

# Disciplinary and Other NASD Actions

## REPORTED FOR OCTOBER

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 September 2005.

### Firms Fined, Individuals Sanctioned

Froggatte & Company (CRD #43161, Wichita, Kansas) and Theron Lynn Froggatte (CRD #1902647, Registered Principal, Wichita, Kansas) submitted a Letter of Acceptance, Waiver and Consent in which the firm and Froggatte were fined \$25,000, jointly and severally, and Froggatte was suspended from association with any NASD member in a financial and operations principal capacity for 30 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 Froggatte, conducted a securities business while failing to maintain minimum required net capital. The findings stated that the firm, acting through Froggatte, failed to prepare accurate general ledger, trial balance and net capital computations. The findings also stated that the firm, acting through Froggatte, participated in an underwriting on a firm commitment basis and effected transactions for its own investment account that were not permitted under the express terms of the firm's membership agreement with NASD.

Froggatte's suspension will begin November 7, 2005, and will conclude at the close of business December 6, 2005. (NASD Case #E042004006601)

Leonard Securities, Inc. (CRD #43176, Oklahoma City, Oklahoma), Paul Arthur Raisig (CRD #2231888, Registered Representative, Oklahoma City, Oklahoma) and Robert Leonard Savage (CRD #815336, Registered Principal, Oklahoma City, Oklahoma) submitted a Letter of Acceptance, Waiver and Consent in which the firm and Savage were fined \$10,000, jointly and severally, and ordered to pay \$14,159 in restitution to public customers. Savage was suspended from association with any NASD member in a principal capacity for 10 business days. Raisig was fined \$10,000 and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Raisig recommended and effected mutual fund transactions in the accounts of public customers without having a reasonable basis for the recommendation. The findings stated that the firm, acting through Savage, failed to establish, maintain and enforce a system of supervision reasonably designed to ensure compliance with NASD rule 2310.

Savage's suspension began October 3, 2005, and concluded at the close of business October 14, 2005. Raisig's suspension began October 3, 2005, and will conclude at the close of business October 21, 2005. (NASD Case #E052004004203)

**Presidential Brokerage, Inc. (CRD #28784, Greenwood Village, Colorado), Anthony Joseph Campen (CRD #1959903, Registered Principal, Meza, Arizona) and Eric Joel Lempe (CRD #1483459, Registered Principal, San Diego, California)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$70,000, jointly and severally, with Campen, of which \$65,083 shall be allocated as restitution to public customers and required to attest in writing that it complied with the requirements of NASD Rule 3070. Campen was suspended from association with any NASD member in a principal capacity for 15 business days. Lempe was fined \$224,618 and suspended from association with any NASD member in any capacity 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 Campen, reported customer complaints with inaccurate information and failed to report, or reported late, matters that required disclosure within 10 days pursuant to NASD Rule 3070. The findings stated that the firm, acting through Campen, reported late amendments to Forms U4 and U5 and did not disclose information required to be disclosed on a Form U5. The findings also stated that the firm, acting through Campen, failed to establish a supervisory system, and failed to establish, maintain and enforce written supervisory procedures reasonably designed to achieve compliance with applicable NASD rules pertaining to Rule 3070, reporting the timely and accurate filing of Forms U4 and U5, and the suitability of mutual funds share class recommendations. NASD found that the firm, acting through an employee, failed to supervise the activities of registered representatives who were employing trading strategies with customers located abroad in a manner reasonably designed to achieve compliance with NASD rules. In addition, the findings stated that the firm, acting through Lempe, recommended the purchase of mutual fund "Class B" shares to customers for whom a recommendation of "Class A" shares would have been economically more beneficial.

Campen's suspension began September 19, 2005, and concluded at the close of business October 7, 2005. Lempe's suspension began September 19, 2005, and will conclude at the close of business March 18, 2006. (NASD Case #E3A2002001601)

**Professional Investment Services, Inc. (CRD #13703, Winfield, Kansas) and Don Howard Ehling (CRD #76203, Registered Principal, Winfield, Kansas)** submitted a Letter of Acceptance, Waiver and Consent in which the firm and Ehling were censured and fined \$12,500, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of

findings that Ehling, acting on behalf of Professional Investment Services, Inc., failed to file an annual audit report for the year ending December 31, 2004, by the due date. (NASD Case #2005000996601)

**White Mountain Capital, LLC (CRD #104123, Nanuet, New York) and Ruben Francisco Augusta (CRD #2217612, Registered Principal, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$25,000, of which \$15,000 was joint and several with Augusta. Augusta is also suspended from association with any NASD member in any principal capacity for five 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 Augusta, did not discover that an associated person's Continuing Education (CE) and registration status were deficient, and that this person functioned as a representative although she was not effectively registered with the firm. The findings also stated that the firm, acting through Augusta, permitted the individual to function as a representative while her waiver application was pending. NASD found that the firm did not develop and implement a written anti-money laundering (AML) program that was reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act and the regulations promulgated thereunder.

Augusta's suspension began August 15, 2005, and concluded at the close of business August 19, 2005. (NASD Case #E112003012401)

**Viewtrade Securities, Inc. (CRD #46987, Boca Raton, Florida) and James Joseph St. Clair, Jr. (CRD #1550599, Registered Principal, Boca Raton, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$185,000, of which \$30,000 was jointly and severally with St. Clair, and required to retain an independent consultant to conduct a complete audit of the firm's policies, practices and procedures. St. Clair was suspended from association with any NASD member in any principal capacity for 18 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 St. Clair, failed to establish, maintain and enforce taping procedures for supervising the telemarketing activities of all of its registered persons. The findings stated that the firm, acting through St. Clair, sent a signed "certification regarding special written supervisory procedures for compliance with NASD 3010(b)(2)" to NASD that contained material misrepresentations. The findings also stated that the firm, acting through St. Clair, failed to establish and implement policies and procedures that

were reasonably designed to achieve compliance with the Bank Secrecy Act and regulations thereunder, by failing to have procedures to monitor accounts for described red flags, and failing to identify and adequately investigate suspicious activity in customer accounts despite the existence of red flags. The firm also failed to obtain foreign bank certifications. NASD also found that the firm failed to have supervisory procedures designed to prohibit insider trading in accounts maintained for public customers. NASD found that the firm, acting through St. Clair, failed to establish, develop and implement an adequate supervisory system or procedures allowing the firm to monitor, achieve and retrieve instant messages sent and received by its registered persons, and the use by its registered representatives of email. The findings stated that the firm, acting through St. Clair, failed to establish and maintain a system of supervision reasonably designed to ensure compliance with the rules of NASD and the applicable laws and regulations.

St. Clair's suspension began October 17, 2005, and will conclude at the close of business April 16, 2007. (NASD Case #E072003014001)

## Firms and Individuals Fined

**Colonial Brokerage, Inc. (CRD #111668, Montgomery, Alabama) and Beth Phillips Johnson (CRD #4334497, Registered Principal, Lowndesboro, Alabama)** submitted a Letter of Acceptance, Waiver and Consent in which the firm and Johnson were censured, and the firm was fined \$15,000, of which \$10,000 was jointly and severally with Johnson. Without admitting or denying the allegations, the firm and Johnson consented to the described sanctions and to the entry of findings that they engaged in a securities business when the firm's net capital was below the required minimum as prescribed by SEC rule 15c3-1. The findings stated that the firm, acting through Johnson, failed to provide notification that the member firm's net capital was below the required minimum. NASD also alleges that the firm failed to timely report transactions in debit securities reportable via the Trade Reporting and Compliance Engine (TRACE). (NASD Case #E052004001401)

**Global Strategic Investments, LLC (CRD #117028, Miami, Florida) and Justin Ryan DalMolin (CRD #4666567, Registered Principal, Miami Beach, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which the firm and DalMolin were censured and fined \$10,000, jointly and severally. Without admitting or denying the allegations, the firm and DalMolin consented to the described sanctions and to the entry of findings that the firm, acting through DalMolin, conducted a securities business while failing to maintain the minimum net capital requirement. The findings

stated that the firm, acting through DalMolin, violated SEC Rules 17a-3 and 17a-5, in that the firm's original net capital computations and its FOCUS report were materially inaccurate. (NASD Case #E0720040143)

## Firms Fined

**American Funds & Trust, Inc. (CRD #1066, Salt Lake City, Utah)** 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 its anti-money laundering (AML) compliance program failed to implement procedures required by the firm's customer identification program by failing to establish and maintain records of information obtained and reviewed to verify the identity of 49 customers of 50 new accounts opened. NASD also found that the firm's independent test of its AML program was limited to certain aspects of the firm's AML program as opposed to the entire program. (NASD Case #E3A2004003401)

**Clayton, Dunning & Company, Inc. (CRD #42533, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to develop and implement an AML program reasonably designed to achieve and monitor its compliance with the requirements by failing to implement an adequate customer identification program in that the firm did not adequately verify the identity of new customers. (NASD Case #E1020040891-01)

**Domestic Securities, Inc. d/b/a The Attain ECN (CRD #34721, Montvale, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it incorrectly classified an order to sell short as a "covered" order in connection with the firm's Sec Rule 11ac1-5 data disclosures. (NASD Case #2005000264801)

**Eastlake Securities, Inc. (CRD #15781, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it developed and implemented an AML program that was not reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act and the implementing regulations thereunder. The findings stated that the firm allowed a representative to maintain his registration

as a general securities representative through his purported association with the firm, when in fact he was not actively involved in the firm's securities business or otherwise functioning as a representative of the firm. (NASD Case #E1020040133-01)

**Electronic Brokerage Systems, LLC (CRD #104031, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$40,000. 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 the Order Audit Trail System<sup>SM</sup> (OATS<sup>SM</sup>) reportable order events (ROEs), and submitted to OATS reports with respect to equity securities traded on NASDAQ that were not in the electronic form prescribed by NASD and were repairable. The findings stated that the subject reports were rejected by the OATS system and notice of such rejection was made available to the firm on the OATS Web site, but the firm did not correct or replace the subject reports. The findings also stated that the firm failed to enforce its written supervisory procedures that specified that the firm would conduct a weekly review to ensure that all required ROEs were submitted to OATS, and a daily review to ensure that rejected ROEs were repaired. NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations, and NASD rules concerning OATS. (NASD Case #2004200007701)

**Fleet Securities, Inc. (CRD #13071, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the 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 Service<sup>SM</sup> (ACT<sup>SM</sup>) last-sale reports of transactions, failed to designate through ACT that some of these transactions were late, and inaccurately reported to ACT that it had acted as a principal in some of these transactions. The findings stated that the firm failed to record on the order tickets the execution times in seconds. In addition, the findings stated that the firm reported transactions to the Municipal Securities Rulemaking Board (MSRB) with the incorrect executing broker symbol, and failed to timely report some of these transactions to the MSRB. (NASD Case #E1020030187-01)

**Janco Partners, Inc. (CRD #40055, Greenwood Village, Colorado)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$30,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, acting through individuals, it caused draft research reports to be sent to the companies that were the

subjects of the reports. The findings stated that the reports contained statements of opinion, prediction and commentary, in addition to factual matters for verification, which should not have been included in the draft reports sent to the subject companies. The findings also stated that a research analyst associated with the firm purchased securities issued by a company that he covered and issued a research report concerning that company. NASD found that the firm's written supervisory procedures were not reasonably designed to achieve compliance in that they recited the rule provisions, but did not include procedures to monitor and achieve compliance with the rule. The findings further stated the firm did not submit to NASD a written attestation that the firm had adopted and implemented written supervisory procedures reasonably designed to achieve compliance. NASD determined that the firm also failed to make a notation of the time of entry and necessary terms and conditions in the memoranda of purchases and sale of securities for the firm's account and each brokerage order. (NASD Case #E3A2004002201)

**The Jeffrey Matthews Financial Group, L.L.C. (CRD #41282, Millburn, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$75,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that its supervisory system and procedures were not reasonably designed to ensure that the required written consent was obtained before pre-registration searches on WebCRD, and that the firm retained the required documentation. (NASD Case #E9B2004025501)

**Legacy Financial Services, Inc. (CRD #38697, Petaluma, California)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was fined \$54,250. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it failed to timely file disclosures for reportable events to NASD within 10 business days after learning of such events, failed to timely report complaints to NASD by the 15th day of the month following the calendar quarter in which the complaints were received, and failed to promptly update Forms U4 and U5 for events that required regulatory disclosure. The findings stated that the firm had inadequate written supervisory procedures relating to prompt reporting of events requiring regulatory disclosure filings. (NASD Case #E012004004501)

**Nat City Investments, Inc. (CRD #17490, Cleveland, Ohio)** submitted a Letter of Acceptance, Waiver and Consent in which it was censured and fined \$50,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to establish and maintain a supervisory system reasonably designed to review and monitor its fee-based brokerage. (NASD Case #E8A2003084601)

**People's Securities Inc. (CRD #13704, Bridgeport, Connecticut)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$125,000, and required to review its procedures regarding the preservation of electronic mail communications for compliance with NASD rules and federal securities laws and regulations. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to maintain and preserve all of its email communications in that the firm utilized an email archival system that purged all email communications after 60 days and the back-up records of the purged emails after 10 days. (NASD Case #E112004014101)

**Prime Capital Services, Inc. (CRD #18334, Poughkeepsie, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$200,000, and required to review the firm's written supervisory procedures regarding the preservation of electronic mail communications for compliance with NASD rules and federal securities laws and regulations. The firm was also required to offer public customers options to convert class B shares into class A shares at no cost. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm failed to establish, maintain and enforce supervisory procedures that were reasonably designed to achieve compliance with advertising rules, branch office inspections, review and approval of new brokerage and variable annuity applications, review of principals' customer transactions and mutual fund share class suitability. The findings stated that the firm failed to report customer complaints and registered representative terminations in a timely manner and neglected to preserve certain required books and records of its registered representatives including email communications. (NASD Case #E112003006901)

**QA3 Financial Corporation (CRD #14754, Omaha, Nebraska)** 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 the firm failed to establish, maintain and enforce a supervisory system reasonably designed to enable the firm and its supervisors to scrutinize mutual fund share purchases to detect and prevent unsuitable Class B share purchases. (NASD Case #E0420040097-02)

**Robeco Securities, L.L.C. (CRD #2998, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported corporate bond transactions containing deficiencies to TRACE. The findings stated that the firm reported one side

of the transaction to TRACE, but not both sides as required by NASD Systems and Programs Rule 6230. (NASD Case #E1020030563-01)

**Shattuck Hammond Partners LLC (CRD #113645, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report 77 out of 97 municipal securities transactions to the MSRB. Further, the findings stated that of the trades reported to the MSRB, the firm reported five municipal securities transactions to the MSRB late, incorrectly dated, and two transactions that were reported nonreportable events. The findings also stated that the firm did not maintain adequate written supervisory procedures to ensure compliance with MSRB Rule G-14. (NASD Case E1020040367-01)

**Summer Street Research Partners (CRD #127142, Boston, Massachusetts)** 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 issued research reports that omitted certain facts and/or utilized conditional or indefinite language in making required disclosures. (NASD Case #E112004004801)

**Wave Securities, LLC (CRD #43705, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver and Consent in which it 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 to report the time of execution through ACT in last-sale reports of transactions in NASDAQ National Market<sup>SM</sup> (NNM)<sup>SM</sup> securities. The findings also stated that the firm failed to report the time of execution through ACT in last-sale reports of transactions in NASDAQ SmallCap<sup>SM</sup> securities, and failed to report the time of execution through ACT in transactions for which the firm had recording and reporting obligations under NASD Marketplace Rules 6954 and 6955. (NASD Case #2004200000501)

**Wm Smith Securities, Inc. (CRD #30777, Denver, Colorado)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000, including \$2,500 that was jointly and severally with an individual. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it issued research reports that did not include the required disclosure concerning the receipt or expected receipt of compensation for investment banking services. The findings stated that the firm permitted a continuing education (CE) inactive individual to function in a capacity that required

registration with NASD. The findings also stated that the firm's supervisory system and procedures were not reasonably designed to achieve compliance with NASD's Membership and Registration Rule 1120. (NASD Case #E3A2003003101)

**1717 Capital Management Company (CRD #4082, Newark, Delaware)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to enforce written supervisory procedures for special supervision of registered representatives who had a history of customer complaints. (NASD Case #E112002095801)

## Individuals Barred or Suspended

**Roberto Alford (CRD #2445460, Registered Principal, Del Ray Beach, 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, Alford consented to the described sanctions and to the entry of findings that he failed to disclose a material fact on his Form U4 and failed to respond to NASD requests for information. (NASD Case #E1020041090-01)

**John Joseph Amore (CRD #1502074, Associated Person, Manhasset, 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, Amore consented to the described sanction and to the entry of findings that he engaged in securities transactions at his member firm that required him to be registered with NASD. The findings stated that Amore failed to appear for an NASD on-the-record interview. (NASD Case #E102004102402)

**Thomas Michael Aretz (CRD #1083897, Registered Representative Destin, 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 60 days. Without admitting or denying the allegations, Aretz consented to the described sanctions and to the entry of findings that he borrowed \$25,000 from a public customer in contravention of the firm's written procedures. The findings stated that Aretz repaid the loan with interest, but only after the customer complained to NASD and his firm.

Aretz's suspension began September 12, 2005, and will conclude at the close of business November 10, 2005. (NASD Case #2005001180902)

**Richard Carvel Brown (CRD# 32843, Registered Representative, Cheyenne, Wyoming)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined

\$5,000 and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Brown consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firm.

Brown's suspension began August 1, 2005, and concluded at the close of business August 19, 2005. (NASD Case #E3A2004031401)

**Jan Lynn Brueggemann (CRD #2714692, Registered Representative, Irvine, California)** submitted an Offer of Settlement in which he was fined \$7,400 and suspended from association with any NASD member in any capacity for 30 business days. Without admitting or denying the allegations, Brueggemann consented to the described sanction and to the entry of findings that he participated in a private securities transaction without providing prior written notification to, and receiving prior written approval from, his member firm.

Brueggemann's suspension will begin October 17, 2005, and will conclude at the close of business November 28, 2005. (NASD Complaint #E022004059104/NASD Offer #C0220050053)

**Gary Lynn Craig (CRD #874487, Registered Principal, Mercer Island, 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 four months. Without admitting or denying the allegations, Craig consented to the described sanction and to the entry of findings that he participated in the preparation and distribution of sales literature that contained unwarranted and misleading information to prospective investors on behalf of his member firm. The findings stated that Craig sent a letter on behalf of his member firm to its existing investors that failed to state material facts.

Craig's suspension began September 19, 2005, and will conclude at the close of business January 18, 2006. (NASD Case #E3B2003026801)

**Douglas William Daniels (CRD #1345341, Registered Representative, Lynn, Massachusetts)** 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, Daniels consented to the described sanction and to the entry of findings that he invested \$5,000 in a variable annuity that required a minimum investment of \$10,000 for a public customer with the notation that it was an initial deposit and additional funds would follow. The findings stated that the insurance company failed to receive the additional \$5,000,

issued a check canceling the customer's application and returned the initial deposit. The findings also stated that Daniels, without the knowledge or consent of the customer, negotiated the \$5,000 check and misappropriated the proceeds to his own use and benefit. The findings further stated that Daniels failed to respond to NASD requests for information. (NASD Case# E9B2004050101)

**Kevin John Davis (CRD #3226294, Registered Principal, Sartell, 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, Davis consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. (NASD Case #20050005911-01)

**Tanya Rochelle Davis (CRD #4759997, Associated Person, Houston, Texas)** submitted an Offer of Settlement in which she was suspended from association with any NASD member in any capacity for six months. In light of the financial status of Davis, no monetary sanctions have been imposed. Without admitting or denying the allegations, Davis consented to the described sanction and to the entry of findings that she willfully failed to disclose a material fact on her Form U4.

Davis's suspension began September 19, 2005, and will conclude at the close of business March 18, 2006. (NASD Complaint #E062004018404/NASD Offer #C0620050017)

**Terry James DiMartino (CRD #1057994, Registered Representative, Newington, Connecticut)** 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 DiMartino, no monetary sanctions have been imposed. Without admitting or denying the allegations, DiMartino consented to the described sanction and to the entry of findings that he willfully failed to disclose a material fact on his Form U4.

DiMartino's suspension began September 19, 2005, and will conclude at the close of business December 18, 2005. (NASD Case #E2005001599501)

**Linda Ora Foster (CRD #2738949, Registered Representative, Spanaway, Washington)** submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Foster reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Foster consented to the described sanctions and to the entry of findings that she forged the signature of a public customer

on a supplement to an insurance application and, without the customer's knowledge or consent, submitted it with a check drawn on her bank account to the insurance company.

Foster's suspension will begin October 17, 2005, and will conclude at the close of business October 16, 2006. (NASD Case #E3B2004017101)

**William Stephen Foster (CRD #3148209, Registered Representative, Norman, Oklahoma)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$22,500 and suspended from association with any NASD member in any capacity for two months. The fine includes the disgorgement of excess commissions received in the amount of \$12,500. The fine must be paid before Foster reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Foster consented to the described sanctions and to the entry of findings that he recommended and effected securities transactions in the accounts of public customers without having a reasonable basis for believing the transactions were suitable based upon the customers' investment objectives, financial situations and needs.

Foster's suspension began October 17, 2005, and will conclude at the close of business December 16, 2005. (NASD Case #EAF0300750003)

**John Melvin Fuls (CRD #4742604, Registered Representative, Sauk Rapids, 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, Fuls consented to the described sanction and to the entry of findings that he received a \$2,869 check from a public customer as payment for insurance policy premiums, and Fuls instead deposited the check into his bank account and converted the funds to his personal use. (NASD Case #E0420040484-03)

**Mark Bennett Haiken (CRD #233565, Registered Financial and Operations Principal, Port Washington, 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 the capacity of a Financial and Operations Principal (FINOP) for 60 days. Without admitting or denying the allegations, Haiken consented to the described sanctions and to the entry of findings that his member firm, acting through Haiken, failed to reflect a net capital deficiency.

Haiken's suspension began September 19, 2005, and will conclude at the close of business November 17, 2005. (NASD Case #ELI2003049503)

**Stuart Michael Hammerle (CRD #1008986, Registered Representative, Philadelphia, Pennsylvania)** was barred from association with any NASD member in any capacity. The sanctions were based on findings that without the knowledge or consent of a public customer, Hammerle submitted a letter to his member firm that reflected the customer's purported signature and stated that checks totaling \$15,000 from the customer's margin account be made payable to entities with which Hammerle had personal business dealings. The findings stated that the checks were issued and negotiated and were to be applied by the entities to Hammerle's benefit. The findings also stated that Hammerle failed to respond to NASD requests for documents and to appear and give testimony. (NASD Case #C9A050017)

**Roger Dean Harper, Jr. (CRD #2646828, Registered Representative, Leawood, Kansas)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000, suspended from association with any NASD member in any capacity for 18 months and required to requalify by exam in all capacities. The fine must be paid before Harper reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Harper consented to the described sanctions and to the entry of findings that he knowingly notarized 401(k) rollover forms that contained non-genuine signatures.

Harper's suspension will begin October 17, 2005, and will conclude at the close of business March 16, 2007. (NASD Case #20050006024-01)

**Richard Francis Huston (CRD #2512830, Registered Representative, Vineland, 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 60 days. Without admitting or denying the allegations, Huston consented to the described sanctions and to the entry of findings that he photocopied a public customer's signature onto nine trading authorization forms used in connection with penny stock transactions without the customer's knowledge or consent.

Huston's suspension began October 3, 2005 and will conclude at the close of business December 1, 2005. (NASD Case #E9B2004018301)

**David Ray Kelsey (CRD #2826645, Registered Representative, Lawrence, Kansas)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000, suspended from association with any NASD member in any capacity for six months and required to requalify in all capacities prior to reassociation with an NASD member. The fine must be paid before Kelsey reassociates with any NASD member following the suspension or before requesting relief

from any statutory disqualification. Without admitting or denying the allegations, Kelsey consented to the described sanctions and to the entry of findings that he asked a colleague to notarize 401(k) rollover forms, knowing that the signatures for the participants' spouses were not genuine.

Kelsey's suspension began October 17, 2005, and will conclude at the close of business April 16, 2006. (NASD Case #20050006024-02)

**David Benjamin Lazarus (CRD #2738374, Registered Principal, Miami Beach, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$30,000, suspended from association with any NASD member in any capacity for 42 days and ordered to pay disgorgement of \$1,413.35, plus interest, to public customers. Without admitting or denying the allegations, Lazarus consented to the described sanctions and to the entry of findings that he knowingly and intentionally entered priced limit orders to buy or sell shares of NASDAQ securities into an Electronic Communications Network (ECN) at prices that he knew would improve, and were intended to improve, the National Best Bid or Offer (NBBO) in such securities. The findings stated that Lazarus knowingly and intentionally bought and sold shares of these securities at prices that were lower than he would otherwise have been able to buy, thereby obtaining a financial benefit. The findings also stated that Lazarus caused to be published or circulated limit orders at prices that affected the NBBO and became quotations for the securities, without believing that those quotations represented bona fide bids or offers for the securities. NASD found that Lazarus caused to be published or circulated purchases and sales of securities that he did not believe were bona fide purchases and sales.

Lazarus's suspension began September 19, 2005, and will conclude at the close of business on October 30, 2005. (NASD Case #2004200001804)

**Van Hung Le (CRD #4770466, Registered Representative, Arlington, Virginia)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Le consented to the described sanction and to the entry of findings that he effected unauthorized transactions in customer accounts. The findings also stated that Le failed to appear for an on-the-record interview with NASD. (NASD Case #E9B2004057101)

**Matthew Lonskey (CRD #4669940, Registered Representative, Belmar, 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, Lonskey consented to the described sanction and to the entry of findings that he signed the name of a public customer on

variable annuity documents without the customer's knowledge, authorization or consent. The findings stated that Lonskey failed to respond to NASD requests for information. (NASD Case #2005001307501)

**Victor Gary Lowatchie (CRD #2203004, Registered Representative, Falmouth, Maine)** submitted a Letter of Acceptance, Waiver and Consent in which he was permanently barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lowatchie consented to the described sanction and to the entry of findings that he affixed the signatures of public customers on account applications, IRA transfer forms, beneficiary forms and other documents without their knowledge or consent. (NASD Case #E112004045001)

**Michael Jay Margolis (CRD #2532830, Registered Representative, Staten Island, New York)** 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 15 business days. Without admitting or denying the allegations, Margolis consented to the described sanctions and to the entry of findings that he commingled a public customer's funds with his own in that he deposited \$10,000 in cash from a customer into his personal bank account and simultaneously had the bank issue a \$9,990 check, and used the check to pay the semi-annual premium for a variable life insurance policy owned by customer's wife.

Margolis's suspension began September 19, 2005, and concluded at the close of business October 7, 2005. (NASD Case #ELI20040383-01)

**Rudolf Nepakharev (CRD #3121741, 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, Nepakharev consented to the described sanctions and to the entry of findings that he made material misrepresentations about a company's securities and failed to disclose material, adverse facts that he was or should have been aware of, including the company's financial condition. The findings stated that he made statements about the company and its business, including stock price projections and guarantees, for which he had no basis. (NASD Case #2005000739201)

**John Gregory Oppenheimer (CRD #3178207, Registered Representative, Raleigh, North Carolina)** was barred from association with any NASD member in any capacity. The sanction was based on the findings that Oppenheimer effected transactions in the account of a public customer without the customer's authorization. The findings stated that he forged the customer's signature on documents, including annuity purchase applications, and failed to respond to NASD requests to provide testimony. (NASD Case #C07050031)

**James Vincent Pardy (CRD #2900751, Registered Principal, Flushing, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$15,000 and suspended from association with any NASD member in any principal capacity for 30 days. Without admitting or denying the allegations, Pardy consented to the described sanctions and to the entry of findings that he failed to reasonably supervise several registered representatives and failed to report customer complaints, pursuant to NASD Conduct Rule 3070.

Pardy's suspension began September 19, 2005, and will conclude at the close of business October 18, 2005. (NASD Case #ELI2004001101)

**Joseph Pitruzzello, Jr. (CRD #2296199, Registered Representative, San Mateo, California)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$7,500 and suspended from association with any NASD member firm in any capacity for three months. The fine must be paid before Pitruzzello reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Pitruzzello consented to the described sanctions and to the entry of findings that he forged the signature of a public customer to a retirement plan's salary reduction agreement.

Pitruzzello's suspension began October 17, 2005, and will conclude at the close of business January 16, 2006. (NASD Case #E012004032702)

**Ralph Anthony Purpora (CRD #1077716, Registered Representative, Poughkeepsie, New York)** 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, Purpora consented to the described sanctions and to the entry of findings that he recommended securities transactions to public customers without having reasonable grounds for believing that the recommendations were suitable, because the customers could have purchased Class A shares in each fund at a reduced sales charge by applying break points, using letters of intent and/or using rights of accumulation.

Purpora's suspension began September 19, 2005, and concluded at the close of business October 14, 2005. (NASD Case #E112003006904)

**Gary Allen Randa (CRD #2425208, Registered Representative, Oswego, Illinois)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any member in any capacity. Without admitting or denying the allegations, Randa consented to the described sanction and to the entry of findings that he fraudulently obtained a public customer's checkbook without

the consent or knowledge of the customer. The findings stated that he forged the customer's signature on deposit slips and checks totaling \$60,500, made them payable to himself and deposited the funds in his bank account, thereby converting the customer's funds to his own use and benefit. (NASD Case #E8A2004082401)

**Rita Nell Raymer (CRD #2757002, Registered Representative, Sweeden, Kentucky)** 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, Raymer consented to the described sanction and to the entry of findings that she recommended and effected securities transactions in the accounts of public customers without having a reasonable basis for believing the transactions were suitable based upon customers' investment objectives, financial situations, and needs. The findings stated that Raymer made misrepresentations and omitted material facts in the sale of variable annuity contracts to public customers with the intent of deceiving the customers or with reckless disregard for the truth. (NASD Case #E052003013101)

**Kendra Ann Reed (CRD #3181912, Registered Representative, Ruckersville, Virginia)** submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Reed consented to the described sanctions and to the entry of findings that she did not disclose to her member firm that the data on the applications for public customers' variable life insurance had been altered by her and was not the product of the paramedical examiner.

Reed's suspension will begin October 17, 2005, and will conclude at the close of business April 16, 2006. (NASD Case #E9A2004025401)

**David Alexander Rourke, Sr. (CRD #2089364, Registered Representative, Wellesley, Massachusetts)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$7,500 and suspended from association with any NASD member firm in any capacity for ten business days. Without admitting or denying the allegations, Rourke consented to the described sanctions and to the entry of findings that he recommended the purchase of Class B mutual funds to public customers without having reasonable grounds to believe that the Class B shares, as opposed to the Class A shares, were suitable for the customers.

Rourke's suspension began October 3, 2005, and concluded at the close of business October 14, 2005. (NASD Case #E0420040097-01)

**John Charles Sabo (CRD #826178, Registered Principal, Wellesley, Massachusetts)** 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 seven months. The fine must be paid before Sabo reassociates with any NASD member following the suspension, or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Sabo consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, or approval from, his member firm.

Sabo's suspension will begin October 17, 2005, and will conclude at the close of business May 16, 2006. (NASD Case #E9B2004034201)

**Glen Joseph Santangelo (CRD #2776058, Registered Representative, Ridgewood, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$50,000 and suspended from association with any NASD member in any capacity for 60 business days. Without admitting or denying the allegations, Santangelo consented to the described sanctions and to the entry of findings that he disseminated, by email, material confidential and non-public information to different institutional customers concerning stock preferences and trading for other large institutional customers. The findings stated that Santangelo improperly disseminated, by email, draft research reports to institutional customers without the prior approval of a registered principal of his member firm.

Santangelo's suspension began September 6, 2005, and will conclude at the close of business November 29, 2005. (NASD Case #E1020031690-01)

**Trisha Joyce Smith (CRD #2796673, Registered Representative, Pace, Florida)** was barred from association with any NASD member in any capacity. The sanctions were based on the findings that Smith misused public customer's funds. The findings stated that she failed to follow the customers' directions to remit premium payments to her member firm and instead held the funds for a later time prior to remitting the funds as directed. The findings also stated that Smith failed to respond to NASD requests for information. (NASD Case #C07050007)

**Oscar Stoyanovich (CRD # 1855125, Registered Representative, Pembroke Pines, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member firm in any capacity. Without admitting or denying the allegations, Stoyanovich consented to the described sanctions and to the entry of findings that he failed to appear for an NASD on-the-record interview. (NASD Case #E072004084601)

**Elangovan Surendran (CRD #2658729, Registered Principal, Mineola, New York)** submitted an Offer of Settlement in which he was fined \$2,500, suspended from association with any NASD member in any capacity for nine months, and ordered to pay \$7,000 in disgorgement in partial restitution to a public customer. The fine and disgorgement must be paid before Surendran reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification.

Without admitting or denying the allegations, Surendran consented to the described sanctions and to the entry of findings that he directly or indirectly, by the use of the means or instrumentalities of interstate commerce or of the mails, knowingly or recklessly used or employed, in connection with the purchase or sale of securities, manipulative or deceptive devices or contrivances, 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. NASD also found that Surendran recommended securities transactions to a public customer 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, investment objectives and needs.

Surendran's suspension will begin October 17, 2005, and will conclude at the close of business July 16, 2006. (NASD Case #E9B2003035202/C9B050008)

**David James Swiat (CRD #4470758, Registered Representative, Kalamazoo, Michigan)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Swiat consented to the described sanction and to the entry of findings that he received \$300 in cash from a public customer for investment purposes and failed to promptly use the customers funds as instructed. The findings stated that Swiat created and gave to the customer a fictitious order ticket and a fictitious receipt on which he signed his member firm's branch office manager's name without his knowledge or consent. The findings also stated that he misused customer funds by failing to follow instructions, in that he used the funds for some purpose other than the benefit of the customer. (NASD Case #E8A2004068801)

**Andrew Tzanides (CRD #1444656, Registered Representative, Cresskill, 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, Tzanides consented to the described sanction and to the entry of findings that he effected transactions on behalf of public customers and charged

markups or markdowns that were excessive and unfair. The findings also stated that Tzanides failed to appear for an NASD on-the-record interview. (NASD Case #C8A050016)

**Marcus Rodney Valenzuela (CRD #4231176, Registered Representative, Plantation, Florida)** 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, Valenzuela consented to the described sanction and to the entry of findings that he effected securities transactions in the accounts of public customers without the prior authorization, knowledge or consent of the customers. (NASD Case #CFL050002)

**Grant Jack Vermillion (CRD #4572722, Registered Representative, Lawrence, Kansas)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000, including \$2,330.94 in disgorgement of commissions received, and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before Vermillion reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Vermillion consented to the described sanctions and to the entry of findings that he participated in business activities outside the scope of his member firm without providing prompt written notice to his firm.

Vermillion's suspension begins October 17, 2005, and will conclude at the close of business November 15, 2005. (NASD Case #2005000590201)

**Edward Gordon Villesvik (CRD #2785214, Registered Representative, Bothell, Washington)** submitted a Letter of Acceptance, Waiver and Consent in which he fined \$10,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Villesvik reassociates with any NASD member following his suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Villesvik consented to the described sanctions and to the entry of findings that he failed to report a material fact on his form U4.

Villesvik's suspension will begin October 17, 2005, and will conclude at the close of business April 16, 2006. (NASD Case #E3B2004012001)

**David Charles Vogel (CRD #2985902, Registered Representative, Pleasant Gap, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Vogel reassociates with any NASD member following his suspension or before requesting relief from any

statutory disqualification. Without admitting or denying the allegations, Vogel consented to the described sanctions and to the entry of findings that he submitted a withdrawal application for \$1,800 from a public customer's variable annuity, but failed to have the customer sign and date the withdrawal application. The findings stated that Vogel attached to the withdrawal application the signature pages of a previously signed withdrawal application containing the customer's signature, and altered the date on the page.

Vogel's suspension began October 3, 2005, and will conclude at the close of business January 2, 2006. (NASD Case #ELI20040278-01)

**Daimon Lenier Wiley (CRD #4800796, Associated Person, Cincinnati, Ohio)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 business days. The fine must be paid before Wiley reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Wiley consented to the described sanctions and to the entry of findings that he failed to disclose a material fact on his Form U4.

Wiley's suspension began September 19, 2005, and will conclude at the close of business October 28, 2005. (NASD Case #E8A2004081501)

**Brad David Wilson (CRD #1392130, Registered Principal, Sarasota, Florida)** was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. The sanctions were based on findings that he affixed a notary public's signature and seal without the knowledge or authorization of the notary public.

Wilson's suspension began September 6, 2005, and will conclude at the close of business November 4, 2005. (NASD Case #C0720040086)

**Matthew Gary Winslow (CRD #2628719, Registered Principal, Boca Raton, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which he was suspended from association with any NASD member in any capacity for 30 business days and ordered to comply with the terms and conditions of the general release and settlement agreement with a clearing firm. Without admitting or denying the allegations, Winslow consented to the described sanctions and to the entry of findings that he engaged in trading activities that resulted in negative equity balances in his accounts totaling \$750,000. The findings stated that Winslow's financial inability to eliminate the negative equity balances in his accounts caused his member firm and the clearing firm to incur substantial losses.

Winslow's suspension will begin October 17, 2005, and will conclude at the close of business November 28, 2005. (NASD Case #E062001028601)

## Complaints Filed

NASD issued the following complaints. 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.

**Russell Orville Hodder, Jr. (CRD #2179109, Registered Representative, Comstock Park, Michigan)** was named as a respondent in an NASD complaint alleging that he effected transactions in the accounts of public customers without their knowledge or consent and in the absence of written or oral authorization to exercise discretion in their accounts. The complaint alleged that Hodder signed the customers' names or caused their names to be signed, which caused a withdrawal from their accounts, and requested that the checks be delivered to him at his branch office; that he received and signed the customers' names to the checks; and that he cashed the checks and used the funds to invest in a company, all without the knowledge or consent of the customers and in the absence of written or oral authorization to respondent to exercise discretion in their accounts or to sign the customers' names on documents. The complaint also alleged that Hodder failed to respond to NASD requests for documents and information. (NASD Case #E8A2003076301)

**Paul R. Hunt (CRD #4304579, Registered Representative, Greenville, North Carolina)** was named as a respondent in an NASD complaint alleging that he effected transactions in the account of public customers without the customers' prior knowledge or authorization. The complaint also alleged that Hunt failed to respond to NASD requests for information. (NASD Case #2005000308801)

**Calvin Wayne McClintock (CRD #3040464, Registered Representative, Mt Vernon, Illinois)** was named as a respondent in an NASD complaint alleging that he effected transactions in the accounts of public customers, without their knowledge or consent and in the absence of written or oral authorization to exercise discretion in the accounts. The complaint also alleged that McClintock failed to respond to NASD requests for information. (NASD Case #E8A2004085901)

**Robert Christopher Patrick (CRD #2854687, Registered Principal, Ronkonkoma, New York)** was named as a respondent in an NASD complaint alleging that he effected transactions in the accounts of public customers without the customer's prior knowledge, authorization or consent. (NASD Case #ELI2003032201)

**Scott Howard Ross (CRD #2399201, Registered Representative, Setauket, New York)** was named as a respondent in an NASD complaint alleging that, acting on behalf of his firm, he effected transactions without prior knowledge, authorization or consent of the public customers. The complaint also alleged that Ross failed to appear for an NASD on-the-record interview. (NASD Case #ELI2004022002)

**John Joseph Stapleton (CRD #2791194, Registered Representative, Long Beach, New York)** was named as a respondent in an NASD complaint alleging that, while exercising control over a public customer's account, he effected excessive transactions in the customer's account. The complaint alleged that Stapleton, in connection with the purchase or sale of securities, directly or indirectly, by the use of the means or instrumentalities of interstate commerce or of the mails, or of any facility of any national securities exchange, knowingly or recklessly employed devices, schemes or artifices to defraud; made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made not misleading; engaged in acts, practices or courses of business that operated or would operate as a fraud or deceit upon any person; or effected transactions in, or induced the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance. The complaint also alleged that Stapleton recommended to a public customer securities transactions involving equities and options without having reasonable grounds for believing such transactions were suitable for the customer in view of the size and frequency of the transactions, the nature of the account and his financial situation. (NASD Case #E9B2003033501)

**Bryan Christopher Terra (CRD #4717215, Registered Representative, Monroe, Louisiana)** was named as a respondent in an NASD complaint alleging that, in his capacity as a personal banker, he came into possession of a \$650 check received by the bank for deposit to an unspecified customer's bank account and converted the funds for his own use and benefit by depositing funds into his personal bank account. The complaint also alleged that Terra failed to respond to NASD requests for information. (NASD Case #2005000870801)

**Otto Keith Vaughan Jr. (CRD #453757, Registered Representative, Aurora, Colorado)** was named as a respondent in an NASD complaint alleging that he was appointed as trustee for a public customer testamentary trust

that gave him complete authority over the trust's assets, including check writing authority on the accounts. The complaint alleges that Vaughan, acting as trustee, purchased a condominium for himself using \$75,000 that he borrowed from one of the trust's accounts and did not disclose this loan to the beneficiaries of the trust. The complaint also alleges that Vaughan withdrew an additional \$247,000 from the accounts and used the funds to pay for personal expenses and failed to keep any records or documents detailing such withdrawals used for personal expenses. In addition, the complaint alleges that Vaughan did not provide the beneficiaries with an account containing details of all disbursements from the trust assets and kept no records detailing the amount of fees he paid to himself. (NASD Case #E3A2003052101)

### **Firm Suspended for Failure to Supply Financial Information**

The following firm was suspended from membership with 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 9552. 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.

**Fidelity Asset Management, Inc.**  
Walnut, California  
(September 7, 2005)

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

**Bayou Securities, LLC**  
Stamford, Connecticut  
(September 8, 2005)

**May, Davis Group Inc.**  
New York, New York  
(September 13, 2005 to September 26, 2005)

**Milestone Group Management LLC**  
Lake Success, New York  
(September 12, 2005)

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

**David E. Osaba**  
Weirton, West Virginia  
(September 9, 2005)

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

**Robert Agueli**  
New York, New York  
(September 15, 2005)

**Angelo A. Armenta**  
Monrovia, California  
(September 15, 2005)

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

**Keith Adam Gorin**  
Coral Springs, Florida  
(September 7, 2005)

**Anny C. Moreira**  
New York, New York  
(September 6, 2005)

**Alex Livak**  
Astoria, New York  
(August 29, 2005)

**Edward George Ozimkowski**  
Deerfield Beach, Florida  
(September 7, 2005)

**Kenneth A. Smith, II**  
Fresno, California  
(September 9, 2005)

**Individuals Suspended Pursuant to NASD Rule 9552(d)**

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

**Ian Philmore Bynoe**  
Brooklyn, New York  
(September 7, 2005)

**Daniel Lucian Cammarano, III**  
West Palm Beach, Florida  
(September 6, 2005)

**Ellen Annette Guldenzopf**  
Portland, Oregon  
(August 29, 2005)

**David Wayne Parsons**  
Baldwin, New York  
(June 22, 2005)

**Dennis Alvin Pearson, Jr.**  
San Diego, California  
(August 24, 2005)

**Chris Michael Richardson**  
Sherwood, Oregon  
(August 24, 2005)

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

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

**Gregory Murntaz Hasho**  
Mineola, New York  
(August 26, 2005)

**Dmitry Victor Kardonski**  
Tenafly, New Jersey  
(September 1, 2005)

**Eric Peter Lesak**  
Wantagh, New York  
(September 19, 2005)

**David Osaba**  
Weirton, West Virginia  
(June 20, 2005 to August 3, 2005)

**David Wayne Parsons**  
Baldwin, New York  
(September 1, 2005)

**Max Evan Rosado**  
Brooklyn, New York  
(September 22, 2005)

**Lori Beth Seelig**  
West Orange, New Jersey  
(September 21, 2005)

**Eugene Mark Spiegel**  
Atlanta, Georgia  
(September 1, 2005)

**Patience Lane Taylor**  
Plymouth, Massachusetts  
(July 20, 2005 to September 15, 2005)

**Jorge Eduardo Villalba, Jr.**  
Duncanville, Texas  
(September 22, 2005)

## NASD Charges Eight Firms with Directed Brokerage Violations, Imposes Fines Totaling More than \$7.75 Million

NASD has fined eight broker-dealers—including seven retail firms and one mutual fund distributor—more than \$7.75 million for directed brokerage violations. The sanctions are the latest actions resulting from an NASD enforcement sweep focusing on the receipt or payment of directed brokerage in exchange for preferential treatment for certain mutual fund companies.

All of the cases involve violations of NASD's Anti-Reciprocal Rule, which prohibits firms from favoring the sale of shares of mutual funds on the basis of brokerage commissions received by the firm. Among other things, the rule prohibits a firm from recommending funds or establishing preferred lists of funds in exchange for receipt of directed brokerage.

"We continue to pursue conduct which puts the interests of firms ahead of the interests of customers," said Barry Goldsmith, NASD Executive Vice President and Head of Enforcement. "NASD's prohibition on the receipt of directed brokerage is designed to eliminate these conflicts of interest in the sale of mutual funds, whose costs are paid not by the mutual fund company, but by the funds' shareholders."

NASD found that the seven retail firms operated "preferred partner" or "shelf space" programs that provided benefits to specific mutual fund complexes in return for directed brokerage. The benefits to the mutual fund complexes included, in various cases, higher visibility on firms' internal Web sites, including inclusion on internal lists identifying the

funds as participants in the programs; increased access to firms' sales forces; participation in "top producer" or training meetings; and promotion of the preferred funds on a broader basis than was available for other funds.

The mutual fund complexes that participated in these programs paid extra fees for the preferential treatment they received. The additional fees were usually based on a combination of sales and/or assets under management by the brokerage firm. Certain complexes participating in the preferred partner programs paid part or all of the revenue sharing fees by the use of directed brokerage—that is, by directing commissions from trades in the portfolios they managed to the firms. This included a practice of directing trades to the trading desks of designated third parties, which then remitted a portion of the trading commissions to the retail firms named in these actions, although those retail firms provided no services in connection with the trades. The commissions paid under these arrangements were sufficiently large to pay for the preferred benefits received by the funds as well as the costs of trade execution.

The retail firms generally monitored the amount of directed brokerage received to ensure that the fund complexes were satisfying their revenue sharing obligations. The use of directed brokerage allowed the fund complexes to use assets of the mutual funds instead of their own money to meet their revenue sharing obligations.

NASD also censured and fined one mutual fund distributor, Lord Abbett Distributor LLC. Lord Abbett paid for some of its shelf space obligations by having its affiliated investment adviser direct portfolio transactions to or for the benefit of firms to which the distributor owed revenue sharing fees.

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The firms and their respective fines are as follows (firms noted with asterisks are wholly owned subsidiaries of National Planning Holdings, Inc.):

<b>IFC Holdings, Inc. d/b/a INVEST Financial Corporation*</b>	\$1,520,000	Tampa, FL
<b>Commonwealth Financial Network</b>	\$1,400,000	Waltham, MA
<b>National Planning Corporation Inc.*</b>	\$1,308,000	Santa Monica, CA
<b>Mutual Service Corporation</b>	\$1,300,000	W. Palm Beach, FL
<b>Lincoln Financial Advisors Corporation</b>	\$950,000	Ft. Wayne, IN
<b>SII Investments, Inc.*</b>	\$658,500	Appleton, WI
<b>Investment Centers of America, Inc.*</b>	\$363,500	Appleton, WI
<b>Lord Abbett Distributor, LLC</b>	\$255,000	Jersey City, NJ

The fine imposed on National Planning Corporation also included charges relating to violations of NASD rules relating to its use of non-cash compensation. During four months in 2002, National Planning Corporation, instead of giving equal weight to the sales of all mutual funds, as required by NASD rules, provided registered representatives with double production credits for sales of mutual funds offered by participants in its preferred partner program towards qualification for attendance at a rewards conference. The fine imposed on Commonwealth Financial Network included charges relating to its failure to retain emails as required by the federal securities laws and NASD rules.

NASD has brought 20 previous actions for similar violations.

## **NASD Orders ING Funds Distributor to Pay \$1.5 Million Fine, \$1.4 Million in Restitution for Permitting Improper Market Timing**

### **NASD also Sanctions ING Funds Distributor Supervisor**

NASD has ordered ING Funds Distributor (IFD) to pay a fine of \$1.5 million for permitting improper market timing in ING funds and related violations—the largest fine NASD has imposed in a market timing case. NASD also ordered IFD to pay more than \$1.4 million in restitution to the affected mutual funds, and imposed a \$25,000 fine and 30-day supervisory suspension on IFD supervisor William L. Sessions.

IFD is the wholesale distributor of ING mutual funds and is owned by ING Group. In 2000, ING Group acquired Pilgrim Funds, which had entered into agreements with three different clients—two registered representatives and an independent investment advisor—to allow them to engage in market timing in their accounts. After the acquisition, language was added to ING fund prospectuses stating that the funds were not short-term trading vehicles and that excessive trading, or market timing, could harm ING funds. The new prospectus language also alerted investors that IFD could prohibit excessive exchanges of more than four per fund per year.

At about the same time, IFD adopted procedures for identifying accounts that effected more than four exchanges in a fund year and prohibiting them from making further exchanges. But NASD found that despite the fund prospectus language and IFD's own internal procedures, IFD and Sessions permitted one client to engage in excessive trading until 2001 and the other two clients to engage in excessive trading until September 2003.

Sessions was a registered principal of IFD responsible for overseeing the implementation of IFD's market timing procedures and was heavily involved in the firm's efforts to detect and prevent market timing. NASD found that Sessions sent numerous restriction letters to other brokers stating that excessive market timing activity had been detected, that such trading activity was "detrimental to the overall effectiveness of the investment objectives of the ING Funds," and that the identified accounts were prohibited from engaging in further exchanges. Sessions also placed stop transfer and stop purchase orders on identified accounts. Nevertheless, he permitted extensive market timing activity by the three clients—far in excess of the limits set by IFD and described in the prospectuses for ING funds, and through numerous accounts—to continue.

By permitting market timing activities contrary to the firm's procedures and the funds' prospectuses, IFD and Sessions violated NASD's rule requiring adherence to just and equitable principles of trade and high standards of commercial honor. NASD also found that IFD failed to implement and enforce its own internal procedures intended to detect and prevent market timing. As a result, a large number of excessive trades by customers other than the three receiving favorable treatment were allowed to occur because they went undetected.

NASD also found that, prior to August 2003, IFD did not have an adequate system for retaining email communications and failed to ensure that emails were kept for the requisite time periods, in violation of recordkeeping rules. As a result of those deficiencies, IFD was unable to produce all of its emails to NASD investigators.

## **NASD Fines Janney Montgomery Scott \$1.2 Million for Market Timing and Other Violations; Orders Restitution of Nearly \$1 Million**

### **NASD also Sanctions Janney Managers**

NASD fined Janney Montgomery Scott LLC, of Philadelphia \$1.2 million for permitting improper market timing and related violations. In addition, NASD ordered the Philadelphia-based firm to pay nearly \$1 million in restitution to the affected mutual funds.

NASD also suspended Kenneth Rosato—the former branch manager of Janney's Brooklyn office and the broker responsible for the misconduct—for one year and fined him \$370,000, which includes disgorgement of \$185,000 in commissions he received as a result of the improper market timing activities. NASD also barred Linda Rosato, the former branch operations manager of Janney's Brooklyn office and

Kenneth Rosato's sister-in-law, for refusing to testify in NASD's investigation of this misconduct.

NASD found that from May 2000 through September 2003, Janney permitted two hedge fund customers to evade attempts by mutual fund companies to block or restrict their market timing transactions. The hedge fund accounts were customers of Kenneth Rosato. Rosato opened 19 different accounts for the two hedge funds and allowed them to engage in approximately 1,600 exchange transactions with mutual funds after receiving close to 200 block notices from those mutual funds prohibiting further trading.

NASD also found that Rosato also undertook a number of efforts to assist the hedge fund customers in evading the restrictions placed on market timing by mutual funds. Among other things, Rosato opened multiple accounts for the hedge funds to enable them to market time mutual funds without detection; used different broker numbers and different addresses in an effort to shield the true ownership of the accounts, and placed trades in related accounts to escape detection by the mutual funds.

Rosato also suggested deceptive strategies the hedge funds could use to evade attempts by mutual funds to restrict market timing—such as waiting a certain number of days after the initial purchase before market timing; limiting exchanges to a certain number per month; keeping transactions under a certain dollar amount, and recommending certain mutual funds to market time because those funds' market timing monitoring efforts were viewed as being ineffective.

NASD's investigation showed that Janney was aware that the hedge funds were engaging in market timing activity. The firm had received numerous notices from the mutual funds prohibiting future market timing by these customers. Despite this, the customers continued to engage in extensive market timing activity through Janney—earning approximately \$1 million in profits at the expense of long-term investors in those mutual funds.

By permitting the market timing activities of the hedge fund customers, Janney and Rosato violated NASD's rule requiring adherence to just and equitable principles of trade and high standards of commercial honor. Janney also failed to respond adequately to red flags that market timing was occurring, and failed to establish and maintain an adequate supervisory system to prevent or detect deceptive market timing practices.

NASD's investigation uncovered other violations as well. NASD found that Janney did not have an adequate supervisory system to ensure an accurate response to regulatory inquiries. In October 2003, Janney responded to an NASD request for information by stating that no one at the firm had promoted or otherwise encouraged market timing activities and that

the author of the letter was not aware of communications between mutual funds and Janney regarding market timing. In fact, extensive market timing activities had occurred and the firm had received numerous communications from mutual funds concerning market timing. NASD found that Janney did not have a supervisory system or written procedures to ensure that it conducted adequate due diligence or made sufficient inquiry when responding to regulatory inquiries. NASD found that Janney's failure to establish an adequate supervisory system contributed to the firm's inaccurate response to NASD's request.

"NASD often begins its regulatory inquiries through written requests for information and relies upon the responses it receives to determine whether further review is necessary," said Barry Goldsmith, NASD Executive Vice President and Head of Enforcement. "It is critical that firms have effective procedures in place for responding to regulatory inquiries and conduct a comprehensive and searching review before responding."

NASD also found that Janney failed to create records reflecting the time of receipt of mutual fund orders and failed to establish and maintain an adequate supervisory system to detect and prevent late trading in mutual funds.

NASD's investigation showed that in 2003, the firm's records for more than 7,000 mutual fund orders that were processed after 4 p.m. contained no indication that the orders were actually received before 4 p.m.

In settling this matter, Janney, Kenneth Rosato and Linda Rosato neither admitted nor denied the allegations, but consented to the entry of NASD findings.

## **NASD Fines First Allied Securities over \$400,000, Orders More Than \$325,000 in Restitution for Market Timing Violations**

### **NASD also Fines and Suspends Broker**

NASD has fined First Allied Securities, Inc. of San Diego \$408,000 for facilitating the deceptive efforts of three hedge fund customers to engage in improper market timing transactions. NASD also ordered First Allied to pay approximately \$326,500 to reimburse the affected funds.

NASD suspended Gary Ferraro, a former First Allied salesman located in Chicago and the broker for the three customers, for nine months and fined him over \$136,700. NASD found that between November 2001 and July 2003, first at another firm and then at First Allied, Ferraro negotiated or authorized so-called "sticky asset" deals with two mutual fund advisors that

enabled two hedge fund customers to execute more mutual fund trades than allowed in the funds' prospectuses. Under these secret arrangements, Ferraro's customers agreed to invest millions of dollars on a long-term basis in one mutual fund complex (the "sticky" money) in exchange for the opportunity to market time millions of dollars in other funds in the same fund family.

For example, NASD found that in one of Ferraro's deals, a customer invested \$1.9 million in long-term assets in one mutual fund in exchange for the opportunity to market time up to \$1.9 million in another fund in the same complex. During a six-month period, the customer engaged in 20 exchanges, well in excess of the four exchanges out per year allowed by the prospectus, thereby generating illicit profits of more than \$190,000.

In addition, Ferraro and First Allied enabled another client to use related accounts to evade attempts by a mutual fund complex to restrict the customer's trading. Specifically, Ferraro opened an account for a client who proceeded to execute market timing trades in one mutual fund family. After the fund restricted trading, Ferraro opened two related accounts for the same beneficial owner, one of which was funded indirectly by a transfer of \$4 million from the restricted account. Ferraro, through employees who reported to him, executed market timing trades in the two accounts in violation of the fund prospectus limits, thereby allowing the customer to earn approximately \$110,000 in illicit profits.

NASD's investigation showed that before hiring Ferraro, First Allied was aware that his customers were engaged in market timing. In fact, the investment advisor to one mutual fund complex advised an officer of First Allied that it had a special market timing arrangement with Ferraro that it did not offer to investors generally. The advisor also told First Allied that "working on this side of the business is something that most fund groups do not like to discuss openly." Despite this knowledge, First Allied failed to implement a supervisory system designed to monitor the activity of Ferraro and the people who worked for him.

In settling with NASD, First Allied and Ferraro neither admitted nor denied the allegations, but consented to the entry of NASD's findings.

## **NASD Fines David Lerner Associates \$115,000 for Misleading Advertising and Communications with the Public**

### **Firm President David Lerner and Sales Chief also Fined; Firm Ordered Not to Conduct Public Seminars for 30 Days**

NASD has fined David Lerner Associates, Inc. (DLA) of Syosset, New York \$115,000 for misleading marketing materials, including radio advertising, client seminars and other communications with the public. The firm was also ordered not to conduct any public seminar for 30 days. For six months, the firm must pre-file all sales literature and advertisements with NASD's Advertising Regulation Department at least 10 days prior to their first use.

Also sanctioned were David Lerner, the firm's President; John Dempsey, the firm's Senior Vice President of Sales, and SSH Securities, Inc., an affiliate of DLA. Lerner and Dempsey are each being fined \$25,000. Dempsey is being suspended from serving in a principal or supervisory capacity with any registered firm for 30 days. SSH Securities, Inc. will pay a fine of \$10,000 for preparing inaccurate fact sheets distributed by DLA to promote a proprietary family of mutual funds.

"To protect investors, and to help them make the best and most appropriate investment decisions, NASD rules require firms to use accurate, fair and balanced communications when marketing their products and services," said Barry Goldsmith, NASD Executive Vice President and Head of Enforcement. "David Lerner Associates violated those rules by making statements that investors would naturally be expected to rely upon, that were widely disseminated through the media, but which were exaggerated, misleading and unsupported by the facts."

In a September 2004 complaint, NASD charged the firm and David Lerner with using 11 radio advertisements and other communications between May 2001 and May 2003 that contained numerous statements and claims that were misleading, exaggerated or unwarranted. The firm advertised heavily on New York metropolitan area radio stations with 60-second spots that ran several days a week, frequently throughout the day. DLA spent significant amounts of money on radio ads—\$2.3 million during the review period, which represented 71 percent of its total marketing expenditures. As the spokesman for the firm, David Lerner narrated all of the ads.

A recurring theme of the radio advertisements was the concept of "providing returns of 10 percent and more" to "tens of thousands" of customers. For example, one advertisement stated: "For 25 years, we at David Lerner Associates have provided tens of thousands of people with investments that, even in these turbulent times, continue to pay over 10%." Another stated: "We are currently providing returns of 10 percent and more in investments that have nothing to do with the stock market." NASD charged that these and other statements, which the firm could not support, were exaggerated, unwarranted or misleading.

The firm's advertisements also suggested that individuals who invested with DLA would retain the value of their assets regardless of market conditions, or would regain prior losses sustained in the stock market downturn in 2000. For instance, one advertisement stated, "While past performance can never be a guarantee of future results, we at David Lerner Associates are proud and pleased that for 26 years, tens of thousands of our investors have been receiving high income and solid returns regardless of whether interest rates or the stock market went up or down." Another advertisement stated, "By counseling them to select value-oriented investments, our clients have not only weathered the financial storm, they have actually seen their income grow and their assets more than hold their value." NASD alleged that these and other statements were exaggerated or misleading and were improperly promissory.

Like radio advertising, investment seminars were also important to the firm's marketing efforts. During the relevant period, the firm conducted approximately 70 to 80 seminars for the public, with Lerner appearing as the principal speaker at each seminar. As with the radio ads, the firm did not have factual support for many of the claims and also failed to disclose material information.

Finally, SSH Securities prepared and DLA distributed fact sheets concerning DLA's proprietary Spirit of America mutual funds, which NASD charged contained inaccurate information. NASD charged Dempsey, the principal of DLA responsible for approving advertisements, with failing to discharge his supervisory responsibilities.

Without admitting or denying the allegations, the firms and individuals consented to NASD's findings of advertising and supervisory failures and agreed to the imposed sanctions.

## **Edward D. Jones Fined \$300,000 for Failing to Disclose Municipal Bond Yields on Confirmations to Customers**

### **Failures Involved More than 86,000 Transactions Totaling More than \$1.6 Billion**

NASD has censured and fined Edward D. Jones & Co., L.P. \$300,000 for failing to disclose the yield-to-maturity on transaction confirmations issued to customers who sold municipal securities. The failures occurred in more than 86,000 transactions in the period from January 2003 to April 2004, involving total sales of over \$1 billion. The firm was also charged with failing to establish a supervisory system and procedures designed to detect this failure.

The NASD settlement also requires Edward Jones to demonstrate that customer confirmations for municipal securities transactions contain the necessary disclosures, and to certify periodically for a two-year period that its customer confirmations comply with the MSRB Rule.

"Full and fair disclosure is the fundamental tenet of our industry," said Barry Goldsmith, NASD Executive Vice President and Head of Enforcement. "Disclosing the yield in municipal securities transactions—both purchases and sales—allows customers to evaluate the fairness of the price they paid or received for their bonds. The disclosure failures in this case deprived these selling customers of critical information."

The rules of the Municipal Securities Rulemaking Board (MSRB), which are enforced by NASD, require securities dealers to issue written confirmations to customers who have bought or sold municipal securities. The confirmations must include specific information regarding each transaction, including yields and dollar prices for the securities purchased or sold. For municipal bonds, the yield is generally the rate of return until the maturity date, taking into account the interest payments, the price of the bond, its redemption value and the amount of time remaining until maturity ("yield-to-maturity"). If the bond is priced on the basis of the yield to a call date or to a put date, this must be noted in the confirmation along with the date of the call or put and the dollar price on that date.

NASD found that Edward Jones included yield information in confirmations issued to customers when they purchased municipal securities. But because of a change in Edward Jones' automated systems, that information was omitted from the confirmations issued to customers who sold municipal bonds. From January 2003 until April 2004, there were approximately 86,478 such transactions involving total sales of approximately \$1,650,304,650.

The MSRB has emphasized the importance of disclosing yield in municipal securities transactions. In a 1980 report, it stated:

*Of the many possible relevant factors, the Board continues to be firmly of the view that the resulting yield to a customer is the most important one in determining the fairness and reasonableness of price in any given transaction. Such yield should be comparable to the yield on other securities of comparable quality, maturity, coupon rate, and block size then available in the market.*

From May 1995 until April 2004, Edward Jones's supervisory system and its written supervisory procedures were not adequate to ensure that confirmations issued to its customers in municipal securities transactions disclosed the information required by the MSRB Rule, NASD found.

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