

Disciplinary and Other NASD Actions

REPORTED FOR JULY

NASD® has taken disciplinary actions against the following firms and individuals for violations of NASD rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this *Notice* is current as of the end of June 2003.

Firm Expelled

Whitehorne & Company, Ltd. (CRD #28724, Smithfield, Rhode Island) was expelled from NASD membership. The sanction was based on findings that the firm submitted false and misleading information to NASD on a Form BD in connection with the application for a change of ownership. (NASD Case #C11020043)

Firms Fined, Individual Sanctioned

ESA Securities, Inc. (CRD #100320, Englishtown, New Jersey) and **John J. Derrico (CRD #2204033, Registered Principal, Farmingdale, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$12,500. Derrico was fined \$12,500 and suspended from association with any NASD member in a principal capacity for 30 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Derrico, permitted two statutorily disqualified persons to be associated with and conduct activities on behalf of the firm. The findings also stated that the firm, acting through Derrico, permitted one individual to act as a general securities representative, equity trader, and general securities principal, while failing to have registered in such capacities. NASD also found that the firm, acting through Derrico, permitted three individuals to perform duties as registered persons while their registration status with NASD was inactive due to their failure to timely complete the Regulatory Element of NASD's Continuing Education Rule. In addition, the findings state that the firm, acting through Derrico, conducted a securities business while failing to maintain its minimum net capital.

Derrico's suspension began July 7, 2003, and will conclude at the close of business August 15, 2003. (NASD Case #C9B030035)

Omnivest, Inc. (CRD #13396, Denver, Colorado) and **Ann Gay Phelps (CRD #714437, Registered Principal, Aurora, Colorado)** submitted a Letter of Acceptance, Waiver, and Consent in which they were fined \$10,000, jointly and severally. Phelps was also suspended from association with any NASD member as a financial and operations principal for six months. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry

of findings that the firm, acting through Phelps, submitted a FOCUS Report that was inaccurate in that it materially overstated the firm's net capital. The findings also stated that the firm, acting through Phelps, conducted a securities business while failing to maintain the required minimum net capital. NASD also found that the firm, acting through Phelps, did not make and keep current records of assets and liabilities, income, and expense and capital accounts, with proof of money balances, and did not include on its itemized daily transaction record transactions in mutual funds that were effected "application way."

Phelps' suspension began July 7, 2003, and will conclude at the close of business January 6, 2004. (NASD Case #C3A030019)

Firms and Individuals Fined

APS Financial Corporation (CRD #10033, Austin, Texas) and John Gerard Lindquist (CRD #1557994, Registered Principal, Austin, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$15,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Lindquist, permitted a registered person to act in a capacity requiring registration when such person was deemed inactive for failing to complete the Regulatory Element of Continuing Education. (NASD Case #C06030008)

Banyan Securities, LLC (CRD #22395, Larkspur, California) and Bruce Edward Neff (CRD #345627, Registered Principal, San Anselmo, California) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$15,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Neff, allowed registered representatives to act in capacities requiring registration while they were inactive for failing to complete the Regulatory Element of Continuing Education. (NASD Case #C01030014)

Hanmi Securities, Inc., (CRD #25518, Los Angeles, California) and Eul Hyung Choi (CRD #1592055, Registered Principal, Los Angeles, California) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$20,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Choi, permitted registered persons, including Choi, to act in capacities requiring registration while their NASD registrations were inactive due to failure to complete in a timely manner the Regulatory Element of the Continuing Education Requirements. (NASD Case #C02030023)

Nutmeg Securities, Ltd. (CRD #18975, Fairfield, Connecticut) and Jared David Schneid (CRD #850418, Registered Principal, Lyme, Connecticut) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$10,000, jointly and severally. In addition, the firm was fined \$13,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, as Market Maker ID (MMID) to the Automated Confirmation Transaction ServiceSM (ACTSM) acting through Schneid, reported transactions in NASDAQ National Market[®] (NNM[®]) and Consolidated Quotations Service (CQS) securities late, and also reported those transactions without using the required ".SLD" modifier. The findings also stated that the firm failed to report customer complaints and failed to file timely customer complaints pursuant to NASD Conduct Rule 3070. In addition, NASD found that the firm failed to maintain and preserve copies of customer complaints and an internal inspection report of one Office of Supervisory Jurisdiction (OSJ). Furthermore, the findings stated that the firm failed to conduct an internal inspection of one OSJ; failed to designate a registered principal in one OSJ; failed to have adequate written procedures related to customer complaint filing requirements; and failed to enforce their procedures as they related to trade reporting, internal inspections, and books and record retention. (NASD Case #C11030017)

The (Wilson) Williams Financial Group (CRD #22704, Dallas, Texas) and Wilson Williams (CRD #834161, Registered Principal, Dallas, Texas) 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 respondents consented to the described sanctions and to the entry of findings that Williams, acting for the firm, was responsible for reviewing and approving research reports for compliance with applicable federal securities laws and NASD rules, failed to adequately review sales literature written by a registered representative, and allowed the registered representative to distribute research reports that violated NASD Rule 2210(d). (NASD Case #CAF030031)

Firms Fined

Burlington Capital Markets Inc. (CRD #26991, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$15,000, and required to revise its written supervisory procedures concerning the handling of material, non-public information and the possible misuse of such information by employee and proprietary accounts 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 failed to reasonably and properly supervise the activities of its investment banking department so as to detect and prevent violations of applicable securities laws and regulations concerning the handling of

material, non-public information and the possible misuse of such information by employee and proprietary accounts. (NASD Case #CMS030119)

J. Alexander Securities, Inc. (CRD #7809, Los Angeles, California) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$20,000. 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 ACT last-sale reports of transactions in OTC Equity securities, and failed to designate through ACT such last-sale reports as late. The findings also stated that the firm reported to ACT last-sale reports of transactions in OTC Equity securities on an "as of" basis when electronic submission on the trade date of such transactions was possible through ACT. Furthermore, NASD found that the firm incorrectly designated as ".SLD" through ACT last-sale reports of transactions in OTC Equity securities reported to ACT within 90 seconds of execution. (NASD Case #CMS030116)

Paragon Capital Markets, Inc. (CRD #18555, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$35,000, and required to revise its written supervisory procedures concerning regular and rigorous reviews of execution quality, SEC Rule 15C2-11, and NASD Marketplace Rule 6740 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 orders in certain securities and failed to make an affirmative determination prior to executing such transactions. The findings stated that the firm failed to display immediately customer limit orders in NASDAQ securities in its public quotation, when each such order was at a price that would have improved the firm's bid or offer in each such security; or when the order was priced equal to the firm's bid or offer and the national best bid or offer in such security, and the size of the order represented more than a de minimis change in relation to the size associated with its bid or offer in each such security. NASD also found that the firm failed to report to ACT the correct symbol indicating whether the transaction was a buy, sell, sell short, sell short exempt, or cross for transactions in eligible securities and whether the firm executed transactions in eligible securities in a principal or agency capacity.

In addition, the findings stated that the firm accepted a transaction in ACT that contained inaccurate information and failed to report to ACT the correct execution time in transactions in eligible securities. Furthermore, NASD found that the firm published quotations for OTC Equity securities or, directly or indirectly, submitted such quotations for publication in a quotation medium (that is, the Pink Sheets L.L.C.), and: (i) did not have in its records the documentation required by SEC Rule 15c2-11(a) ("Paragraph (a) information"); (ii) did not have a reasonable basis under the circumstances for believing that the Paragraph (a) information was accurate in all material respects;

or (iii) did not have a reasonable basis under the circumstances for believing that the sources of the Paragraph (a) information were reliable. The findings also stated that, for quotations, the firm failed to file a Form 211 with NASD at least three business days before the firm's quotations were published or displayed in a quotation medium. NASD also determined that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning regular and rigorous reviews of execution quality, SEC Rule 15c2-11, and NASD Marketplace Rule 6740. (NASD Case #CMS030122)

R. J. Thompson Securities, Inc. (CRD #100001, Omaha, Nebraska) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$12,000, and required to revise its written supervisory procedures concerning the Order Audit Trail SystemSM (OATSSM) 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 failed to timely report to OATS Reportable Order Events. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning OATS. (NASD Case #CMS030120)

Recom Securities, Inc. (CRD #7488, Minneapolis, Minnesota) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was fined \$27,500 and required to update its written supervisory procedures in a manner reasonably designed to ensure compliance with NASD Membership and Registration Rule 1120(a). Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it permitted registered representatives to perform duties as registered persons, including but not limited to receiving compensation for securities transactions while their registration statuses were inactive due to their failure to timely complete the Regulatory Element of NASD's Continuing Education Requirements. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures designed to fulfill its obligation to comply with the Regulatory Element of NASD's Continuing Education Requirements. (NASD Case #C04030030)

Individuals Barred or Suspended

Stanley Crawford Armour (CRD #2729805, Registered Representative, Pearl River, New York) 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, Armour consented to the described sanction and to the entry of findings that he purchased, or caused to be purchased, securities in the account of a public customer without the customer's knowledge or consent. The findings also stated that Armour withdrew, or caused to be withdrawn, \$72,500 from a customer's account without the customer's

knowledge or consent, and used the funds to pay for unauthorized transactions. NASD also found that Armour signed a customer's signature on an acknowledgement form without the customer's knowledge or consent. (NASD Case #C9B020091)

Erik Antony Baron (CRD #2450380, Registered Representative, Brookfield, Connecticut) was barred from association with any NASD member in any capacity. The sanction was based on findings that Baron failed to testify truthfully in an NASD on-the-record interview. The findings also stated that Baron solicited a public customer to open an account with him at a member firm, requested the customer purchase shares of stock, and purchased the stock without the customer's prior knowledge, authorization, or consent. NASD also found that Baron failed to allow his member firm to review an outgoing e-mail to a customer concerning the unauthorized purchase and sent the e-mail from a non-company computer, without the firm's prior knowledge or approval. In addition, NASD found that Baron made a material misrepresentation to a customer by telling the customer that he had not intended to make the unauthorized transaction when, in fact, the order was placed intentionally. Furthermore, the findings stated that Baron failed to exercise good faith in seeking an extension of time for the customer to pay for the unauthorized transaction in violation of Regulation T of the Exchange Act. (NASD Case #C10020126)

Simon Benjamin Bezer (CRD #2998675, Registered Representative, New York City, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$8,000, including disgorgement of \$3,000, and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Bezer reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Bezer consented to the described sanctions and to the entry of findings that he issued a personal check for \$15,287 to his member firm to satisfy a margin call based on recent stock purchases in his personal account. At the time he issued this check, Bezer was aware that he did not have sufficient funds in his bank account to pay the check. The findings also stated that Bezer then sold the subject shares prior to his member firm being notified that the check had been returned for insufficient funds, earning a profit of \$3,000.

Bezer's suspension began June 16, 2003, and will conclude at the close of business June 15, 2005. (NASD Case #C9B030026)

Michael Sean Britten (CRD #4154170, Registered Representative, Colorado Springs, Colorado) 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, Britten consented to the described sanction and to the entry of findings that he received a payroll check from his member firm for \$342.25. The findings stated

that Britten, without the prior authorization or knowledge of the firm, altered his payroll check and changed the amount to \$7,342.25, endorsed the altered payroll check, and deposited the altered check into a bank account in his and his wife's name, thereby converting \$7,000 from his member firm. (NASD Case #C3A030004)

James Burling Chase (CRD #368743, Registered Representative, Milwaukee, Wisconsin) was fined \$25,000, suspended from association with any NASD member in any capacity for one year, and ordered to requalify as a general securities representative before reentering the industry. The Securities and Exchange Commission (SEC) imposed the sanctions following the appeal of a National Adjudicatory Council (NAC) decision. The sanctions were based on findings that Chase recommended and effected transactions in a public customer's account without a reasonable basis for believing that such recommendations were suitable for the customer due to the nature of the securities, the concentration of the securities in the account, and the customer's investment objectives, financial situation, and needs.

Chase's suspension began July 7, 2003, and will conclude July 6, 2004. (NASD Case #C8A990081)

Clifford James Chinn (CRD #2004936, Registered Representative, Los Gatos, California) was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid when and if Chinn seek to reenter the securities industry. The sanctions were based on findings that Chinn entered into an agreement with public customers whereby he would use his own funds to trade in their account and apply any profits he earned from such trading to reimburse the customers' losses they had suffered in the account.

Chinn's suspension began June 2, 2003, and will conclude at the close of business June 1, 2004. (NASD Case #C01020021)

Gary Ray Chromiak (CRD #2639493, Registered Representative, Catasauqua, Pennsylvania) 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, Chromiak consented to the described sanction and to the entry of findings that he participated in a scheme to benefit himself whereby another individual used his position to award insurance and health services contracts to vendors and then skimmed fees and commissions from these contract. The findings stated that Chromiak served as the insurance broker of record for the contracts and allowed the other individual to use his name to create a shell company and a bank account through which the proceeds of the fraud were laundered and concealed. (NASD Case #C9A020057)

James Stephen Davenport (CRD #1726592, Registered Representative, Glasgow, Kentucky) was fined \$10,000 and suspended from association with any NASD member in any capacity for nine months. The fine must be paid before Davenport reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. The NAC imposed the sanctions following the call for review of an Office of Hearing Officers (OHO) decision. The sanctions were based on findings that Davenport completed and signed "prohibited activities listing" forms wherein he falsely represented to his member firm that he had not borrowed \$1,536,000 from firm customers with which he was associated.

Davenport's suspension began March 4, 2002, and concluded December 4, 2002. **(NASD Case #C05010017)**

Brian A. Duffy (CRD #3002253, Registered Representative, Rockville Centre, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Duffy recommended public customers to invest in particular stocks, instructed the customers to wire funds to pay for the stocks to a specific account held by his wife, failed to use the funds to purchase the stocks, and instead improperly used the funds, thereby converting the funds for his own use. The findings also stated that Duffy failed to respond to NASD requests for information. **(NASD Case #C10020135)**

Rhonda Gail Elliott (CRD #2801768, Registered Representative, Chelsea, Michigan) 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, Elliott consented to the described sanction and to the entry of findings that she effected withdrawals totaling \$20,965 from the bank accounts of public customers maintained at the bank branch where she worked and converted \$14,195 to her own use and benefit without the knowledge or authorization of the customers. NASD also found that Elliott caused the balance to be deposited, without the knowledge or authorization of the respective customers to whom the funds belonged, to accounts from which she had made prior unauthorized withdrawals. The findings also stated that Elliott failed to respond to NASD requests for information. **(NASD Case #C8A030036)**

Dane Stephen Faber (CRD #1020637, Registered Principal, Sausalito, California) was barred from association with any NASD member in any capacity and ordered to pay \$82,220, plus interest, in restitution to public customers. The NAC imposed the sanctions following appeal of an OHO decision. The sanctions were based on findings that Faber, while soliciting public customers to purchase common stock, made material misrepresentations that the stock was being sold pursuant to an Initial Public Offering (IPO); made baseless price predictions and generalized assurances of success regarding the stock; omitted negative financial information about the issuer; and failed fully

to disclose the speculative nature of the security. The findings also stated that Faber made recommendations to a public customer that were unsuitable for her stated investment objectives.

Faber has appealed this decision to the SEC and the sanctions, except for the bar, are not in effect pending review. **(NASD Case #CAF010009)**

Louis Martin Fischler (CRD #3096487, 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 45 days. The fine must be paid before Fischler reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Fischler consented to the described sanctions and to the entry of findings that he prepared a research report for a stock issuer that was unbalanced, unwarranted, and contained omissions of material fact including that the company may be required to issue securities in order to satisfy current debt, thereby diluting previously issued stock.

Fischler's suspension began July 7, 2003, and will conclude at the close of business August 20, 2003. **(NASD Case #CAF030029)**

Mario Joseph Forte (CRD #2933602, Registered Principal, Staten Island, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, including \$4,569 in disgorgement of commissions; required to pay \$11,981.60, plus interest, in restitution to a public customer; and suspended from association with any NASD member in any capacity for five months. The fine and restitution must be paid before Forte reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Forte consented to the described sanctions and to the entry of findings that he exercised control over the account of a public customer and effected numerous and excessive securities transactions in these accounts using unsuitable levels of margin in a manner that was inconsistent with the customer's investment objectives.

Forte's suspension began June 16, 2003, and will conclude November 15, 2003. **(NASD Case #C9B030031)**

Donald Greg Gary (CRD #1746150, Registered Representative, Longwood, Florida) was barred from association with any NASD member in any capacity and required to pay \$25,000 in restitution. The sanctions were based on findings that Gary received checks totaling \$25,396.59 from public customers and converted them to his own use and benefit. The findings also stated that Gary failed to respond to NASD requests for information. **(NASD Case #C07020099)**

Gregory Gassoso (CRD #2873605, Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Gassoso consented to the described sanctions and to the entry of findings that he opened accounts for public customers at his member firm without the customers' knowledge, authorization, or consent.

Gassoso's suspension began July 7, 2003, and will conclude at the close of business July 18, 2003. **(NASD Case #C10030032)**

Darrell Todd Gibson (CRD #2833174, Registered Representative, McGregor, Texas) was barred from association with any NASD member in any capacity. The sanction was based on findings that Gibson engaged in a private securities transaction without prior written notice to, and approval from, his member firm. The findings also stated that Gibson recommended to public customers the purchase of a promissory note without having a reasonable basis, based on the customer's financial status, objectives, and needs. NASD also found that Gibson sold securities without being properly registered with NASD and failed to respond to NASD requests for information. **(NASD Case #C06020024)**

James Andrew Grove (CRD #2564779, Registered Representative, Houston, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Grove consented to the described sanctions and to the entry of findings that he exercised discretionary transactions in the account of a public customer without having obtained prior written authorization from the customer and prior written acceptance of the account as discretionary by his member firm.

Grove's suspension will begin July 21, 2003, and will conclude January 20, 2004. **(NASD Case #C05030029)**

Sri Haran (CRD #2748909, Registered Representative, Chester, 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 10 business days. Without admitting or denying the allegations, Haran consented to the described sanctions and to the entry of findings that, while registered with a member firm, he engaged in outside business activities by referring clients to another firm for investment advisory services in exchange for a referral fee without prompt written notice to his member firm.

Haran's suspension began June 16, 2003, and concluded at the close of business June 27, 2003. **(NASD Case #C9B030033)**

Kazi Enayet Hossain (CRD #3269002, Registered Representative, Redlands, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$3,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Hossain consented to the described sanctions and to the entry of findings that he participated in outside business activities for commissions without providing written notice to his member firm.

Hossain's suspension began July 7, 2003, and concluded at the close of business July 18, 2003. **(NASD Case #C02030029)**

Richard Allen Hughey (CRD #1658128, Registered Representative, Sewickley, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hughey consented to the described sanctions and to the entry of findings that he sold a variable life insurance contract to a public customer and received from the customer a check for \$2,000 payable to Hughey to pay a year's premium on the contract. The findings also stated that Hughey accepted the check, deposited the check into his personal bank account, and instead of immediately applying the entire amount to the customers contract, Hughey made personal use of a portion of the customer's funds. **(NASD Case #C9A030015)**

Chet Anthony Jacks (CRD #3054197, Registered Representative, Davenport, Iowa) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Jacks consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. **(NASD Case #C04030026)**

Loren Revel Johnson (CRD #2823385, Registered Representative, Maplewood, Minnesota) 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, Johnson consented to the described sanction and to the entry of findings that he submitted fictitious expense reports totaling \$109,686.56 to his member firms and converted these funds to his own personal use and benefit. **(NASD Case #C04030027)**

Stephen Ralph Kittelson (CRD #729924, Registered Representative, Mankato, Minnesota) 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 60 days. The fine must be paid before Kittelson reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kittelson

consented to the described sanctions and to the entry of findings that he participated in outside business activities for compensation and failed to provide prompt written notice of the transactions to his member firm. The findings also stated that Kittelson negotiated and entered into a settlement agreement with a public customer without the knowledge or consent of his member firm.

Kittelson's suspension began June 16, 2003, and will conclude at the close of business August 15, 2003. (NASD Case #C04030029)

Dennis Ray Koenemann (CRD #2994250, Registered Representative, Ballwin, 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, Koenemann consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. (NASD Case #C04030032)

David Ronald Krizman (CRD #1514846, Registered Representative, Tucson, Arizona) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity and ordered to disgorge \$51,407.35 in commissions in partial restitution to customers. The disgorgement must be paid before Krizman reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Krizman consented to the described sanctions and to the entry of findings that while associated with his member firm, he participated in outside business activities outside the scope of his employment relationship with his member firm, and failed to provide his member firm with prompt written notice. The findings also stated that Krizman failed to respond to NASD requests for information. (NASD Case #C3A030010)

Josias Souza Lima (CRD #1374082, Registered Principal, Plymouth, Minnesota) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$25,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Lima reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Lima consented to the described sanctions and to the entry of findings that he executed unauthorized sales of securities in public customer accounts without the customers' prior knowledge, authorization, or consent.

Lima's suspension began June 16, 2003, and will conclude at the close of business December 15, 2003. (NASD Case #C04030025)

David Carroll Loach (CRD #1251138, Registered Representative, Phoenix, Arizona) 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 18 months. The fine must be paid before Loach reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Loach consented to the described sanctions and to the entry of findings that, while associated with a member firm, he participated in private securities transactions outside the regular course and scope of his association with his member firm without providing prior written notice to his member firm.

Loach's suspension began June 16, 2003, and will conclude at the close of business December 15, 2004. (NASD Case #C3A030016)

Gerald Meyers (CRD #333324, Registered Representative, Los Angeles, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Meyers reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Meyers consented to the described sanctions and to the entry of findings that he falsified customer account forms by designating himself as the registered representative of record in connection with the solicitation of and purchase by public customers of variable universal life insurance contracts underwritten by his member firm. The findings also stated that Meyers solicited each of the contracts, and in so doing, assisted another individual to engage in the securities business without benefit of registration in contravention of NASD rules.

Meyers' suspension began July 21, 2003, and will conclude at the close of business July 20, 2005. (NASD Case #C02030032)

Kimberly Jean Misaraca (CRD #2879704, Registered Principal, Bellport, New York) submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$32,500 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Misaraca reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Misaraca consented to the described sanctions and to the entry of findings that she failed to timely report customer complaints to NASD in accordance with NASD Conduct Rule 3070. The findings also stated that Misaraca failed to timely and completely respond to NASD requests for information and documentation.

Misaraca's suspension began June 16, 2003, and will conclude at the close of business June 15, 2004. (NASD Case #CLI030012)

Francis Burke Murphy (CRD #2433976, Associated Person, Middletown, 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 30 days. The suspension shall be effective immediately upon Murphy's reassociation with any NASD member. The fine must be paid before Murphy reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Murphy consented to the described sanctions and to the entry of findings that he engaged in the securities business of a member firm as a general securities representative and as an assistant representative for order processing, even though he was not registered with NASD in any capacity. (NASD Case #C10030035)

Lee Francis Murphy (CRD #343318, Registered Principal, Covington, Louisiana) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$6,000, including disgorgement of commissions earned in the amount of \$367.47, and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Murphy consented to the described sanctions and to the entry of findings that he effected sales of municipal securities from his firm's account to public customers at a price that was not fair and reasonable. The findings also stated that Murphy caused the distribution of municipal securities quotations that were not based upon his best judgment of the fair market value at the time he caused distribution of the quotations.

Murphy's suspension began June 16, 2003, and concluded at the close of business July 7, 2003. (NASD Case #C05030028)

Melissa Noelle Muzzi (CRD #3016356, Registered Representative, Sacramento, California) 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, Muzzi consented to the described sanction and to the entry of findings that she forged a public customer's name to a Master Agreement to open a bank account with a line of credit and listed her own home address as the customer's address. The findings also stated that Muzzi withdrew \$7,915 against the line of credit from the account for a customer that she had opened without the customer's knowledge or consent. (NASD Case #C01030012)

Vikram Vishweshwar Naik (CRD #3152134, Registered Representative, Brookfield, Wisconsin) 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, Naik consented to the described sanction and to the entry of findings that he failed to follow the directions of a customer to invest funds in specific mutual funds for which the customer submitted a personal check; that is, without authorization or consent, Naik completed applications for variable life insurance policies and forged the names of the customer and his fiancée thereon. The findings also stated that Naik altered the name of the payee on the customer's check, forged the customer's initials to approve the alteration, and submitted the check to pay for the insurance policies. NASD also found that Naik forged the customer's signature on account transfer paperwork in order to cause the customer's mutual fund accounts to be transferred from Naik's former member firm to his new member firm. (NASD Case #C8A030038)

Seth Paul Page (CRD #2457887, Registered Representative, Bayonne, New Jersey) 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, Page consented to the described sanction and to the entry of findings that he signed a public customer signature to a Client Agreement form without the customer's consent or authority. The findings also stated that Page signed a customer's signature to a letter addressed to his member firm requesting that all further account information for the customer be sent to a new address without the customer's consent or authority. NASD also found that Page executed securities transactions in the account of a public customer without the customer's knowledge, authorization, or consent. In addition, the findings stated that Page refused to answer any further questions during an NASD on-the-record interview. (NASD Case #C9B030011)

James Lawrence Paris (CRD #1722114, Registered Principal, Daytona Beach, Florida) 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 principal capacity for one year. The fine must be paid before Paris reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Paris consented to the described sanctions and to the entry of findings that he failed to supervise adequately his member firm's compliance with applicable capital, record keeping, and financial reporting requirements.

Paris' suspension began June 16, 2003, and will conclude at the close of business June 15, 2004. (NASD Case #C07030031)

Judy Ann Payer (CRD #1027554, Registered Principal, Long Beach, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$30,000 and suspended from association with any NASD member in any principal or supervisory capacity for 90 days. Without admitting or denying

the allegations, Payer consented to the described sanctions and to the entry of findings that she permitted persons associated with her member firm to engage in the securities business of the firm as general securities representatives and/or as assistant representatives for order processing while not registered with NASD in any capacity. The findings also stated that Payer prepared, or caused to be prepared, inaccurate records regarding the valuation of one security.

Payer's suspension began June 16, 2003, and will conclude September 13, 2003. (NASD Case #C10030029)

Dalton Thomas Poole (CRD #2784840, Registered Representative, Tampa, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Poole reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. If Poole reassociates with any NASD member following the suspension, the member firm must adopt special supervisory procedures, for at least two years, reasonably designed to prevent the recurrence of the same or similar violations. Without admitting or denying the allegations, Poole consented to the described sanctions and to the entry of findings that he submitted a false application for a variable annuity to his member firm after he changed one owner's date of birth and the relationship between the joint contract owners without the knowledge or authorization of the clients in an attempt to circumvent underwriting standards for the variable annuity. The findings also stated that Poole submitted a confidential client account to his member firm after forging the initials of his client to the form, without the client's knowledge or authorization.

Poole's suspension began July 7, 2003, and will conclude at the close of business July 6, 2005. (NASD Case #C07030036)

Monte Guy Pyle (CRD #2473059, Registered Representative, Poway, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$60,000 and suspended from association with any NASD member in any capacity for eight months. Without admitting or denying the allegations, Pyle consented to the described sanctions and to the entry of findings that he gave equity traders, for whom he conducted securities business, gifts that exceeded \$100 in value per individual. The findings also stated that Pyle, in connection with his request for reimbursement for the year 2000 gifts, submitted to his member firm an invoice that reflected materially misleading and inaccurate information regarding one of the gifts, and failed to submit to his member firm records reflecting separate instances in which he gave gifts and gratuities to individuals with whom he conducted business.

Pyle's suspension began July 7, 2003, and will conclude March 7, 2004. (NASD Case #C02030027)

Kevin F. Quinn (CRD #2403509, Registered Representative, Bay Shore, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Quinn reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Quinn consented to the described sanctions and to the entry of findings that he signed the names of public customers on account documents without the customers' knowledge, authorization, or consent.

Quinn's suspension began June 16, 2003, and will conclude at the close of business June 15, 2005. (NASD Case #C10030031)

Kenneth Harold Rodgers (CRD #2694136, Registered Representative, Milltown, New Jersey) was barred from association with any NASD member in any capacity. The sanction was based on findings that Rodgers, while exercising effective control over a public customer's account, recommended to the customer numerous purchase and sale transactions in various securities without having reasonable grounds for believing that such transactions were suitable for the customer in view of the size and frequency of the transactions, the nature of the account, and the customer's financial situation and needs. The findings also stated that, as a result of the transactions, the customer suffered losses. (NASD Case #C9B020088)

Kenneth Robert Rott (CRD #1155938, Registered Representative, Golden, Colorado) 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, Rott consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. (NASD Case #C3A030018)

Timothy John Ryan (CRD #1245453, Registered Principal, Kingston, New York) was barred from association with any NASD member in any capacity. The NAC imposed the sanction following appeal of an OHO decision. The sanction was based on findings that Ryan effected unauthorized transactions in the accounts of public customers, and that he engaged in deceptive conduct with respect to those transactions. (NASD Case #CAF010013)

Brian Francis Schantz (CRD #1232754, Registered Principal, Bayport, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Schantz consented to the described sanctions and to the entry of

findings that he failed to adequately supervise an individual, in that he failed to adequately investigate the following "red flags" indicating potential unauthorized trading by the individual: customer complaints, trade cancellations, and Regulation T extensions in the customer accounts of the individual.

Schantz' suspension began June 16, 2003, and concluded at the close of business July 15, 2003. (NASD Case #C9A030014)

Stephen Wilfred Schmidt (CRD #1453836, Registered Representative, Greenwood, Indiana) was barred from association with any NASD member in any capacity. The sanction was based on findings that Schmidt presented a stock certificate to his member firm that was forged and counterfeit to be deposited in his margin account as collateral for a loan. The findings also stated that Schmidt failed to respond to NASD requests for information. (NASD Case #C8A020085)

Robert Eugene Schnelle (CRD #414544, Registered Representative, Danville, Illinois) 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 one month. The fine must be paid before Schnelle reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Schnelle consented to the described sanctions and to the entry of findings that, without a public customer's knowledge and authorization, he used customer funds totaling \$10,000 received for the purchase of a security in the form of a variable annuity for his own benefit or for some purpose other than the benefit of the customer.

Schnelle's suspension began June 16, 2003, and concluded at the close of business July 15, 2003. (NASD Case #C8A030039)

Kent David Schuette (CRD #1644804, Registered Representative, Edwardsville, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, required to pay \$39,485, plus interest, in disgorgement of unjust profits in partial restitution to public customers, and suspended from association with any NASD member in any capacity for three months. The fine and restitution must be paid before Schuette reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Schuette consented to the described sanctions and to the entry of findings that he failed and neglected to provide prompt written notice to his member firm of his outside business activities.

Schuette's suspension began July 7, 2003, and will conclude at the close of business October 6, 2003. (NASD Case #C8A030040)

Donald Gene Schuster (CRD #2598174, Registered Representative, Tigard, Oregon) 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, Schuster consented to the described sanction and to the entry of findings that he issued checks totaling \$27,198.60 drawn on an account of a club for which he was the treasurer and had control. The findings also stated that the checks were made payable to a bank account controlled by Schuster, and that he endorsed the checks and obtained possession and control of the funds withdrawn from the club's account. In addition, the findings stated that Schuster converted the \$27,198.60 to his own use and benefit, without the club's prior knowledge, authorization, or consent. NASD also found that Schuster failed to respond to NASD requests for information. (NASD Case #C3B030008)

Randolph Frederick Simens (CRD #720948, Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$1,500 and suspended from association with any NASD member in any capacity for 10 business days. The fine must be paid before Simens reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Simens consented to the described sanctions and to the entry of findings that he opened a securities account with a member firm and, prior to opening the account, failed to inform, in writing, the member firm with which he was employed that he had opened the securities account. The findings also stated that Simens failed to inform, in writing, the firm with which he opened the securities account that he was associated with another member firm.

Simens' suspension began July 7, 2003, and will conclude at the close of business July 18, 2003. (NASD Case #C10030033)

Wise Alsop Skillman, III (CRD #1757886, Registered Principal, Jacksonville, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, suspended from association with any NASD member in a principal capacity for 30 days, and required to requalify by exam as a general securities principal within 90 days from the date of his reassociation with a member firm. If Skillman fails to requalify within the 90 days, he will be suspended from acting in a general securities principal capacity until the exam is successfully completed. The fine must be paid before Skillman reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Skillman consented to the described sanctions and to the entry of findings that he failed to have an adequate supervisory system in place at his member firm in that registered representatives in a branch office conducted the majority of their business with customers located in the United Kingdom during

trips to the United Kingdom, yet the firm's supervisory system provided little or no supervision of their activities at such times. The findings also stated that Skillman failed to enforce his member firm's written supervisory procedures designed to prevent violations of NASD's suitability rule. NASD also found that Skillman failed to conduct reviews of customer accounts and new account documentation for public customers at a branch office, and failed to detect that the firm's registered representatives in that office had invested a large percentage of customer assets in a single speculative security.

Skillman's suspension began July 7, 2003, and will conclude at the close of business August 5, 2003. (NASD Case #C10030036)

John Kevin Toupin (CRD #1777676, Registered Principal, Clayton, Georgia) was barred from association with any NASD member in any capacity. The sanction was based on findings that Toupin received \$300,000 from a public customer for investment, deposited the funds into his account, and failed to invest the funds as instructed, thereby converting the funds to his own use and benefit. The findings also stated that Toupin failed to respond to NASD requests for information. (NASD Case #C07030001)

Robert Tretiak (CRD #1416058, Registered Principal, Las Vegas, Nevada) was barred from association with any NASD member in any principal capacity, suspended from association with any NASD member in any capacity for two years and six months, and fined \$25,000. The sanctions were based on findings that Tretiak fraudulently sold securities in an IPO while using a materially misleading prospectus, that he did so in violation of the contingency requirements contained in the prospectus, and that he failed properly to establish an escrow account for the IPO.

Tretiak was also fined \$10,000 for failure to satisfy a final arbitration award, and suspended until payment is made in full of the arbitration award plus an additional 30 days. It was also ordered that the suspension would convert to a bar in all capacities if the arbitration award was not paid in full within 30 months of NASD's January 23, 2001 decision in this matter.

The SEC affirmed the NAC's findings and sanctions in these two separate disciplinary proceedings that the NAC consolidated for hearing and decision.

Tretiak's suspension for the IPO transaction began June 16, 2003, and will conclude at the close of business December 15, 2005. The suspension for failure to comply with an arbitration award began May 18, 2003, and will conclude when the arbitration award is paid in full plus an additional 30 days. (NASD Cases #C02990042 and #C02980085)

Walter Josef Tuer (CRD #2098245, Registered Representative, Costa Mesa, California) submitted a Letter

of Acceptance, Waiver, and Consent in which he was censured, fined \$2,500, and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Tuer consented to the described sanctions and to the entry of findings that he effected, or caused to be effected, transactions in a joint customer account, and exercised discretionary power in that account without prior written authorization from the customers and acceptance in writing by his member firm of the account as discretionary.

Tuer's suspension began July 7, 2003, and concluded at the close of business July 11, 2003. (NASD Case #C02030028)

Chinh Viet Van (CRD #2900047, Registered Representative, San Jose, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Van consented to the described sanction and to the entry of findings that he received \$68,776.49 from public customers and converted the funds to his own use and benefit without the customers' knowledge or consent. The findings also stated that Van maintained personal securities accounts at another firm and failed to notify the account firm of his association with his member firm and failed to notify his member firm of the account. (NASD Case #C01030015)

Gregory Beauchamp Washington, II (CRD #2691785, Registered Representative, Golden Valley, Minnesota) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and required to pay \$25,000 in restitution, plus interest, to public customers. Satisfactory proof of payment of restitution must be made before Washington reassociates with any NASD member. Without admitting or denying the allegations, Washington consented to the described sanctions and to the entry of findings that he converted shares of stock that were to be delivered to public customers. The findings also stated that Washington failed to respond to an NASD request to appear for an on-the-record interview. (NASD Case #C04030028)

Eugene Zlatsin (CRD #4561445, Registered Representative, Yorktown Heights, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Zlatsin reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Zlatsin consented to the described sanctions and to the entry of findings that he drafted and submitted a letter on his member firm's letterhead to a college professor that falsely represented that it had been prepared and issued by an individual stating that Zlatsin could not attend a mid-term examination because his presence was required for a business event. The findings stated that the letter

was false as the purported author of the letter was a fictitious person, and no business event requiring Zlatsin's attendance was scheduled for the date of the mid-term examination.

Zlatsin's suspension began June 16, 2003, and will conclude at the close of business June 15, 2004. (NASD Case #C9B030034)

Individuals Fined

Richard Hans Bach (CRD #1011097, Registered Principal, Utica, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was censured and fined \$10,000. Without admitting or denying the allegations, Bach consented to the described sanctions and to the entry of findings that he caused a member firm to be in violation of Section 15c of the Securities and Exchange Act of 1934 and Rule 15A3-1 thereunder, in that the firm used the instrumentalities of interstate commerce to conduct a securities business while failing to maintain minimum required net capital. The findings also stated that Bach, acting on behalf of a member firm, failed to designate and/or qualify a limited principal introducing broker/dealer financial and operations, as required by Membership and Registration Rule 1022c. (NASD Case #C8A030045)

John Francis Mauldin (CRD #1945566, Registered Representative, Grapevine, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which he was censured, fined \$35,000, and required to file with NASD's Advertising Regulation Department all sales literature—except for generic newsletters that do not discuss or otherwise reference specific securities—and advertisements written, distributed, or used by him at least 10 days prior to their first use for six months. Without admitting or denying the allegations, Mauldin consented to the described sanctions and to the entry of findings that he wrote newsletters recommending hedge funds sold by a member firm that had inadequate risk disclosures about investing in the hedge funds, made an unwarranted projection of future performance, and made an inaccurate statement that a hedge fund would be subject to NASD inspection, oversight, or audit. The findings also stated that Mauldin failed to fully disclose the amount of consideration he would receive from the member firm for referring customers to the firm to buy the hedge funds. In addition, NASD found that Mauldin failed to disclose his affiliation with the member firm by name in the newsletters. (NASD Case #CAF030032)

Gary Allen Squires (CRD #432815, Registered Representative, N. Caldwell, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was censured and fined \$11,400, including disgorgement of \$6,400 in financial benefits received by Squires. Without admitting or denying the allegations, Squires consented to the described sanctions and to the entry of findings that he exercised

discretionary authority over a securities account his wife maintained at a member firm without providing his member firm and the other firm written notification of his association with the other member. The findings also stated that Squires purchased shares of stock in five IPOs in his wife's account that traded at a premium in the secondary market. (NASD Case #C9B030038)

Ronald James Turner (CRD #2735639, Registered Representative, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was censured and fined \$10,000. The fine must be paid before Turner reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Turner consented to the described sanctions and to the entry of findings that he, on behalf of his member firm, failed to ensure that the firm had properly designated a limited principal-introducing broker/dealer financial and operations as required by NASD Membership and Registration Rule 1022(c). In addition, the findings stated that Turner acted in a principal capacity without being qualified to do so. (NASD Case #C9B030030)

Decisions Issued

The following decisions have been issued by the DBCC or the Office of Hearing Officers and have been appealed to or called for review by the NAC as of June 6, 2003. The findings and sanctions imposed in the decisions 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*.

Justin Edward Apgar (CRD #2770606, Registered Representative, Wall Township, New Jersey) was fined \$52,000, including disgorgement of commissions, and suspended from association with any NASD member in any capacity for two months. The sanctions were based on findings that Apgar committed fraud by misrepresentation to a public customer in that the interest rate on an investment was guaranteed a rate of return.

This action has been appealed to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C9B020046)

Eric Harold Dieffenbach (CRD #1833420, Registered Principal, Littleton, Colorado) and **Michael Antoine Rooms (CRD #2187994, Registered Principal, Littleton, Colorado)** were fined \$12,000 and \$5,000, respectively. Dieffenbach was suspended from association with any NASD member in any capacity for six months, and Rooms was suspended from association with any NASD member in any capacity for 30 business days. The sanctions were based on findings that Dieffenbach and Rooms, prior to effecting transactions in the

accounts of public customers, failed to provide any of the customers with a copy of the required Risk Disclosure Document, complete information regarding the inside bid and ask quotations, and failed to tell their customers the amount of their compensation. The findings also stated that Dieffenbach and Rooms attempted to obstruct NASD's investigation of the penny stock trading violations by contacting and bribing customers into signing non-solicitation letters, backdated and altered certain of the non-solicitation letters before submitting them to NASD, and threatened and encouraged customers to lie to NASD.

Dieffenbach and Rooms have appealed this decision to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C06020003)

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.

Patrick W. Donohue (CRD #4168054, Registered Representative, Moreno Valley, California) was named as a respondent in an NASD complaint alleging that he signed, or caused to be signed, the name of a public customer to effect \$6,000 in wire transfers that the customer did not authorize, deposited the funds into his bank account, and converted the funds to his own use and benefit without the customer's knowledge or consent. The complaint also alleges that Donohue failed to respond to NASD requests for information. (NASD Case #C02030030)

Richard Peter Hveem (CRD #2622370, Registered Representative, Weehawken, New Jersey) was named as a respondent in an NASD complaint alleging that he engaged in unauthorized trades in the account of a public customer without the customer's prior knowledge, authorization, or consent. (NASD Case #C9B030037)

John Francis Kilcommons (CRD #2418075, Registered Representative, Quincy, Massachusetts) was named as a respondent in an NASD complaint alleging that while registered with a member firm, he misused \$221,674.98 in insurance and brokerage customer funds and converted \$60,226.16 in customer funds for his own use and benefit without customer authorization. The complaint also alleges that Kilcommons failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #C11030018)

Aqiyl Taariq Muhammed (CRD #2379364, Registered Representative, Marietta, Georgia) was named as a respondent in an NASD complaint alleging that he opened an investment club at his member firm and solicited public customers to transfer \$258,263.05 from their existing securities accounts at his member firm to the investment club to be pooled for investment. The complaint also alleges that Muhammed entered into a "limited joint venture agreement" pursuant to which he obligated the investment club to invest \$350,000, and submitted wire instructions to his member firm in an attempt to send \$242,000 without conducting any investigation to determine the potential risks of the joint venture prior to entering into the agreement without having an adequate and reasonable basis for believing that the joint venture was suitable for investment prior to entering into the joint venture agreement. In addition, the complaint alleges that Muhammed entered into the agreement and failed to provide prior written notice to, and receive prior written approval from, his member firm to participate in the joint venture. (NASD Case #C07030035)

Michael Allyn Rose (CRD #2891577, Registered Principal, Lawrence, New York) was named as a respondent in an NASD complaint alleging that, while using the means and instrumentalities of interstate commerce to offer securities for sale, he 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, and misrepresentations in the form of price predictions to induce transactions, and transactions did occur. The complaint also alleges that Rose made negligent material misrepresentations to public customers in connection with the offer and sale of a security. (NASD Case #C3A030014)

Thomas Harris Thorp (CRD #2745965, Registered Representative, Peoria, Illinois) was named as a respondent in an NASD complaint alleging that he received \$418,083.96 from public customers who had taken out loans on their fixed annuities at Thorp's urging. The complaint alleges that, in exchange for the loan proceeds, each customer received a promissory note from Thorp whereby the customer was promised a 10 percent guaranteed return on investments. The complaint further alleges that Thorp did not use the customer annuity loan proceeds to make investments as promised, and instead used the proceeds from the customer loans for personal use or not for the benefit of the customer. In addition, the complaint alleges that, in connection with the sales of securities, Thorp used the instrumentalities of interstate commerce or the mails to make untrue statements of material facts or omitted to state material facts necessary to make the statements, in light of the circumstances in which they were made, not misleading. Specifically, the complaint alleges that Thorp represented to public customers that their funds would be used to purchase real estate and other capital projects when, in fact, he used the customer funds for his own benefit or not for the benefit of the customer. Furthermore, the complaint alleges that Thorp

participated in private securities transactions, for compensation, by participating in the sale of securities in the form of promissory notes to public customers through a company. In connection therewith, Thorp failed and neglected to provide written notice to, and obtain written authorization from, his member firm prior to engaging in such transactions. The complaint also alleges that Thorp failed to respond to NASD requests for information. (NASD Case #C8A030043)

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

Hornblower & Weeks, Inc.
New York, New York
(May 20, 2003)

Investment Services Capital, Inc.
Haverstraw, New York
(May 15, 2003)

Sierra Brokerage Services, Inc.
Columbus, Ohio
(May 20, 2003)

Firms Suspended for Failure to Supply Financial Information

The following firms were suspended from membership in NASD for failure to comply with formal written requests to submit financial information to NASD. The action was based on the provisions of NASD Rule 8221. The date the suspension commenced is listed after the entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

Davrey Financial Services, Inc.
Tacoma, Washington
(May 19, 2003)

Euronet Securities Corp.
Madrid, Spain
(May 19, 2003)

Lee Harris and Company
Chicago, Illinois
(June 4, 2003)

Oakdale Financial Group, LLC
New York, New York
(June 4, 2003)

Peyton, Chandler & Sullivan, Inc.
Roseville, California
(May 19, 2003 – June 12, 2003)

Suspension Lifted

NASD has lifted the suspension from membership on the date shown for the following firm because it has complied with formal written requests to submit financial information.

Elephantx Online Securities, LLC
New York, New York
(May 8, 2003)

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.)

Banda, James C.
Sagamore Hills, Ohio
(May 13, 2003)

Chan, Brian
San Diego, California
(June 2, 2003)

Cope, Jason
Coraopolis, Pennsylvania
(May 27, 2003)

Curry, Richard H.
Sugarland, Texas
(May 15, 2003)

Harris, James Sheridan
Duncanville, Texas
(June 3, 2003)

Holmes, Leslie R.
Upper Marlboro, Maryland
(June 2, 2003)

Vivono, Anthony S.
Lansdale, Pennsylvania
(May 27, 2003)

Waye, II, Gary C.
Rochester, New York
(June 5, 2003)

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.)

Liao, Lewis
Ranch Palos Verdes, California
(June 2, 2003)

Lombardi, Ralph M.
Marmora, New Jersey
(May 23, 2003)

Lou, Albert
Monterey Park, California
(May 30, 2003)

Luetje, Kevin M.
Sarasota, Florida
(May 23, 2003)

Micciche, Anthony V.
Tampa, Florida
(June 5, 2003)

Wise, Stanley M.
Newport Beach, California
(May 27, 2003)

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

Ballon, Robert I.
San Diego, California
(May 15, 2003)

Bruzzese, Michael
Brooklyn, New York
(May 15, 2003)

Eckstein, Brian K.
Johnstown, Ohio
(May 20, 2003)

Haburjak, David W.
W. Gastonia, North Carolina
(May 15, 2003)

Koch, Robert
Newtropli, Pennsylvania
(May 15, 2003)

Mormando, Jr., Nicholas J.
Brooklyn, New York
(May 15, 2003)

Morris, Aaron S.
Hollywood, Florida
(May 15, 2003)

Rice, Jay R.
Salt Lake City, Utah
(May 15, 2003)

Stachura, Jerome L.
Bensalem, Pennsylvania
(May 15, 2003)

Stevens, Jason B.
Scottsdale, Arizona
(May 15, 2003)

Individual Suspended Pursuant to NASD Rule Series 9510 for Failure to Comply With an Arbitration Award or a Settlement Agreement

Correa, Osualdo E.
Corpus Christi, Texas
(May 15, 2003)

NASD Charges Former Merrill Lynch Managing Director with Issuing Misleading Research, Selectively Disclosing Material Non-Public Information, and Improper Gift Giving to Tyco's CEO

NASD charged Phua Young, formerly a managing director and senior research analyst at Merrill Lynch, with a series of research violations, including publishing research reports about Tyco International Ltd., that contained misleading statements and exaggerated claims. The misconduct, which included other related securities violations, took place over a three-year period until April 2002, when Merrill discharged him for violating firm policy and regulatory standards.

The charges filed represent another chapter in NASD's actions involving research analyst misconduct. In the last year, NASD has brought over 20 actions involving violations against firms and individuals.

This complaint focuses primarily on Young's coverage of Tyco, Young's favored company and the most important issuer in Young's research area. From February until April 2002, Young published research reports about Tyco that contained misleading statements and exaggerated claims that were contrary to the beliefs, views, and opinions he expressed privately. Young also disseminated material non-public information about Tyco and gave advance notice of proposed ratings to selected institutional clients. The complaint further charges that Young routinely gave Tyco advance copies of his research reports that included proposed ratings and analyses. NASD also charged Young with improperly giving a gift to Dennis Kozlowski, then Tyco's chief executive officer.

"The conduct of this analyst, as evidenced by his own e-mails, gifts to the CEO of Tyco, and favors he received from the company amounted to a betrayal of objectivity and honesty in research," said Mary L. Schapiro, NASD Vice Chairman and President of Regulatory Policy and Oversight. "NASD will continue to hold analysts accountable whenever the interests of issuers and investment bankers cause them to lose their objectivity and produce misleading and skewed research."

While at Merrill Lynch, Young maintained an extraordinarily close relationship to Tyco, as evidenced by his own e-mails that manifest his lack of independence from the company. For instance, Young remarked to a senior employee in Tyco's Investor Relations Department, "I am indirectly paid by Tyco." In another e-mail following Young's blast voice mail to institutional clients, Young asked Tyco Investor Relations, "[d]id I not sound pumped up enough?" Tyco responded "you always sound pumped."

Young's close relationship with Tyco is also evident from favors he received from Tyco. For example, Young flew multiple times on one of Tyco's corporate jets for business trips, often accompanied by Kozlowski. On another occasion, Young requested, and Tyco retained, a private investigator to prepare a background report on one of Young's personal friends. Young's close relationship with Tyco compromised his independence as a research analyst.

Misleading Research Reports

The complaint stated that in January 2002 Tyco announced it planned to split into four companies and retire \$11 billion in debt. As part of this plan, Tyco announced it would spin off CIT, a large commercial lender. In February, March, and April of 2002, Young published a series of research reports on Tyco in which he assumed a sale of CIT for \$8 billion, relied upon that sale price to reach an asset valuation of the company between \$60 to \$70 per share, and stated that the stock was undervalued. Privately, however, Young did not believe that the CIT sale would produce \$8 billion or anywhere near that number, as noted in his e-mails. Young also privately expressed his negative view of Tyco's debt level, and believed the company was facing a liquidity crisis and that the stock was overvalued. For example,

when the stock was trading between \$33 and \$35 per share, in an e-mail dated March 7, 2002, to a Tyco investor relations employee, Young stated:

"I am waiting for \$10 [stock price] after tyco [sic] announces the inability to sell CIT for anything near \$8B. Liquidity crunch, more distractions, the debt bomb starts to TICK, TICK, TICK"

Several days earlier, he expressed a similar concern to the same employee:

"Dennis sounds down. He does not sound like he can sell CIT without a huge loss."

Although Tyco did not ultimately pursue the larger break-up plan, it spun off CIT in July 2002 for only \$4.6 billion, not the \$8 billion noted in Young's research reports.

Improperly Sharing Research and Ratings

The complaint further charges that Young gave advance notice of unpublished ratings to institutional clients. Before Young re-initiated coverage of Tyco and another company in September 1999, he selectively disclosed to certain institutional clients that he was going to give Tyco and the other company Merrill's highest rating. Given his close relationship with Tyco, he also routinely gave the company advance notice of unpublished research reports and ratings, solicited Tyco to make changes, and generally followed the company's suggested edits. For example, in one e-mail, Young forwarded a draft report and proposed rating to Tyco's chief financial officer, stating:

PLEASE REVIEW ASAP. I WILL NOT SEND OUT UNTIL I HEAR FROM YOU FIRST! LOYAL TYCO EMPLOYEE!

Dissemination of Material Non-Public Information

The complaint charges that in September 1999, Young improperly disseminated material non-public information to selected institutional clients concerning Tyco's acquisition of a Siemens business unit for over \$1 billion in cash. As noted in the complaint, Young also received a "grid" detailing the advantages of the Siemens acquisition from a Tyco investor relations employee. That same day, he received an e-mail from Tyco that stated:

"The attached information makes you an insider until the deal is announced. The information sheet at this stage is preliminary."

Shortly thereafter, Young e-mailed the "grid" to an institutional client and wrote, "You can't use until after announcement." The next day, Tyco advised Young, "DO NOT PUT OUT ANY INFORMATION UNTIL THE STORY CROSSES THE WIRE."

Improper Gift to Dennis Kozlowski, Tyco's CEO

NASD also charged that in December 2001, Young violated NASD rules when he gave a case of wine valued at over \$4,500 to Kozlowski. NASD rules prohibit a registered person from giving gifts valued at over \$100 to any person where such payment is in relation to the business of the employer of recipient.

Under NASD rules, Young may file a response and request a hearing before an NASD hearing panel. Possible sanctions include a fine, suspension, bar, or expulsion from NASD.

NASD Takes Disciplinary Actions for Variable Annuity Abuses and Issues Investor Alert on Variable Products

NASD, as part of its ongoing efforts to curb abuses in the sale of variable products, has censured and fined InterSecurities, Inc., of St. Petersburg, Florida, \$125,000 for having inadequate procedures and systems governing its sale of variable products and its handling of customer complaints. In addition, in three separate enforcement actions not related to the InterSecurities matter, NASD announced that it filed complaints against individuals for unsuitable sales of deferred variable annuities.

"There has been a dramatic increase in sales of variable products in the last several years and the marketing efforts used by some variable annuity sellers deserve scrutiny—especially when seniors are the targeted investors," said Mary L. Schapiro, NASD Vice Chairman and President of Regulatory Policy and Oversight. "Sales pitches that confuse or frighten investors violate NASD rules and will be the subject of enforcement action." For this reason, NASD today issued an Investor Alert to help investors better understand variable annuities before purchasing one. The alert, *Variable Annuities: Beyond the Hard Sell*, can be found at www.nasdr.com/alert_variable_annuities.htm.

InterSecurities was charged with failing to adequately address customer complaints that were made against it. As an affiliate company of InterSecurities, Western Reserve Life Assurance Co., of Ohio (WRL) received nearly all customer complaints concerning InterSecurities' sales of variable products. Because WRL determined whether each was a "complaint," InterSecurities failed to have records of all complaints and report them to NASD as required by NASD rules.

InterSecurities also did not have procedures in place to ensure the proper registration, training, or supervision of individuals that handled customer complaints, adequate guidelines for customer complaint investigations, or adequate reviews of its complaint handling process. In addition, over the course of more than four years, InterSecurities had inadequate procedures and systems governing the sale of variable products. In settling these matters, InterSecurities neither admitted nor denied NASD's findings.

In other recent enforcement actions, NASD filed three separate complaints against individuals for unsuitable sales of variable annuities. They include:

♦ Ralph T. Grubb, at the time employed by Banc of America Investment Services, Inc., was charged with an unsuitable sale of a deferred variable annuity to an 18-year-old high school senior who was seeking a safe investment for a \$30,000 legacy while in college. When she graduated from college, she intended to use the funds for a down payment on a house or to buy a car. However, the annuity contract was subject to a ten percent additional tax on distributions prior to age 59½ and carried surrender charges that would have still been in effect when she intended to liquidate her investment. The complaint also alleges that Grubb's recommended allocation of 100 percent of the customer's premium to one equity sub-account within the annuity was unsuitable in relation to the customer's risk tolerance, and that the customer had no need for the death benefit feature of the annuity because she was unmarried and had no dependents. Moreover, the customer was in the lowest marginal tax bracket and had no need for tax deferral, a principal reason that people purchase variable annuities. The complaint further alleges that Grubb made an unsuitable sale of a deferred variable annuity to the customer's father for the investment of a legacy received by the customer's 16-year-old sister.

♦ Kevin S. Jones was charged with an unsuitable switch of variable annuities. At the time, Jones was employed at Raymond James and Associates, Inc. The customer, a self-employed rancher, needed access to her funds and had an investment time horizon of two to seven years. During the sixth year of her ownership of a \$300,000 variable annuity, Jones recommended that she switch to another variable annuity in the amount of \$315,000, for which Jones received a commission of \$8,500. The original variable annuity would have allowed the customer penalty-free access to her money in eight months, but the switch resulted in limited access to her investment for the next nine years. The switch also caused the customer to pay a \$1,600 surrender fee. The complaint further alleges that the switch resulted in no significant improvement in the death benefit for the customer and caused the customer to pay substantial increased annual costs. Over a six-year period, these increased costs depleted the \$15,000 bonus offered by the second variable annuity.

♦ Gregory Hunter of Edward Jones, Inc., was named in the third action and charged with an unsuitable sales transaction. In this case, the customer had a portfolio worth approximately \$250,000 that generated monthly income averaging approximately \$1,500. Hunter recommended and sold to this customer a \$60,000 deferred variable annuity by liquidating a portion of her portfolio. The net effect of the transaction was that the customer's portfolio now

generated monthly income that was insufficient to cover her monthly expenses requiring the customer to make regular monthly withdrawals of \$360 from the annuity for living expenses. Given the customer's need for current income and the fact that she did not need benefits offered by a variable annuity such as tax deferral or a death benefit, the transaction was unsuitable.

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

These cases are the latest in a series of special examinations conducted by NASD that focused on the sale of variable contracts.

NASD has issued alerts to both firms and investors to help ensure that these products are properly sold, which can be found at:

- ♦ www.nasdr.com/alert_exchange_lifeinsurance.htm,
- ♦ www.nasdr.com/pdf-text/9935ntm.pdf, and
- ♦ www.nasdr.com/pdf-text/0044ntm.pdf.