040009)**

Gordon Philip Lewis (CRD #1443906, Registered Representative, Lakeport, California) and **Robert Jess Bise, Jr. (CRD #1437310, Registered Principal, Kelseyville, California)** submitted an Offer of Settlement in which Lewis was barred from association with any NASD member in any capacity, and Bise was fined \$10,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Bise reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Lewis and Bise consented to the

described sanctions and to the entry of findings that Lewis recommended unsuitable investments to a public customer, and effected purchases and sales of securities in her account without reasonable grounds for believing his recommendations were suitable for the customer based upon her other securities holdings, financial situation, and needs. NASD also found that Lewis prepared and submitted order tickets in connection with the unsuitable recommendation to his member firm that falsely represented that the purchases were unsolicited when, in fact, they were solicited. The findings also stated that, in connection with the losses that the customer suffered in her account based upon his recommendations, Lewis paid \$24,000 to the customer without disclosing the payment to his member firm. In addition, the findings stated that Bise failed to reasonably supervise the activities of Lewis to detect and prevent the unsuitable recommendations.

Bise's suspension began April 5, 2004, and will conclude at the close of business October 4, 2004. **(NASD Case #C01030026)**

John Joseph Liselli (CRD #1885832, Registered Principal, Littleton, Colorado) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Liselli reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. The sanctions were based on findings that Liselli failed to disclose material information on his Form U4.

Liselli's suspension began March 15, 2004, and will conclude at the close of business June 14, 2004. **(NASD Case #C3A040008)**

Stephen Michael Magee (CRD #2469731, Registered Principal, Portland, Oregon) submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for 18 months. Without admitting or denying the allegations, Magee consented to the described sanction and to the entry of findings that he failed to respond to an NASD request to appear and give testimony.

Magee's suspension will begin April 19, 2004, and will conclude at the close of business October 18, 2005. **(NASD Case #CMS030197)**

Cara Ann Miller (CRD #2968371, Registered Representative, Florence, Kentucky) was barred from association with any NASD member in any capacity. The sanction was based on findings that Miller converted \$7,322.58 of public customer funds without the customers' knowledge or consent. **(NASD Case #C05030051)**

Russell Wayne Miller (CRD #3219969, Registered Representative, Cibola, Texas), Robert Cowan Hess (CRD #2871722, Registered Representative, South Amboy, New Jersey), and Joseph Scott Glodek (CRD #2024287, Registered Principal, Chester, New Jersey) submitted an Offer of Settlement in which Miller and Hess were each fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before Miller or Hess reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Glodek was fined \$5,000 and suspended from association with any NASD member in a principal capacity for 55 days. The sanctions were based on finding that Miller and Hess recommended to a public customer numerous purchase and sale transactions in various securities, without having reasonable grounds for believing that such transactions were suitable for the customer in light of the size of the transactions, the customer's financial situation, investment objectives, needs, and/or the nature of the securities. The findings also stated that Glodek failed to reasonably supervise Miller and Hess to prevent their violations and to achieve compliance with applicable securities laws, regulations, and NASD rules.

Miller's and Hess' suspensions began April 5, 2004, and will conclude at the close of business May 14, 2004. Glodek's suspension began April 5, 2004, and will conclude May 29, 2004. **(NASD Case #C9B030041)**

Frank R. Minkewicz, Jr. (CRD # 3083234, Registered Representative, Virginia Beach, Virginia) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. The fine must be paid before Minkewicz reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Minkewicz consented to the described sanctions and to the entry of findings that he forged the signature of a public customer on various documents relating to a variable annuity application, thereby falsifying the records of his member firm.

Minkewicz' suspension began March 15, 2004, and will conclude at the close of business May 13, 2004. **(NASD Case #C07040017)**

Don Alan Morris (CRD #1766760, Registered Representative, Singer Island, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Morris consented to the described sanctions and to the entry of findings that he effected the sale of a corporate bond from the brokerage accounts of a public customer without the customer's prior knowledge, authorization, or consent.

Morris' suspension began April 5, 2004, and will conclude at the close of business April 19, 2004. (NASD Case #C07040020)

Jeffrey George Nunez (CRD #1580759, Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Nunez consented to the described sanction and to the entry of findings that he failed to respond to an NASD request to appear and provide testimony. (NASD Case #CMS040020)

Stephen Michael O'Donnell (CRD #1931363, Registered Representative, Brooklyn, New York) was fined \$95,364, ordered to pay \$106,781, plus interest, in restitution to a public customer, and barred from association with any NASD member in any capacity. The sanctions were based on findings that O'Donnell failed to disclose material information when soliciting and recommending shares of securities to public customers, failed to disclose to public customers the risks of investing in a security, and failed to disclose that his compensation was strongly tied to his sale of the stock. NASD also found that O'Donnell committed fraud by omitting material information while making recommendations to public customers, in that he knew it was misleading to make stock recommendations to public customers without disclosing either the risks of investment or information pertaining to the company's profitability. (NASD Case #C3A030039)

Thomas James O'Neill (CRD #724885, Registered Supervisor, Billings, Montana) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. The sanction was based on findings that O'Neill exercised discretion in the accounts of public customers without prior written authorization from the customers and prior written acceptance of the accounts as discretionary by his member firm. The findings also stated that O'Neill recommended frequent purchase and sale of stocks for the account of a public customer, including the purchase and sale of volatile, high-risk stocks, without reasonable grounds for believing that such recommendations were suitable for the customer upon the basis of the facts disclosed by her as to her other security holdings, her financial situation, and needs. NASD also found that O'Neill failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #C3B030022)

Paul John Pallo (CRD #1068684, Registered Principal, Mahwah, New Jersey) submitted a Offer of Settlement in which he was fined \$10,000, including \$5,000 in disgorgement of commissions, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Pallo consented to the described sanctions and to the entry of findings that he recommended and effected the purchase of Class B mutual fund shares in the

accounts of public customers without having reasonable grounds for believing that such transactions were suitable for the customers in view of the amount of shares purchased and the nature of the transactions, and in light of the customers' financial situation, investment objectives, circumstances, and needs. The findings also stated that Pallo's recommendations were unsuitable in that he should have recommended that the customers purchase Class A mutual fund shares given the amount invested so that the customers would have been eligible to receive breakpoints on Class A shares purchases, paid lower 12b-1 fees, and avoided being subject to contingent deferred sales charges. NASD also found that Pallo recommended and effected unsuitable mutual fund switch transactions in the account of a public customer without having reasonable grounds for believing that such transactions were suitable for the customer in view of the nature of the recommended transactions, and in light of the customer's financial situation, investment objectives, circumstances, and needs. The findings further stated that these transactions were unsuitable in that the customer incurred unnecessary expenses because the investment objectives of the Class A shares that were sold were nearly identical to the Class A shares that were purchased.

Pallo's suspension began April 4, 2004, and will conclude at the close of business April 16, 2004. (NASD Case #C9B030051)

George Arturo Perez (CRD #2349953, Registered Representative, South Orange, New Jersey) was barred from association with any NASD member in any capacity. The sanction was based on findings that Perez failed to respond to NASD requests for information. The findings also stated that Perez willfully failed to disclose material information on his Form U4. (NASD Case #C9B030032)

Gary Joseph Redding (CRD #2236814, Registered Representative, Centereach, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Redding submitted a materially false Form U4 to NASD and willfully failed to amend his Form U4 to disclose material information. The findings also stated that Redding failed to respond to NASD requests for information. (NASD Case #CLI030021)

Neal Wade Schmidt (CRD #1947144, Registered Representative, Bismarck, North Dakota) submitted an Offer of Settlement in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Schmidt reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Schmidt consented to the described sanctions and to the entry of findings that he failed to update and disclose material information on his Form U4.

Schmidt's suspension began March 15, 2004, and will conclude at the close of business September 14, 2004. (NASD Case #C04030052)

Robert Eugene Schnelle (CRD #414544, Registered Representative, Danville, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Schnelle consented to the described sanction and to the entry of findings that he received \$5,442 from a public customer to be applied to an existing life insurance policy of the customer, applied only \$1,442 to the policy, and misappropriated the remainder without the customer's knowledge or consent. In addition, NASD found that a public customer gave Schnelle \$4,100 to be invested in a universal variable life insurance policy and, without the customer's knowledge and authorization, cashed the checks and misused the funds by commingling the funds with funds belonging to either Schnelle or other members of the public. (NASD Case #C8A040009)

Lawrence Michael Schwartz (CRD #1818360, Registered Representative, Huntington, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Schwartz consented to the described sanction and to the entry of findings that he forged checks totaling \$713,000 from the bank account of a customer of a bank affiliate of Schwartz' member firm by completing and signing the customer's name to the checks. The findings also stated that Schwartz failed to respond to an NASD request to provide a written statement. (NASD Case #C10040014)

Thomas Alfred Sewall (CRD #2298117, Registered Representative, Houston, Texas) submitted an Offer of Settlement in which he was fined \$65,300, including disgorgement of \$55,300 in commissions, and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Sewall reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Sewall consented to the described sanctions and to the entry of findings that he engaged in an outside business activity, for compensation, without providing written notice to his member firm.

Sewall's suspension began March 15, 2004, and will conclude at the close of business March 14, 2005. (NASD Case #C06030030)

Yury Shapiro (CRD #4507669, Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Shapiro consented to the described sanction and

to the entry of findings that he arranged for an impostor to take the Series 6 and Series 63 qualification exams on his behalf. (NASD Case #C10040006)

Thomas Matthew Smith (CRD #704047, Registered Principal, San Rafael, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for two months, suspended from association with any NASD member in a supervisory capacity for six months, required to requalify as a Series 24 general securities principal prior to any association with any NASD member in a supervisory capacity, and required to not directly supervise brokers who recommend or trade in equities. Without admitting or denying the allegations, Smith consented to the described sanctions and to the entry of findings that he failed to supervise reasonably so as to prevent a registered representative's fraudulent sales practices and recommendations of securities to public customers. The findings also stated that Smith approved all orders for purchase of securities submitted by a registered representative without properly reviewing them for suitability, and failed to question contradictory information regarding the investment objectives of some of the customers and to ascertain from the customers whether the security was suitable for them.

Smith's suspension in all capacities began March 15, 2004, and will conclude at the close of business May 14, 2004. Smith's suspension in a supervisory capacity began March 15, 2004, and will conclude at the close of business September 14, 2004. (NASD Case #CMS040017)

Nelson Eugene Terry (CRD #2311378, Registered Principal, Dallas, Texas) was fined \$10,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid when and if Terry seeks to return to the securities industry. The sanctions were based on findings that Terry, acting on behalf of his member firm, engaged in a securities business while failing to maintain sufficient net capital. The findings also stated that Terry failed to maintain and keep current accurate books and records. NASD also found that Terry failed to file an accurate and timely FOCUS Part IIA Report.

Terry's suspension began March 1, 2004, and will conclude at the close of business May 31, 2004. (NASD Case #C06030015)

Eleanor Poulsen Tweed (CRD #1246659, Registered Supervisor, Chandler, Arizona) submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Tweed consented to the described sanction and to the entry of findings that she knowingly provided false information to a public customer concerning the value of securities held in accounts in the customer's name or under his control. The findings also stated

that Tweed's representations were oral, materially misstated the accounts' values, and were made in order to conceal from the customer the actual value of the accounts. (NASD Case #C3A040010)

Sandra Marie Welsh (CRD #2853318, Registered Representative, Warminster, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Welsh consented to the described sanction and to the entry of findings that she forged the name of a former public customer of her member firm on a fictitious letter created by a co-worker for the purpose of the co-worker obtaining reimbursement from the firm for tuition-related expenses. (NASD Case #C9B040015)

Decision Issued

The following decision has been issued by the District Business Conduct Committee (DBCC) or the Office of Hearing Officers (OHO) and has been appealed to or called for review by the National Adjudicatory Council (NAC) as of March 5, 2004. The findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notice to Members*.

Alvin Waino Gebhart Jr. (CRD #1005905, Registered Principal, Fallbrook, California) and Donna Traina Gebhart (CRD #2708528, Registered Principal, Fallbrook, California) A. Gebhart was fined \$100,000 and suspended from association with any NASD member in any capacity for one year. D. Gebhart was fined \$7,500 and suspended from association with any NASD member in any capacity for seven months. The sanctions were based on findings that A. Gebhart and D. Gebhart offered and sold unregistered securities and negligently failed to disclose material information to public customers while recommending the purchase of securities. The findings also stated that the respondents participated in private securities transactions without providing written notice to, and receiving approval from, their member firm.

This decision has been appealed to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C02020057)

Complaints Filed

The following complaints were issued by NASD. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by NASD in which findings as to the allegations in the complaint have not been made, and does not represent a decision as to any of the allegations contained in the complaint.

Because these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

Richard Juan Adams (CRD #2896069, Registered Representative, Houston, Texas) was named as a respondent in an NASD complaint alleging that he received \$2,000 from a public customer to invest in an individual retirement account (IRA) but failed to open an IRA or invest the funds in any IRA or growth and income fund. The complaint also alleges that Adams failed to respond to NASD requests for information. (NASD Case #C06030025)

Kathleen Marie Biggs-Drake (CRD #4300338, Registered Representative, Port Charlotte, Florida) was named as a respondent in an NASD complaint alleging that she received a signed blank check from a public customer who instructed Biggs-Drake to complete it for \$100 and use the proceeds to purchase prepaid gasoline cards for the customer. The complaint also alleges that Biggs-Drake failed to follow the customer's instructions and made the check payable to herself for \$1,000. In addition, the complaint alleges that Biggs-Drake failed to respond to NASD requests to provide testimony. (NASD Case #C07040028)

John David Buglisi (CRD #2977744, Registered Representative, Lido Beach, New York) was named as a respondent in an NASD complaint alleging that he engaged in purchase and sale transactions in the accounts of public customers without their prior knowledge, authorization, or consent. (NASD Case #CL1040001).

Clyde Allen Christensen (CRD #1505051, Registered Representative, Vancouver, Washington) was named as a respondent in an NASD complaint alleging that he received \$105,000 from public customers to be used to purchase securities and, instead, deposited the funds in accounts that he controlled. The complaint also alleges that Christensen subsequently returned \$20,899.87 of the funds to customers, thereby converting \$84,100.13 of the customers' funds to his own use and benefit without the customers' knowledge, authorization, or consent. The complaint further alleges that Christensen failed to respond to NASD requests for information. (NASD Case #C3B040006)

Mitchell Todd Galloway (CRD #2990335, Registered Representative, Cedar Hill, Texas) was named as a respondent in an NASD complaint alleging that he engaged in outside business activities without notice to his member firm. The complaint also alleges that Galloway recommended that a public customer surrender a variable annuity and use the proceeds to purchase a fixed annuity, incurring the maximum surrender fees of nearly \$6,000, without reasonable grounds for believing his recommendation was suitable based on the customer's financial situation and needs. Furthermore, the complaint alleges that

Galloway failed to respond to NASD requests for information. (NASD Case #C06040003)

Kyle Allen Grossart (CRD #1113760, Registered Representative, Granite Bay, California) was named as a respondent in an NASD complaint alleging that he purchased \$90,000 of money market fund Class A shares in the account of a public customer without the knowledge or consent of the customer, generating \$3,600 in commissions, of which Grossart received \$1,440. (NASD Case #C01040003)

Michael John Hanchar (CRD #2051679, Registered Principal, Parker, Colorado) was named as a respondent in an NASD complaint alleging that he obtained possession and control of the funds of public customers by causing the redemption of mutual fund shares owned by the customers, directing that the redemption proceeds be wired to bank accounts of other customers at his member firm, and then causing all or a portion of such funds to be wired to a bank account in his name and under his control. The complaint also alleges that Hanchar withdrew redemption proceeds of approximately \$772,200, and improperly transferred for his own benefit approximately \$713,000. In addition, the complaint alleges that Hanchar failed to respond to NASD requests for information. (NASD Case #C3A040009)

Richard Hennion (CRD #1315386, Registered Principal, Totowa, New Jersey) was named as a respondent in an NASD complaint alleging that, while exercising effective control over the account of a public customer, he effected, or caused to be effected, transactions in the account without having reasonable grounds for believing that such transactions were suitable for the customer in view of the size and frequency of the transactions, concentration of speculative securities, the nature of the account, and the customer's financial situation, investment objectives, and needs. The complaint also alleges that Hennion exercised discretion in the account of a public customer without prior written authorization from the customer and prior written acceptance of the account as discretionary by his member firm. (NASD Case #C9B040013)

Gary David Kneller (CRD #1836439, Registered Principal, Marietta, Georgia) was named as a respondent in an NASD complaint alleging that he received \$500,000 from a public customer for a purported securities trading program. The complaint also alleges that the customer learned that her investment principal had been lost although she had received \$96,000 in payments from the investment, leaving her with a loss of \$404,000, plus interest. In addition, the complaint alleges that Kneller entered into a settlement agreement with a public customer in connection with legal action initiated by the customer and failed to disclose the legal action and the settlement agreement to his member firm. Furthermore, the complaint alleges that Kneller failed to respond to NASD requests for information. (NASD Case #C07040024)

Thomas John Linda (CRD #2404854, Registered Principal, Melville, New York) was named as a respondent in an NASD complaint alleging that he either intentionally or recklessly failed to disclose to public customers that his compensation would include a sales credit. The complaint also alleges that Linda, while using the means and instrumentalities of interstate commerce to offer securities for sale, omitted to state material facts necessary in order to make the statements made in connection with such offers, in light of the circumstances in which they were made, not misleading. The complaint further alleges that Linda, while using the means and instrumentalities of interstate commerce to offer securities for sale, made material misrepresentations in the form of price predictions to induce transactions, and transactions did occur. (NASD Case #C3A040007)

Ronald James Marszalek (CRD #2891521, Registered Representative, Joliet, Illinois) was named as a respondent in an NASD complaint alleging that he affixed the signature of his branch manager on documents intended to correct the middle initial of a customer's name and to change the customer's address on the customer's account at the member firm, without the branch office manager's knowledge or consent. The complaint also alleges that Marszalek purchased securities for the joint account of public customers without the knowledge or consent of the customers and in the absence of written or oral authorization to Marszalek to exercise discretion in said account. Furthermore, the complaint alleges that Marszalek transferred, or caused the transfer of, securities from the joint account of public customers to the securities account of another customer without the knowledge or consent of the customers and in the absence of written or oral authorization to Marszalek to exercise discretion in the account of the public customers. Moreover, the complaint alleges that Marszalek sold, or caused the sale of, securities from the account of a public customer for \$14,712.27, received \$12,212.27 from the customer, and subsequently used the funds for his own personal benefit or for some purpose other than the benefit of the customers. (NASD Case #C8A040004)

Patrick Roger Morrison (CRD #3159281, Registered Representative, Huntington Station, New York) was named as a respondent in an NASD complaint alleging that he submitted to his member firm a change of address form for a public customer changing her residential address to another address, falsely telling his firm that it was the customer's work address, thereby causing his firm to maintain false records in violation of SEC Rule 17a-3(a)(9). The complaint also alleges that Morrison forged the customer's signature on her customer account agreement, option agreement, and margin account agreement, and submitted requests to the firm to issue checks totaling \$61,700 to the customer without her knowledge, authorization, or consent. In addition, the complaint alleges that Morrison had the checks sent to the falsified address, forged the

customer's endorsement on the checks, endorsed the checks to be payable to himself, and deposited the funds into his personal bank account, thereby making improper use of the customer's funds. Moreover, the complaint alleges that Morrison exercised discretionary trading authority in the account of a public customer without prior written authorization from the customer and written acceptance of the discretionary trading account by his member firm. Furthermore, the complaint alleges that Morrison, in connection with an inducement or attempt to induce the purchase or sale of a security or with the sale or purchase of a security, and through means or instrumentalities of interstate commerce or of the mails, knowingly or recklessly employed a device, scheme, contrivance, or artifice to defraud; employed manipulative, deceptive, or other fraudulent device or contrivance; and engaged in acts, practices, or courses of business that operated as a fraud or deceit upon investors or prospective investors. The complaint also alleges that Morrison effected unauthorized transactions in the account of a public customer and failed to respond to NASD requests to appear and complete on-the-record testimony. (NASD Case #CLI040002)

Raymond Louis Natili, III (CRD #2202614, Registered Representative, Greensboro, North Carolina) was named as a respondent in an NASD complaint alleging that he recommended and effected purchases of Class B mutual fund shares in accounts owned by public customers, causing the customers to pay more than \$27,000 in contingent deferred sales charges and Natili to earn \$17,910 in net commissions. The complaint also alleges that, because the buy transactions occurred within a 10-month period, the purchases could have been aggregated by a Letter of Intent and Natili would have earned only \$4,667 in net commissions on the transactions. The complaint also alleges that Natili made the recommendations to purchase, and subsequently to sell, Class B shares without having reasonable grounds for believing the recommendations and resultant transactions were suitable for the customers on the basis of their financial situation and needs. (NASD Case #C07040025)

David N. Pitts (CRD #3216375, Registered Representative, Cincinnati, Ohio) was named as a respondent in an NASD complaint alleging that he caused \$219,162.12 to be withdrawn from the accounts of public customers without the knowledge or consent of the customers and used the funds for his own benefit or for the benefit of individuals other than the customers. The complaint also alleges that Pitts failed to respond to NASD requests for documents and information. (NASD Case #C8B040005)

Andrew Vincent Reid (CRD #2407747, Registered Principal, New Orleans, Louisiana) was named as a respondent in an NASD complaint alleging that he received a \$10,090.58 check from a public customer for investment, failed to forward the check to his member firm, and, instead, deposited the check into his personal bank account, thereby converting the funds to his own use and benefit without the customer's knowledge or consent. The complaint also alleges that Reid failed to respond to NASD requests for information. (NASD Case #C05040011)

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

Paragon Capital Markets, Inc.
East Hanover, New Jersey
(February 26, 2004)

Summit Trading, Inc.
Coral Springs, Florida
(February 26, 2004)

Phillip Louis Trading, Inc.
Red Bank, New Jersey
(February 26, 2004)

WIN Capital Corp.
Bayville, New York
(February 26, 2004)

Individuals Barred Pursuant to NASD Rule 9544 for Failure to Provide Information Requested Under NASD Rule 8210

(The date the bar became effective is listed after the entry.)

Bush, Brandon T.
Boca Raton, Florida
(February 23, 2004)

McDonald, Stephen M.
Daniel Island, South Carolina
(March 3, 2004)

Carrea, Anthony J.
Chesapeake, Virginia
(February 23, 2004)

McMaster, Samuel A.
Albuquerque, New Mexico
(February 27, 2004)

Carroll, Kim S.
Lake Forest, California
(February 27, 2004)

Menlove, Troy R.
Sandy, Utah
(February 24, 2004)

Frambes, Steven C.
Dunn Loring, Virginia
(February 4, 2004)

Wolf, Tim Lee
Chandler, Arizona
(February 18, 2004)

Individuals Suspended Pursuant to NASD Rule 9541(b) for Failure to Provide Information Requested Under NASD Rule 8210

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

Anderson, Rene E.
Palm Beach Gardens, Florida
(February 23, 2004)

Andre, Antoine
Dania, Florida
(February 5, 2004)

Barber, Christopher Layne
Wake Forest, North Carolina
(February 4, 2004)

Del Valle, Jose E.
Rio Piedras, Puerto Rico
(February 23, 2004)

Gardner, Walter R.
Little Rock, Arkansas
(February 18, 2004)

Grist, Deborah L.
Chicago, Illinois
(March 3, 2004)

Heimbach, Charles T.
Tampa, Florida
(February 23, 2004)

Regan, Jr., Henry Paul
Miami, Florida
(February 20, 2004)

Tanwir, Khurram
New York, New York
(February 25, 2004)

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

Antonelli, Nicholas M.
Commack, New York
(February 26, 2004)

Ashbaker, Daniel J.
O'Fallon, Illinois
(February 26, 2004)

Belden, Wendell D.
Tulsa, Oklahoma
(February 26, 2004)

Biebel, Richard D.
Montclair, New Jersey
(February 26, 2004)

Bowen, Phillip E.
Webster Groves, Missouri
(February 26, 2004)

Cavaliere, James
Staten Island, New York
(February 26, 2004)

Ihrrie, Michael C.
Germantown, Tennessee
(February 26, 2004)

Thompson, Paul
Bayfield, Colorado
(February 26, 2004)

Winkler, Stuart E.
Brooklyn, New York
(February 26, 2004)

NASD Charges Three Brokers with Suitability Violations for Recommending Investment Purchases Using Mortgage Proceeds

NASD has taken separate enforcement actions against three brokers for making unsuitable recommendations to customers, urging them to purchase investments using proceeds obtained from cash-out home mortgage refinancing. NASD also issued an *Investor Alert* to help highlight the dangers associated with mortgaging a home to fund investments. NASD is concerned that investors who purchase investments with mortgage proceeds and use their investment returns to make the mortgage payments could default on their home loans if their investments decline and they are unable to meet their monthly mortgage payments. Investors can learn more about the risk of the use of mortgage proceeds for investing by reading *Betting the Ranch: Risking Your Home to Buy Securities* (www.nasd.com/investor/alerts/alert_betting_ranch.htm).

Today's enforcement actions include two settlements and the filing of a complaint:

- James A. Kenas of Coeur d'Alene, ID, and formerly a registered representative with WMA Securities, Inc., was suspended for 6 months for violating NASD's Suitability Rule by recommending that his customers purchase mutual fund shares, when the only funds available to those customers for the purchases were from mortgaging their home.
- Steve C. Morgan of Loveland, CO, and a registered representative associated with Washington Square Securities at the time of conduct, suspended for 6 months and ordered to pay restitution to customers of more than \$15,000, which must be paid to the customers before he re-enters the securities business. NASD found that Morgan recommended that a retired couple purchase a variable annuity even though they were financially unable to make the purchase except by mortgaging their home.
- Jamie A. Engelking of Denver, CO, and a registered representative formerly associated with First Union Securities, was charged in a complaint with recommending the purchase of a variable annuity using mortgage proceeds which were the only funds available for the investment.

"A recommendation by a securities firm or a broker that an investor mortgage his home to buy securities raises all kinds of regulatory red flags," said Mary L. Schapiro, NASD's Vice Chairman. "NASD will always ask whether it is appropriate to recommend that you risk your home to seek investment returns."

Under NASD rules, an individual named in a complaint can file a response and request a hearing before an NASD disciplinary panel. Possible sanctions include a fine, order to pay restitution, censure, suspension, or bar from the securities industry.

In settling these charges, Kenas and Morgan neither admitted nor denied the allegations.

NASD Fines Ameritrade, Datek, and iClearing \$10 Million for Improperly Extending Credit and Allowing Trades that Avoided NASD Day Trading Margin Rules

NASD has fined Ameritrade, Inc., Datek Online Financial Services, LLC (Datek), and iClearing, LLC, \$10 million for improperly extending credit to customers in violation of federal securities laws. As a result of a merger effective September 2002, Datek and iClearing became affiliates of Ameritrade, Inc., of Omaha, NE.

NASD determined that the firms permitted cash account customers to purchase and sell securities in a series of trades without requiring full cash payment for each purchase in violation of Federal Reserve Regulation T. Regulation T requires that customers trading in cash accounts make full cash payment for each separate purchase without regard to unsettled proceeds of any securities sold. Specifically, the firms allowed their customers to make purchase transactions based on proceeds due from unsettled trades. Ameritrade, Datek, and iClearing permitted this to occur in over 2 million transactions in 30,000 customer cash accounts. NASD further found that Ameritrade, Datek, and iClearing permitted day trading in cash accounts that, in many instances, would have required \$25,000 minimum equity under NASD rules and should have occurred only in a margin account. NASD rules require a minimum of \$25,000 of equity in a customer's account if the customer is a "pattern day trader." A pattern day trader is an individual that executes four or more day trades within five business days.

"As day trading again becomes popular, firms must adhere to the requirements of Regulation T and require customer payment for their securities," said Mary L. Schapiro, NASD Vice Chairman. "The sanctions imposed here today reflect not only the importance of these rules but the firms' failure to timely respond to NASD's concerns."

NASD informed Datek and iClearing that these practices violated Regulation T and the firms failed to comply with repeated NASD warnings. Specifically, NASD informed Datek and iClearing in October 2001 that day trading in cash accounts without requiring full cash payment for each purchase prior to its sale violated Regulation T. In addition, NASD provided Datek and iClearing with two Federal Reserve opinions that supported its position. NASD then informed Datek and iClearing of potential disciplinary action if the firms continued to permit their

customers to trade in this manner. Despite these warnings, Datek and iClearing continued to permit customers to use unsettled proceeds to fund purchases in cash accounts.

Before their merger Datek informed Ameritrade that NASD had expressed concern about trading in cash accounts and stated that the action violated Regulation T. In addition, in July and August of 2002, Datek gave Ameritrade three letters it had received from NASD informing the firm that it was violating Regulation T and instructing Datek and iClearing to cease the activity. NASD also instructed Ameritrade in August 2002 in writing to immediately cease such activity and instructed the firm in December to immediately implement a process to prevent such trading. However, Ameritrade did not completely prevent this type of trading until May 2003.

In September 2003 NASD issued an Investor Alert to remind investors about the risks associated with trading on margin. The Investor Alert, "Investing with Borrowed Funds: No 'Margin' for Error," can be found at: www.nasd.com/Investor/Alerts/alert_borrowed_funds.htm.

In settling this matter, Ameritrade, Datek, and iClearing neither admitted nor denied the charges.

NASD Charges Advantage Trading Group, Inc. and its Trade Desk Manager with Creating False Trading Records to Mislead Investigation

NASD filed a complaint charging Advantage Trading Group, Inc., of Longwood, FL, and Wendy L. Epps, the firm's Trade Desk Manager, with the creation of false books and records in connection with NASD's investigation of trade reporting violations. NASD also charged the firm with trade reporting violations and failing to maintain and preserve books and records in accordance with NASD rules and federal securities laws. The firm and Epps were also charged with failing to supervise the trade reporting function and the maintenance of books and records.

NASD determined that representatives of Advantage Trading created false order tickets in response to an NASD request for information. The false order tickets were provided to NASD and identified as the firm's official records. The firm subsequently provided a second set of order tickets with different information on the same transactions. In subsequent correspondence and during sworn testimony, representatives of Advantage consistently maintained that the original order tickets were generated directly from the firm's computer system when, in fact, the order tickets were created after the receipt of NASD's inquiry letters.

The two sets of records were inconsistent with the information reported by Advantage to the Automated Confirmation Transaction Service (ACT). Consequently, the regulatory audit

trail was adversely affected. The investigation further revealed that Advantage failed to properly maintain the necessary records and record electronic information in a non-erasable, non-rewritable format.

NASD also determined that Epps oversaw the production of the false order tickets and provided inaccurate and misleading testimony to NASD on two separate occasions. Epps was also the designated supervisor responsible for the underlying trade reporting violations.

Under NASD rules, the individuals and firms named in a complaint can file a response and request a hearing before an NASD disciplinary panel. Possible sanctions include a fine, order to pay restitution, censure, suspension, or bar from the securities industry.

NASD Fines AXA Advisors \$250,000 for Failure to Waive Sales Charges on Customers' Mutual Fund Transfers; AXA to Pay Restitution to Customers

NASD has censured and fined AXA Advisors, LLC, \$250,000 for failing to obtain sales charge waivers for mutual fund customers through net asset value (NAV) transfer programs. NASD also found that AXA, located in New York City, failed to have an adequate supervisory system in place to identify and provide customers with sales charge waivers to which they were entitled.

Some mutual fund families offer NAV transfer programs that eliminate front-end mutual fund sales charges for certain customers. Under the programs, customers who redeem fund shares for which they paid a sales charge may use the proceeds within prescribed time periods to purchase Class A shares of a new mutual fund at NAV; that is, without paying another front-end sales load. Investors who qualify for NAV transfer programs have no reasonable basis to purchase any class of shares other than Class A shares. NAV transfers are explained more fully in an Investor Alert, "Net Asset Value Transfers: Look Before You Leap Into Another Mutual Fund," www.nasd.com/Investor/Alerts/alert_nav_transfers.htm.

AXA failed to identify certain NAV transfer programs and give customers their benefits. As a result, eligible investors purchased Class A shares and paid front-end sales charges that they should not have paid, or purchased Class B shares, which subjected them to contingent deferred sales charges and higher fees. Specifically, AXA failed to identify NAV transfer programs offered by Pacific Investment Management Company LLC (PIMCO) and Eaton Vance Distributors, Inc. The PIMCO transfer program was described in PIMCO's Shareholder's Guide, and the Eaton Vance program was described in its funds' prospectuses.

"When investors are eligible for a discount or sales charge waiver, securities firms must provide them, without exception," said Mary L. Schapiro, NASD Vice Chairman and President of Regulatory Policy and Oversight. "Securities firms must have the necessary systems and procedures to identify these transfer programs and deliver their benefits to customers. To this end, NASD is initiating a broad-based review to determine whether other firms are meeting their obligations to provide sales charge waivers to their customers."

NASD determined that, from February 2000 through July 2003, AXA earned more than \$700,000 in revenue on more than \$18 million invested by the customers of the firm in two different mutual fund families offering NAV transfer programs—PIMCO and Eaton Vance. As part of the settlement, AXA was ordered to provide full restitution to all customers who paid sales charges on purchases that were subject to these programs from February 2000 through February 2004. AXA is also required to retain an independent consultant to review and recommend revisions to its supervisory and compliance procedures and systems in this area.

NASD also charged AXA and Erik Mosholt, a Senior Vice President of the firm's Investment Products Group, with supervisory violations. AXA failed to have adequate systems or procedures in place to identify and determine the availability of NAV transfer programs. In fact, this group, whose responsibilities included conducting due diligence concerning all third-party mutual funds sold by the firm, did not have any written procedures regarding the functions for which the group was responsible. Mosholt and AXA were jointly fined \$50,000, and Mosholt was censured.

In settling these charges, AXA and Mosholt neither admitted nor denied the allegations.

NASD Fines, Suspends Former SSB Research Analyst Christine Gochuico for Misleading Reports on Winstar; Sanctions to Include Additional 18-Month Bar From Appearing on Research

NASD announced that Christine Gochuico, a former vice president and telecommunications research analyst for Salomon Smith Barney, Inc. (SSB), settled charges relating to misleading research by agreeing to a \$100,000 fine and a six-month suspension from the securities industry. For an additional 18 months following her suspension, Gochuico is prohibited from allowing her name to appear on, or otherwise be publicly associated with, any broker-dealer's research report, advertisement, or sales literature.

The sanctions imposed stem from a September 2002 NASD complaint filed against SSB, Gochuico, and Jack Grubman, formerly Managing Director of SSB's Equity Research Department. Charges in the complaint related to the firm's issuance of misleading research reports on Winstar Communications, Inc.—a company with which SSB had a significant investment banking relationship. (See NASD News Release - 09/23/02.) SSB settled the case when it was first filed while Grubman settled at a later date. (See NASD News Release - 04/28/03.)

NASD charged that, between January and April 2001, Gochuico assisted Jack Grubman in analyzing Winstar and drafting research reports that contained misleading statements and omissions and an unreasonable price target for the company. During that time period, Salomon's research reports recommended a purchase of Winstar with a "Buy" rating and a target price of \$50 per share—while the price of Winstar fell more than 99 percent, from approximately \$20 per share to \$0.14 per share. Gochuico's conduct violated NASD's advertising rules, which require that, among other things, published research reports have a reasonable basis, present a fair picture of the investment risks and benefits, and not make exaggerated or unwarranted claims.

NASD also charged that Gochuico assisted in publishing research reports that recommended Winstar at the same time that she was privately expressing doubts and discussing risks about the company. On Feb. 28, 2001, when Winstar was trading at approximately \$13 per share, an institutional investor sent the following e-mail to Gochuico, questioning the use of certain assumptions in Winstar's discounted cash flow model:

"Why do you guys use 12% perpetual FCF [free cash flow] growth for your terminal multiple?? Seems a little high to me, especially considering that the US and World economy has at best 3% LT [long term] sustainable growth rate...."

Gochuico immediately replied:

"There really is no good reason - except the unwillingness to change our Target Price for optics; although I would admit \$50 per share is shall we say - extremely aggressive."

Gochuico violated the NASD rule which requires that conduct be consistent with just and equitable principles of trade and high standards of commercial honor, and NASD's advertising rule that prohibits misleading statements and exaggerated and unwarranted statements. Gochuico agreed to the settlement without admitting or denying the allegations.

NASD Fines Robertson Stephens and Former VP \$350,000 for Attempting to Coerce Investment Banking Fees; Also Charges Former Managing Director

Cites Threat to Drop Research Coverage if \$1 Million Fee Demand Not Met

NASD announced that, as part of its continuing regulatory focus on investment banking and research analyst activities, it has censured and fined Robertson Stephens, Inc., and its former senior investment banker, Richard (Kevin) Davies, a total of \$350,000 for threatening to discontinue research coverage of a public company unless that company paid Robertson Stephens \$1 million in investment banking fees.

NASD found that Davies threatened ResMed, Inc., a public company located near San Diego, CA, by telling a ResMed official that he would instruct Robertson Stephens' research analyst to discontinue research coverage if ResMed did not pay Robertson Stephens \$1 million to participate as a secondary manager in ResMed's planned convertible bond offering in 2001. NASD separately filed a complaint against Hany Awadalla, a former Managing Director of Robertson Stephens, related to the same misconduct.

The actions of Robertson Stephens and Davies violate NASD's rule requiring all firms and associated persons to adhere to high standards of commercial honor and just and equitable principles of trade. This coercive conduct also has the potential to undermine competition for investment banking services.

"Brokerage firms and their executives cannot use threats regarding research activities as a way to exact investment banking business," said Mary L. Schapiro, NASD's Vice Chairman and President of Regulatory Policy and Oversight. "Coercion of this type cannot be allowed to determine whether research coverage of a public company will continue. Investors are entitled to research that is based on the merits and that is not influenced by improper threats."

NASD found that in early June 2001, ResMed's Vice President and Corporate Secretary contacted Davies by telephone to offer Robertson Stephens the opportunity to participate as a secondary manager in the convertible bond offering. During the negotiations, Davies told the ResMed Vice President that unless Robertson Stephens was paid \$1 million to participate in the offering, he would instruct the firm's research analyst to drop coverage of ResMed and that Robertson Stephens would not participate in the offering. At this time, Robertson Stephens rated ResMed as a "Buy."

Despite the threat, ResMed personnel decided to end the negotiations, and Robertson Stephens did not participate in the convertible bond offering that was announced by ResMed on June 11, 2001. On June 20, 2001, Robertson Stephens issued a research report changing its rating on ResMed from a "Buy" to a "Market Perform." The report stated that the changed rating was based on an analysis of valuation criteria. This was the last research report on ResMed that Robertson Stephens published.

As part of its settlement with NASD, Robertson Stephens, which is no longer in business, was censured and fined \$275,000. Davies was censured and fined \$75,000. In settling this matter, Robertson Stephens and Davies neither admitted nor denied NASD's findings.

In July 2002, FleetBoston Financial Corporation, Robert Stephens' parent company, announced its intention to wind down the firm. Robertson Stephens subsequently withdrew from NASD in May 2003.

NASD also announced that, in a related matter, it has filed a complaint against Hany Awadalla, a former Managing Director in Robertson Stephens' mergers and acquisitions group. The complaint alleges that Awadalla, in assisting Davies in the fee negotiations with ResMed, made a similar threat to the same ResMed official. The complaint charges that this was an attempt by Awadalla to obtain a larger fee for Robertson Stephens' investment banking services than ResMed was willing to pay. NASD charged that, by virtue of his conduct, Awadalla failed to observe high standards of commercial honor and just and equitable principles of trade.

Under NASD rules, the individuals and the firms named in the complaint can file a response and request a hearing before an NASD disciplinary panel. Possible sanctions include a fine, suspension, bar, or expulsion from NASD.