

# Disciplinary and Other NASD Actions

## REPORTED FOR APRIL

NASD® has taken disciplinary actions against the following firms and individuals for violations of NASD rules; federal securities laws, rules and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this *Notice* is current as of the end of March 2006.

### Firm Expelled, Individual Sanctioned

**PAZ Securities, Inc. (CRD #17554, Boca Raton, Florida) and Joseph Mizrachi (CRD #337288, Registered Principal, Boca Raton, Florida).** The firm was expelled from NASD membership and Mizrachi was barred from association with any NASD member in any capacity. The SEC affirmed the sanctions imposed by NASD. The sanctions were based on findings that the firm and Mizrachi failed to respond to NASD requests for information.

The firm and Mizrachi have appealed this decision to the United States Court of Appeals, and the sanctions are in effect pending review. (NASD Case #C07030055)

### Firms Fined, Individuals Sanctioned

**Capital Growth Financial, LLC (CRD #41040, Boca Raton, Florida), Michael Barry Falken (CRD #862958, Registered Principal, Coral Springs, Florida), and Michael Scott Jacobs (CRD #1818665, Registered Principal, Boca Raton, Florida)** submitted a Letter of Acceptance, Waiver and Consent (AWC) in which the firm was censured, fined \$45,000, \$10,000 of which was jointly and severally with Falken, and required to file all sales literature and advertisements with NASD, as defined by NASD Conduct Rule 2210(a), except for PowerPoint presentations used by the firm in public seminars, at least 10 days prior to their first use. The firm is also required to provide a copy of its proposed PowerPoint presentations to NASD at least 30 days prior to conducting any such seminar, so as to allow NASD sufficient time to review and approve the proposed public communication. In that regard, the firm agrees to not conduct any public seminar for 30 days from the date of acceptance of this AWC.

Falken was suspended from association with any NASD member in all principal capacities for 10 business days. Jacobs was fined \$10,000 and suspended from association with any NASD member in all principal capacities for 45 days. Without admitting or denying the findings, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Jacobs, sold

securities that were not registered with the SEC. In connection with the securities offering, the firm used general solicitation sales techniques and sold the securities to non-accredited investors, thereby eliminating the offering from any registration exemption. The findings stated that the firm, acting through Falken, approved the use of letters and invitations to seminars to be sent to prospective clients of the firm that failed to disclose that the referenced securities were subject to a high degree of risk, failed to disclose risks specific to the securities, were misleading by being promissory of successful investment results, and otherwise made exaggerated, unwarranted or misleading statements. The findings also included that Jacobs prepared and approved a PowerPoint presentation that was misleading and inconsistent with the private placement memorandum, and made other statements concerning market conditions that were without a reasonable basis. NASD also found that the firm, acting through Jacobs, failed to establish, maintain and enforce an adequate supervisory system, including written procedures, reasonably designed to achieve compliance with applicable rules and regulations related to the sale of private offerings. In addition, NASD found that the firm failed to establish anti-money laundering (AML) procedures reasonably designed to achieve compliance with the US Patriot Act and the Bank Secrecy Act and the implemented regulations promulgated thereunder by the Department of Treasury.

Falken's suspension began on March 6, 2006, and concluded at the close of business on March 17, 2006. Jacobs' suspension began on March 6, 2006 and will conclude at the close of business on April 19, 2006. (NASD Case #E072003099001)

Choice Investments, Inc. (CRD #17665, Austin, Texas), Donald Arthur Itzen (CRD #853436, Registered Principal, Austin, Texas), and Jean Paul Cruikshank (CRD #3230480, Registered Representative, Missouri City, Texas) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$10,000, jointly and severally with Itzen, and ordered to pay \$9,048, plus interest, jointly and severally with Cruikshank, in restitution to a public customer. Itzen was also suspended from association with any NASD member in any principal or supervisory capacity for 10 days. Cruikshank was also fined \$15,000 and suspended from association with any NASD member in any capacity for one year. The

fine must be paid before Cruikshank reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, the respondents consented to the described sanctions and to the entry of findings that Cruikshank recommended investment transactions to a public customer that were unsuitable in light of her financial condition, investment objectives, investment experience and net worth. The findings stated that Cruikshank guaranteed the customer against losses, and to partially fulfill his guarantee, he gave the customer a \$1,000 check drawn from his personal bank account. The findings also stated that Cruikshank made unwarranted or misleading written claims, made predictions or projections of performance, and failed to provide a sound basis for evaluating facts regarding recommended investment products. The findings also included that the firm, acting through Itzen, failed to establish procedures reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules addressing how a supervisor conducts a suitability review of customer transactions. NASD found that Itzen failed to supervise Cruikshank's securities recommendations to a public customer, and failed to enforce the firm's written supervisory procedures regarding the approval of new customer accounts.

Itzen's suspension will begin on April 17, 2006, and will conclude at the close of business on April 26, 2006. Cruikshank's suspension will begin on April 17, 2006, and will conclude at the close of business on April 16, 2007. (NASD Case #E062003053802)

## **Firm and Individual Fined**

Integrity Trading, Inc. (CRD #104236, Kirkland, Washington) and Jeffrey Wade Hockanson, (CRD #1916556, Registered Principal, Kirkland, Washington) submitted a Letter of Acceptance, Waiver and Consent in which the firm and Hockanson were censured and fined \$15,000, jointly and severally. Without admitting or denying the findings, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Hockanson, permitted associated persons to engage in the securities business of the firm while their registrations were inactive as a result of the firm's failure to timely submit appropriate and complete fingerprint cards to NASD. (NASD Case #E3B2004001803)

## Firms Fined

**Access Financial Group, Inc. (CRD #33065, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$51,000 and ordered to pay \$23,353.23, plus interest, in disgorgement in partial restitution to public customers. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it effected riskless principal bond transactions and charged markups that were excessive and unfair, in that the amount charged was greater than the amount warranted by market conditions, the cost of executing the transactions, the value of services rendered to public customers and other pertinent factors. The findings also stated that the firm failed to timely report customer transactions in municipal securities. The findings also stated that the firm effected corporate bond transactions that were Trade Reporting and Compliance Engine<sup>SM</sup> (TRACE<sup>SM</sup>) eligible, and failed to report the transactions to NASD. The findings also included that the firm failed to establish, maintain and enforce adequate written supervisory procedures designed to achieve compliance with applicable securities laws and regulations regarding the review of markups and markdowns assessed on government securities transactions and TRACE reporting. (NASD Case #E8A2004000101)

**Computershare Securities Corporation (CRD #107023, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$60,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it executed securities transactions while failing to maintain its minimum required net capital. The findings stated that the firm failed to comply with SEC Rule 17a-3(a) in that it prepared inaccurate trial balances and net capital computations for numerous months. The findings also stated that the firm failed to comply with SEC Rule 17a-5 in that it filed inaccurate NASD Financial Operational Combined Uniform Single (FOCUS) Part IIA Reports for several months. (NASD Case #E8A2005005301)

**Credit Suisse First Boston LLC n/k/a Credit Suisse Securities (USA) LLC (CRD #816, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined

\$60,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it acquired a Private Clients Service business from another member firm that was to provide clearing, custody, and TRACE reporting services to the business under a separate market identifier that failed to report transactions in TRACE-eligible securities executed on a business day during TRACE system hours to TRACE within 45 minutes of the execution time.

The findings stated that the separate market identifier reported transactions in TRACE-eligible securities to TRACE that it was not required to report, but failed to report other transactions that it was required to report. The findings also stated that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning TRACE reporting. (NASD Case #20050001793-01)

**CyberTrader, Inc. (CRD #44523, Austin, Texas)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it submitted reports with respect to equity securities traded on the NASDAQ Stock Market to the Order Audit Trail System<sup>SM</sup> (OATS<sup>SM</sup>) that were not in the electronic form prescribed by NASD. The findings stated that the 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 any of the reports. The findings also stated that the firm failed to enforce its written supervisory procedures that specified that the OATS Administrator must repair Reportable Order Event (ROEs) rejections. (NASD Case #20042000267-01)

**Deutsche Bank Securities, Inc. (CRD #2525, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit last sale reports of transactions in OTC equity securities through NASDAQ, and failed to designate some of the last sale reports as late. The findings stated that the firm failed to designate transactions executed outside normal market hours as ".T," and incorrectly designated them as

“.SLD.” The findings also stated that the firm failed to enforce its written supervisory procedures for trade reporting that specified that the designated supervisor would review and initial the late trade report and the potential late trade report on a daily basis. **(NASD Case #20050004905-01)**

**Empire Financial Group, Inc. (CRD #28759, Longwood, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$15,000 and required to pay \$192.53, plus interest, in restitution to public customers. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to use reasonable diligence in transactions with a customer to ascertain the best inter-dealer market, and failed to buy or sell in such market so that the resultant price for its customer was as favorable as possible under prevailing market conditions. The findings stated that the firm sold and bought eligible securities for its own account while it held unexecuted market or limit orders. **(NASD Case #20050000667-01)**

**Fulcrum Global Partners LLC (CRD #104455, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$47,500 and required to revise its written supervisory procedures regarding SEC Rules 11Ac1-5 and -6, NASD Marketplace Rule 6541, transaction reporting, NASD’s Firm Quote Rule, and NASD rules concerning locked and/or crossed markets and compliance with Section 28(e) safe harbor concerning soft dollar compensation. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that the firm failed to report, or reported incorrectly, transactions as riskless principal in NASDAQ National Market securities or an OTC equity security to NASDAQ. The findings stated that the firm failed to report the correct symbol indicating whether the firm executed transactions in eligible securities in a principal, riskless principal or agency capacity to NASDAQ and failed to accept or decline a transaction in an eligible security in NASDAQ within 20 minutes after execution. The findings also stated that the firm transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data. The findings also included that the firm effected short sales in a listed security below the price at which the last sale thereof, regular way, was reported pursuant to an effective transaction reporting plan, and failed to

provide written notification disclosing that the transaction was executed at an average price to its customer. NASD found that the firm’s supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning SEC Rules 11Ac1-5 and -6, NASD Marketplace Rule 6541, transaction reporting, NASD’s Firm Quote Rule and NASD’s rules concerning locked and/or crossed markets, and compliance with Section 28(e) safe harbor concerning soft dollar compensation. NASD also found that the firm failed to resubmit rejected ROEs to OATS within the required five business days, thereby resulting in an inaccurate and/or incomplete audit trail. **(NASD Case #20050003966-01)**

**Hill, Thompson, Magid & Co., Inc. (CRD #2202, Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$25,000 and required to revise its written supervisory procedures regarding best execution, affirmative determination, trade reporting, the tick test, order handling, order execution reports, Automated Confirmation Transaction Service (ACT) reporting requirements, SEC SHO Rule 202 threshold securities, locked and crossed markets and OATS. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data by omitting route identifications. The findings stated that the firm failed to provide documentation evidencing the classification of an order. The findings also stated that the firm’s supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning best execution, affirmative determination, trade reporting, the tick test, order handling, order execution reports, ACT reporting requirements, SEC SHO Rule 202 threshold securities, locked and crossed markets and OATS. **(NASD Case #20042000233-01)**

**Kirlin Securities, Inc. (CRD #21210, Syosset, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to amend Uniform Applications for Securities Industry Registration or Transfer (Forms U4) and Uniform Termination Notices

for Securities Industry Registration (Forms U5) within 30 days after learning of the facts or circumstances giving rise to the amendment. The findings stated that the firm's written supervisory procedures failed to address certain areas including books and records, net capital computations, clearing arrangement, corporate collateralized mortgage obligations (CMOs), margin accounts, branch office activities, equity trade reporting, corporate bond TRACE reporting and how documents will be evidenced for review. NASD found that the firm failed to report transactions using the proper ".SLD" late trade modifier, and failed to report transactions to ACT within 90 seconds. (NASD Case #ELI20020057-01)

**Paulson Investment Company, Inc. (CRD #5670, Portland, Oregon)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$175,000 and required to pay \$150,000 in restitution representing the profits obtained by hedge fund clients through market timing activities. The firm must also certify to NASD that it has reviewed its procedures regarding market timing, late trading, recordkeeping and responses to regulatory inquiries, and has established systems and procedures reasonably designed to achieve compliance with the laws, regulations, and rules concerning those matters and to ensure that prospectus fund exchange limits and provisions of selling agreements are enforced. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it engaged in market timing practices and failed to establish, maintain and enforce a supervisory system and written procedures reasonably designed to prevent and detect deceptive market timing activity. The findings stated that the firm failed to adequately respond to "red flags" that the firm and hedge fund clients were engaged in improper market timing practices and failed to take effective action to address these market timing activities. (NASD Case #EAF0400370002)

**Rance King Securities Corp. (CRD #15737, Long Beach, California)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that, in connection with share transactions, it paid, or caused to be paid, \$29,000 in commissions to real estate brokers who were not registered persons. The findings stated that

the firm, in connection with tenant-in-common transactions, paid, or caused to be paid, \$294,000 in commissions to real estate brokers who were not registered persons. (NASD Case #E0220040124-01)

**UBS Securities, LLC (CRD #7654, Stamford, Connecticut)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data. (NASD Case #20042000143-01)

**vFinance Investments, Inc. (CRD #44962, Boca Raton, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$17,500 and required to revise its written supervisory procedures regarding SEC Rule 11Ac1-4. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that the firm failed to immediately display customer limit orders in NASDAQ securities in its public quotation when each such order was at a price that would have improved the firm's bid or offer in each such security, or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each such security and the size of the order represented more than a *de minimus* change in relation to the size associated with the firm's bid or offer in each security. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning SEC Rule 11Ac1-4. The findings also stated that the firm transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data. The findings also included that the firm failed to report route reports for ROEs to OATS. (NASD Case #20042000061-01)

## Individuals Barred or Suspended

**Stephen Cutler Arnold (CRD #1178562, Registered Representative, Camarillo, California)** 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 90 days, and required to pay public customers \$17,655, plus interest, in restitution. Without admitting or denying the findings,

Arnold consented to the described sanctions and to the entry of findings that he participated in private securities transactions and received commissions without providing prior written notice to, and receiving prior written approval from, his member firm.

Arnold's suspension began on March 6, 2006, and will conclude on June 3, 2006. (NASD Case #E0220020636-01)

**John Michael Babiarz (CRD #3047247, Registered Principal, Peabody, Massachusetts)** 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 20 business days. Without admitting or denying the findings, Babiarz consented to the described sanctions and to the entry of findings that he recommended securities transactions to a public customer without having a reasonable basis for believing that the recommendation and resultant transactions were suitable for the customer in light of the customer's investment objectives, financial situation and needs.

Barbiarz' suspension began on March 20, 2006, and will conclude at the close of business on April 17, 2006. (NASD Case #2005002047301)

**Dan Israel Barish (CRD #2133441, Registered Principal, West Bloomfield, Michigan)** 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 findings, Barish consented to the described sanctions and to the entry of findings that he engaged in a private securities transaction and neglected to give prior written notice to, and receive prior written approval from, his member firm.

Barish's suspension began on March 6, 2006, and concluded at the close of business on March 24, 2006. (NASD Case #E8A2004075501)

**Sammy Battista (CRD #4652820, Associated Person, Hamilton, 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 findings, Battista consented to the described sanction and to the entry of findings that in connection with a public customer's life insurance application, he requested that

a co-worker impersonate the customer during a personal history interview his member firm conducted. The findings stated that Battista failed to respond to NASD requests for information. (NASD Case #20050022551-01)

**Christopher Wilson Black (CRD #1856976, Registered Representative, Bellevue, Washington)** submitted an Offer of Settlement in which he was fined \$25,000 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Black consented to the described sanctions and to the entry of findings that he altered handwritten notes of meetings with a public customer to remove personal comments about the customer and to add information regarding conversations he claimed to have had with the customer about the customer's financial situation, holdings, margin and option strategies. The findings stated that Black placed the altered notes in the customer's file, subsequently provided the altered notes to his member firm during discovery in an arbitration hearing, and failed to timely notify his firm that the notes had been altered.

Black's suspension began on March 20, 2006, and will conclude at the close of business on March 19, 2007. (NASD Case #CAF040084)

**Barbara Susan Blonsky (CRD #1226531, Registered Representative, Mt. Laurel, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the findings, Blonsky consented to the described sanctions and to the entry of findings that she attempted to settle a complaint with a public customer by paying the customer \$2,400 without her member firm's knowledge or approval.

Blonsky's suspension began on March 20, 2006, and concluded at the close of business on March 31, 2006. (NASD Case #2005002265801)

**Brian P. Carr (CRD #2577346, Registered Representative, Madison, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000, ordered to pay \$19,786.97, plus interest, in restitution and suspended from association with any NASD member in any capacity for four months. Without admitting or denying the findings,

Carr consented to the described sanctions and to the entry of findings that he made investment recommendations to a public customer without having a reasonable basis for believing that such recommendations were suitable based on the customer's investment objectives, financial situation and needs.

Carr's suspension began on March 20, 2006, and will conclude at the close of business on July 19, 2006. (NASD Case #E9B20030438-02)

**Michael Joseph Cassano (CRD #2909613, Registered Representative, Lexington, Kentucky)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Cassano consented to the described sanction and to the entry of findings that he borrowed \$15,500 from public customers in contravention of his member firm's written procedures prohibiting registered representatives from borrowing money from customers. The findings stated that Cassano failed to respond to NASD requests for information. (NASD Case #20050004481-01)

**Michael Kevin Coleman (CRD #1433865, Registered Representative, Worcester, 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 findings, Coleman consented to the described sanction and to the entry of findings that he failed to answer all questions posed to him during an NASD on-the-record interview. (NASD Case #20050017796)

**Anthony Louis Cortellessa (CRD #54624, Registered Representative, Bayonne, 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 findings, Cortellessa consented to the described sanction and to the entry of findings that he obtained over \$750,000 from public customers to purchase promissory notes, or to be invested in a trust fund, and instead misused the funds for other purposes. (NASD Case #20050027013-01)

**Dennis Eugene Derr (CRD #1939854, Registered Representative, Camarillo, California)** 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 two years, and

ordered to disgorge commissions in the amount of \$90,240, plus interest, to public customers. The fine and restitution amounts must be paid before Derr reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Derr consented to the described sanctions and to the entry of findings that he participated in private securities transactions, for commission, without providing prior written or oral notification to, and receiving prior written approval from, his member firm.

Derr's suspension began on March 20, 2006, and will conclude at the close of business on March 19, 2008. (NASD Case #E0220020636-02)

**Craig Jude Dixon (CRD #3064467, Registered Principal, Manorville, New York)** submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for 60 days, permanently barred from association with any NASD member except as a Limited Representative—Investment Company Products/Variable Contracts, and required to take and pass NASD's Series 6 exam within 90 days of becoming associated with any NASD member. In light of Dixon's financial status, no monetary sanctions have been imposed. Without admitting or denying the allegations, Dixon consented to the described sanctions and to the entry of findings that he engaged in a manipulative scheme to inflate the share price of a security by placing a series of small buy orders into the market at successively higher prices and then crossing blocks of shares of the security between customer accounts at artificially inflated prices. The findings stated that Dixon participated in the unregistered distribution of securities by processing the receipt and sale of unregistered shares without valid exemption under Section 5 of the Securities Act of 1933. The findings also stated that Dixon directly or indirectly, by use of means or instrumentalities of interstate commerce, intentionally or recklessly employed a device, scheme or artifice to defraud or engaged in an act, practice or course of business that operated, or would operate, as a fraud or deceit in connection with the purchase or sale of a security.

Dixon's suspension began on March 20, 2006, and will conclude at the close of business on May 18, 2006. (NASD Case #CMS040165)

**William Hall Formy-Duval (CRD #2212332, Registered Principal, Wilmington, North Carolina)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in all principal and supervisory capacities. In light of Formy-Duval's financial status, no monetary sanctions have been imposed. Without admitting or denying the findings, Formy-Duval consented to the described sanctions and to the entry of findings that he allowed an individual to function as a registered person with his member firm without the benefit of registration, despite the fact that the individual was serving an NASD suspension. The findings stated that Formy-Duval failed to ensure that his member firm maintained its required minimum net capital, and caused his firm to prepare inaccurate net capital computations and to file inaccurate FOCUS reports.

The findings also stated that Formy-Duval failed to use a proper escrow account in connection with a securities offering, and failed to close the offering and return funds to customers at the offering's expiration when the minimum contingency had not been met. The findings also included that Formy-Duval failed to reasonably supervise his member firm and its representatives to prevent and detect sales practice violations. NASD found that Formy-Duval failed to enforce his firm's supervisory procedures and failed to establish and enforce an adequate supervisory system in that he failed to ensure that all covered employees attended annual compliance meetings, failed to ensure that the principal of the firm reviewed correspondence, advertising and sales literature, and failed to establish any written procedures for sales of private placements. (NASD Case #E072004000301)

**Alvin Waino Gebhart, Jr. (CRD #1005905, Registered Principal, Fallbrook, California) and Donna Traina Gebhart (CRD #2708528, Registered Principal, Fallbrook, California).** Alvin Gebhart, Jr. was barred from association with any NASD member in any capacity. Donna Gebhart was fined \$15,000, suspended from association with any NASD member in any capacity for one year, and ordered to requalify by exam before re-entering the securities industry. The SEC affirmed NASD's sanctions following the appeal of a National Adjudicatory Council (NAC) decision. The sanctions were based on findings that the respondents sold unregistered securities that were not exempt from registration, engaged in private securities transactions without providing written notice to, or receiving written

approval from, their member firm, and recklessly omitted material facts in connection with the sales of securities.

Alvin Gebhart, Jr. and Donna Gebhart have appealed this decision to the United States Court of Appeals, and the sanctions, except for the bar, are not in effect pending review. (NASD Case #C02020057)

**Taihua Terry Ho (CRD #843618, Registered Representative, Fresh Meadows, 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 findings, Ho consented to the described sanction and to the entry of findings that he participated in a manipulative scheme or course of business designed to inflate the share price of OTC Bulletin Board-traded issuers and to create the false appearance of active trading in those securities. The findings stated that the manipulative scheme involved the entry of customer buy orders at progressively higher prices and the entry of matched orders to buy and sell shares of the companies. The findings also stated that Ho failed to disclose his outside business activities to his member firm. (NASD Case #20042000053-01)

**Russell Orville Hodder, Jr. (CRD #2179109, Registered Representative, Comstock Park, Michigan)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Hodder effected, or caused to be effected, securities transactions in public customers' accounts without their prior knowledge or authorization and in the absence of written or oral authorization to exercise discretion in their accounts. The findings stated that Hodder signed public customers' names on withdrawal statement forms or checks totaling \$56,500, without their knowledge or consent, and without written or oral authorization to do so, and used the funds to invest in a company he controlled. The findings also stated that Hodder failed to respond to NASD requests for information. (NASD Case #E8A2003076301)

**Philippe Noel Keyes (CRD #1172528, Registered Representative, Valencia, California)** was barred from association with any NASD member in any capacity. The NAC imposed the sanction following appeal of an Office of Hearing Officers (OHO) decision. The sanction was based on findings that Keyes engaged in private securities transactions without providing prior written

notice to, and receiving prior written approval from, his member firm. The findings also stated that Keyes used unbalanced and misleading sales literature in connection with the recommendation and sale of securities.

Keyes has appealed this decision to the SEC, and all sanctions are in effect pending consideration of the appeal. (NASD Case #C02040016)

**Jeffrey Chamberlain Kline (CRD #3204373, Registered Principal, Hilton Head Island, South Carolina)** submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. The fine must be paid before Kline reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Kline consented to the described sanctions and to the entry of findings that he forged a public customer's signature on an IRA Contribution Authorization Form without the customer's prior knowledge, authorization or consent.

Kline's suspension began on March 6, 2006, and will conclude at the close of business on May 4, 2006. (NASD Case #2005001407501)

**Albert Douglas Lalonde (CRD #4900970, Associated Person, Rochester, Michigan)** 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 six months. The fine must be paid before Lalonde reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Lalonde consented to the described sanctions and to the entry of findings that he willfully failed to disclose material facts on his Form U4.

Lalonde's suspension began on March 6, 2006, and will conclude at the close of business on September 5, 2006. (NASD Case #2005000676501)

**Haim Aron Levy (CRD #4485483, Associated Person, Queens, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Levy failed to respond to NASD requests for information. The findings also state that Levy willfully failed to disclose material facts on his Form U4 and his employment application. (NASD Case #E1020040826-01)

**George Douglas Linicomn (CRD #4594756, Registered Representative, Corsicana, Texas)** 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, Linicomn consented to the described sanction and to the entry of findings that he willfully failed to disclose a material fact on his Form U4. (NASD Case #E062004040001)

**Richard Lawrence MacDuff (CRD #4306223, Registered Representative, Silverdale, Washington)** 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, MacDuff consented to the described sanction and to the entry of findings that he engaged in private securities transactions outside the regular course of his employment with a member firm, failed to provide prior notice to his firm describing in detail his proposed transactions and his role therein, and failed to receive written approval from his firm. The findings stated that MacDuff prepared and distributed sales literature in the form of newsletters to public customers without the knowledge or consent of registered principals of his member firms. The findings also stated that MacDuff prepared and distributed newsletters that contained statements that were unwarranted and misleading, and failed to name the member firm with which he was associated, and failed to file the sales literature with NASD's Advertising Department. (NASD Case #2005000920402)

**Robert Franklyn Malin (CRD #1178312, Registered Principal, New York, New York)** submitted an Offer of Settlement in which he was fined \$15,000 and suspended from association with any NASD member in a principal capacity for 30 days. Without admitting or denying the allegations, Malin consented to the described sanctions and to the entry of findings that he, acting on behalf of his member firm, signed a Form (SL-6) Collateral Agreement and Secured Demand Note (SL-6 SDN) Document without disclosing the existence of a side agreement and a Limited Power of Attorney Form to NASD. The findings stated that by failing to disclose the existence of these forms to NASD, Malin caused false, incomplete and misleading filings to be made with NASD, which Malin knew, or should have known, were false, incomplete and misleading.

Malin's suspension began on March 20, 2006, and will conclude at the close of business on April 18, 2006. (NASD Case #E102004085602)

**Cheryl Lynn Mize (CRD #4270587, Registered Representative, Indianapolis, Indiana)** submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Mize consented to the described sanction and to the entry of findings that she willfully failed to disclose material facts on her Form U4. The findings stated that Mize failed to respond to NASD requests for information and documents. (NASD Case #2005002369701)

**David Michael Nelson (CRD #4603121, Registered Representative, Wilmot, South Dakota)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. The fine must be paid before Nelson reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Nelson consented to the described sanctions and to the entry of findings that he engaged in outside business activities, for compensation, without providing prompt written notice to his member firm.

Nelson's suspension began on March 20, 2006, and concluded at the close of business on March 31, 2006. (NASD Case #20050010082-01)

**Marc Christopher Newton (CRD #2684599, Registered Representative, Pickerington, Ohio)** submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for five months. Without admitting or denying the findings, Newton consented to the described sanctions and to the entry of findings that he affixed his supervisor's signature, without his supervisor's knowledge or consent, on annuity reporting sheets that his member firm required to be submitted with annuity applications. The findings stated that Newton affixed the signature of a public customer to a fee in lieu of commission agreement.

Newton's suspension began on April 3, 2006, and will conclude on September 2, 2006. (NASD Case #E8A20040879-02/20050010595)

**Marilyn Ruth O'Leary (CRD #1112613, Registered Principal, Palm Beach Gardens, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$3,500 and suspended from association with any NASD member in any capacity for 90 days. Without admitting or denying the findings, O'Leary consented to the described sanctions and to the entry of findings that she caused her member firm to maintain inaccurate books and records. The findings stated that O'Leary sold unregistered shares of a stock without any exemption.

O'Leary's suspension began on March 6, 2006, and will conclude on June 3, 2006. (NASD Case #EAF0300770003)

**Kent David Oz (CRD #2665265, Registered Principal, New York, New York)** submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 18 months. The fine must be made before Oz reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Oz consented to the described sanctions and to the entry of findings that he violated the firm's anti-money laundering procedures and his member firm's written supervisory procedures in that he effected transactions that had no business or apparent lawful purpose, and failed to obtain approval from designated senior management personnel prior to effecting transactions that were executed at off-market prices. The findings stated that Oz failed to contact a broker-dealer's senior managers to ascertain reasons for off-market transactions and to exchange correspondence documenting such reasons. The findings also stated that Oz failed to ensure that confirmations sent to his customers stated that the transactions were effected at a non-standard settlement price at the customer's request. In addition, the findings stated that Oz failed to have new products or product structures validated and approved prior to trading, and to confine their trading to firm-approved products.

Oz' suspension began on March 20, 2006, and will conclude at the close of business on September 19, 2007. (NASD Case #E102002159103)

**James Ronald Parker (CRD #356630, Registered Representative, Fair Oaks, California)** submitted a Letter of Acceptance, Waiver and Consent in which he was suspended from association with any NASD

member in any capacity for one month. In light of Parker's financial status, no monetary sanction has been imposed. Without admitting or denying the findings, Parker consented to the described sanction and to the entry of findings that he distributed, or caused to be distributed, sales literature to public customers that did not conform to the applicable standards for communications with the public NASD requires.

Parker's suspension began on March 6, 2006, and will conclude at the close of business on April 5, 2006. (NASD Case #E0120040345-01)

**Robert Christopher Patrick (CRD #2854687, Registered Principal, Ronkonkoma, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Patrick executed unauthorized transactions in a public customer's account without the customer's prior knowledge or consent. (NASD Case #ELI2003032201)

**Rodney Joseph Robito (CRD #2214766, Registered Principal, Pelham, New Hampshire)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Robito consented to the described sanction and to the entry of findings that he improperly used \$16,182.86 that he received from public customers to fund their IRA accounts. The findings stated that Robito failed to respond to an NASD request for information. (NASD Case #2005002738801)

**Dulce Maria Salaverria (CRD #4724934, Associated Person, Maracaibo, Venezuela)** was barred from association with any NASD member in any capacity. The NAC imposed the sanction following Salaverria's appeal of a decision issued by OHO. The sanction was based on findings that Salaverria submitted a falsified examination score report to her employing member firm. (NASD Case #C07040077)

**Mark Alan Shiver (CRD #1961734, Registered Representative, Knightdale, North Carolina)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$15,742.19, including disgorgement of \$10,742.19 of profits related to market timing activities, and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Shiver reassociates with any NASD member following the

suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Shiver consented to the described sanctions and to the entry of findings that he facilitated the circumvention of mutual fund company trading restrictions placed on accounts owned by hedge fund companies intended to prevent market timing.

Shiver's suspension began on March 20, 2006, and will conclude at the close of business on June 19, 2006. (NASD Case #E0420030634-01)

**Kerie Anne Smith (CRD #4512256, Associated Person, Allentown, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Smith consented to the described sanction and to the entry of findings that she changed the surrender charge percentage that was shown on an Investment Switch Acknowledgement form signed by a public customer to a higher percentage without the customer's knowledge or authorization. The findings stated that Smith failed to respond to NASD requests for information and to give testimony. (NASD Case #2006004237301)

**William Warren Smith (CRD #1932595, Registered Representative, Collierville, Tennessee)** 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, Smith consented to the described sanction and to the entry of findings that he falsified Letters of Authorization in order to effect fund transfers totaling \$9,200 from a public customer's account to his personal checking account without the customer's knowledge or consent, thereby converting the funds for his own use and benefit. (NASD Case #E052004033202)

**Evan Taber (CRD #1892751, Registered Representative, Plantation, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the findings, Taber consented to the described sanctions and to the entry of findings that he guaranteed a public customer against loss in connection with the customer's bridge loan purchase.

Taber's suspension began on February 24, 2006, and concluded on March 25, 2006. (NASD Case #2005000904401)

**Scott Frederick Takacs (CRD #3177647, Registered Representative, Artesia, New Mexico)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Takacs prepared and submitted requests for reimbursements of business travel expenses that he had not incurred to his member firm, and accepted the funds knowing that he had not incurred them. The findings stated that Takacs failed to respond to NASD requests for information and to provide testimony. (NASD Case #E3A2004032801)

**Richard Harlan Webb, Jr. (CRD #1362819, Registered Representative, Bothell, Washington)** 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 findings, Webb consented to the described sanctions and to the entry of findings that he effected discretionary transactions in a public customer's account without his member firm's prior written authorization and acceptance of the account as discretionary. The findings stated that Webb caused his firm's books and records to be inaccurate by indicating that trades on order tickets were unsolicited when, in fact, he had solicited those transactions.

Webb's suspension began on March 6, 2006, and concluded at the close of business on March 24, 2006. (NASD Case #E3B20040197-01)

**Jason Joseph Wilde (CRD #2787538, Registered Representative, Jersey City, 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, Wilde consented to the described sanction and to the entry of findings that he engaged in fraudulent misrepresentations and omissions to induce purchases or to discourage sales of a security. The findings stated that Wilde engaged in unauthorized trading and other deceptive practices, and knowingly or recklessly provided substantial assistance to others engaging in similar misconduct to further the scheme. The findings also stated that prior to effecting transactions, Wilde failed to provide public customers with a risk disclosure document containing the information required by penny

stock rules, and obtain a signed and dated written statement from the customers acknowledging the document's receipt. The findings also included that Wilde failed to disclose to public customers, either orally or in writing, the inside bid and offer quotations for the security prior to effecting transactions, and failed to provide the same in writing at or prior to the same of any written confirmation sent to the customer. NASD found that Wilde failed to keep and preserve records of such disclosures as required by the penny stock rules. (NASD Case #CMS040165)

## 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 adjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

**Steven Anthony Bencivenga, Jr. (CRD #3000161, Registered Representative, Brooklyn, New York)** was named as a respondent in an NASD complaint alleging that he effected securities transactions in public customers' accounts without their knowledge, authorization or consent, and without reasonable grounds for believing that the transactions were suitable based upon the customers' financial situation, investment objectives and financial needs. The complaint alleges that Bencivenga utilized margin in customers' accounts without the prior knowledge, authorization or consent, and without signing a margin agreement and disclosures. The complaint also alleges that Bencivenga did not obtain written authorization from customers permitting him to either accept instruction from an individual with respect to their accounts, or to enter transactions based on communication with an individual. The complaint further alleges that Bencivenga did not possess or make reasonable efforts to obtain information from customers about their financial status, and did not obtain, complete and/or update new account documentation or account agreements from the customers' prior firm before effecting transactions in their account. In addition, the complaint alleges that

Bencivenga effected a number of unauthorized transactions in the customers' new account in an attempt to respond to complaints they expressed, and to raise illicit profits in order to settle complaints and resolve their concerns. (NASD Case #E1020031192-01)

**Donald Scott Huffman (CRD #4449502, Registered Representative, Boardman, Ohio)** was named as a respondent in an NASD complaint alleging that he received \$5,600 from public customers to purchase insurance, but he used the funds for some purpose other than for the customers' benefits. The complaint also alleges that Huffman created and gave an Evidence of Insurance Form to a public customer that represented that the customer's house was insured when, in fact, it was not. (NASD Case #E8A2004067501)

**Nora Lynn Newell (CRD #1765390, Registered Representative, Chattanooga, Tennessee)** was named as a respondent in an NASD complaint alleging that she borrowed funds totaling \$45,000 from public customers. The complaint alleges that Newell recommended and executed the liquidation of various mutual fund holdings in public customers' accounts for the purpose of funding the loans, and falsely represented to the customers that she would use the funds for real estate investments and she would repay the loan with interest. The complaint also alleges that Newell never made any principal or interest payments on the loans, and did not have reasonable grounds for believing that the recommendation to liquidate and the resultant mutual fund sale transactions were suitable for the customers based on their financial situations, investment objectives or needs. In addition, the complaint alleges that Newell failed to respond to NASD requests for information. (NASD Case #E052004024601)

**Peter Rhee (CRD #2964890, Registered Representative, Garfield, New Jersey)** was named as a respondent in an NASD complaint alleging that he caused purchase and sales transactions in public customers' accounts without their authorization or consent. The complaint also alleges that Rhee failed to respond to NASD requests for information and to appear for an on-the record interview. (NASD Case #E9B2004049101)

**Joseph Gerard Vitetta (CRD #1536695, Registered Representative, Sea Bright, New Jersey)** was named as a respondent in an NASD complaint alleging that he recommended that a public customer surrender a variable annuity and deposit the funds in an investment account without having reasonable grounds to believe that the sale was suitable in light of the customer's financial situation, investment objectives, and the contract terms of the annuity product. The complaint alleges that Vitetta obtained \$37,000 from the customer for investment purposes and converted or misused the funds for his own use and benefit without the customer's knowledge, authorization or consent. The complaint also alleges that Vitetta obtained a loan from a public customer through pressure, misrepresentation or advantage contrary to his member firm's policy and procedures governing the circumstances under which brokers could obtain loans from customers. The complaint further alleges that Vitetta willfully failed to disclose material information on his Form U4. (NASD Case #E1020041225-01)

**Jeffrey S. Weick (CRD #4293526, Registered Representative, Coconut Creek, Florida)** was named as a respondent in an NASD complaint alleging that he executed numerous unauthorized trades in multiple public customer accounts, and overbought trades that were unauthorized in a pattern of knowing misconduct and failed to describe that he was executing unauthorized trades in the customer's accounts to them. The complaint also alleges that Weick, directly or indirectly, in connection with the offer or sale of securities, by the use of means or instrumentalities of interstate commerce, or of the mails, employed devices schemes or artifices to defraud; made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon purchasers or prospective purchasers. (NASD Case #E072004078401)

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

Nalico Equity Corporation  
Giessen, Germany  
(March 2, 2006)

**Firms Suspended for Failure to Supply Financial Information**

The following firms were 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.)

Equity Planning Securities Corp. n/k/a  
The Draken Group, Inc.  
Lawrenceville, Georgia  
(March 13, 2006 to March 29, 2006)

Geo Securities, Inc.  
Dallas, Texas  
(March 13, 2006)

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

Gwendolyn Faye Cash  
Memphis, Tennessee  
(March 2, 2006)

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

Kimberly Gallops Anthony  
Vestavia Hills, Alabama  
(March 3, 2006)

Ian Philmore Bynoe  
Brooklyn, New York  
(February 21, 2006)

Daniel Lucian Cammarano III  
West Palm Beach, Florida  
(February 14, 2006)

Justin Andre Inniss  
Brooklyn, New York  
(March 14, 2006)

Anssy Akhabue Okoebor  
Ladera Ranch, California  
(March 29, 2006)

Roman Pasinkovsky  
Brooklyn, New York  
(March 28, 2006)

Roy Roxton Smith, Jr.  
Jonesboro, Arizona  
(March 13, 2006)

Samuel Lackland Talbot  
Jacksonville, Florida  
(March 15, 2006)

Roger Glen Wilson  
Irving, Texas  
(February 24, 2006)

Vladimir Ziskind  
Brooklyn, New York  
(March 8, 2006)

**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.)

Richard Joseph Arena, Jr.  
E. Patchogue, New York  
(March 1, 2006)

Sandeep Bardia  
Maspeth, New York  
(March 20, 2006)

Clark M. Chasten, II  
Glenwillow, Ohio  
(February 27, 2006)

Russell Rodney Cloward  
West Jordan, Utah  
(February 13, 2006)

**Charles Dean Crystal**  
Colorado Springs, Colorado  
(March 1, 2006)

**John Derek Elwin**  
Lake Worth, Florida  
(February 27, 2006)

**Lyn Jeanne Flanagan**  
San Diego, California  
(March 28, 2006)

**Damascus Isaiha Lee**  
Brooklyn, New York  
(February 28, 2006)

**Kenneth Lee McLaughlin**  
Akron, Ohio  
(March 13, 2006)

**Todd Michael Newman**  
Royal Palm Beach, Florida  
(March 20, 2006)

**E. James Pritchett**  
Metairie, Louisiana  
(February 21, 2006)

**Claude St. Jean**  
Tampa, Florida  
(February 21, 2006)

**Mark Ivan Sikkenga**  
Kalamazoo, Michigan  
(March 13, 2006)

**Thomas William Yurachek**  
St. Charles, Missouri  
(February 21, 2006)

**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.)

**Joseph Byron Andrews**  
Cave Creek, Arizona  
(March 15, 2006)

**Timothy John Carmichael**  
Madison, New Jersey  
(March 15, 2006)

**Ronald Raymond Cournoyer**  
Warwick, Rhode Island  
(February 1, 2006)

**Brian Lee Crawley**  
New Rochelle, New York  
(March 15, 2006)

**Gerald Dean Cronenwett**  
Fishers, Indiana  
(March 16, 2006)

**Henry Daniel Davidson**  
Newport Coast, California  
(March 16, 2006)

**Todd William Haines**  
Boise, Idaho  
(February 1, 2006)

**William Henry Harris, Jr.**  
Phoenix, Arizona  
(March 30, 2006 to April 4, 2006)

**Patrick Steven Jage**  
Oak Brook, Illinois  
(March 16, 2006)

**Gerardo Maroto**  
Oceanside, New York  
(March 16, 2006)

**Anssy Akhabue Okoebor**  
Ladera Ranch, California  
(March 16, 2006,  
NASD Arbitration Case #05-04253)  
(March 30, 2006,  
NASD Arbitration Case #05-02494)

**Clifford John Pinner**

Nutley, New Jersey  
(March 9, 2006)

**John Eric Poulson**

Mill Valley, California  
(March 16, 2006)

**Mauricio Valencia**

Jackson Heights, New York  
(July 20, 2005 to March 9, 2006)

**Kevin James Wallace**

Singapore, Singapore  
(March 16, 2006)

**Gary Steven Wood**

Crystal Bay, Nevada  
(March 16, 2006)

**NASD Fines Merrill Lynch \$5 Million for Call Center Supervisory Failures, Sales Contest Violations**

**Call Center Sales Contests Prohibited for Three Years, Firm Ordered To Impose Special Supervisory Measures Until Corrective Measures Completed**

NASD has fined Merrill Lynch, Pierce, Fenner & Smith Inc. \$5 million for supervisory failures, registration violations, impermissible sales contests and other violations in connection with the operation of its Financial Advisory Center (FAC) located in Hopewell, NJ and Jacksonville, FL. The firm was also prohibited from staging any sales contests for FAC personnel for three years.

In addition, Merrill Lynch was ordered to retain, at its own expense, an independent consultant to recommend corrective measures to firm policies and supervisory and compliance procedures and systems for the FAC. Until those corrective measures are implemented, Merrill Lynch must impose special supervisory procedures, including monitoring calls between FAC personnel and customers.

In connection with the announcement, NASD is releasing a new Investor Alert, "Customer Advisory Centers: Not Your Typical Securities Firm Call Center."

"Regardless of the size of their brokerage account, all investors are entitled to services from registered representatives acting in their clients' best interests

who are reasonably supervised by properly registered professionals," said NASD Senior Vice President and Acting Head of Enforcement James Shorris. "In this case, Merrill Lynch failed to meet these basic standards by permitting its call center to function without proper supervisory controls, which gave rise to impermissible sales contests, unsuitable mutual fund switches and other systemic failures."

NASD found that, from 2001 to 2004, Merrill Lynch did not have an adequate supervisory system and procedures that were reasonably designed to oversee the trading activities of its registered representatives at the FAC, referred to within the firm as Investment Service Advisors (ISAs). Certain of the ISAs engaged in a pattern of mutual fund switch recommendations that were accompanied by misrepresentations and omissions of facts to customers. Further, Merrill Lynch permitted individuals lacking the proper securities licenses and qualifications to be responsible for the supervision of the ISAs. Merrill Lynch also conducted several sales contests which improperly awarded non-cash compensation to ISAs in the form of rock concert tickets, sporting events and dinners based solely on the sale of the firm's proprietary mutual funds.

The FAC was originally designed as a centralized "call center," where customers could call with questions or requests about their accounts and which initially held only a small number of customer accounts. NASD found that the character of the FAC changed in 2001. As a result of an overall Merrill Lynch strategy to improve its retail business by "segmenting" customer accounts, the firm began relocating thousands of customer accounts from branch offices throughout the country to the FAC. Generally, smaller accounts with assets of \$100,000 or less, or those with minimal transactional activity, were moved to the FAC, in part so that Merrill Lynch's full service Financial Advisors in branch offices could devote more attention to larger accounts.

NASD found that between March 2001 and August 2002, more than 1 million customers were transferred to the FAC. At its peak size in 2002, the FAC had approximately 1.3 million accounts holding approximately \$20 billion in assets. That year, the FAC had gross revenues of approximately \$210 million.

For new FAC accounts, Merrill Lynch promised around-the-clock customized financial advice from a "team of

Merrill Lynch professionals.” NASD found that Merrill Lynch failed to disclose that the ISAs often had five years or less brokerage experience, and that when making recommendations regarding securities, they were limited to mutual funds. ISAs were prohibited from soliciting orders in equities or bonds, unless requested to do so by a client.

ISAs solicited securities transactions from the newly transferred customers, generating millions of dollars in annual gross revenues for Merrill Lynch. There was significant mutual fund switching activity. For example, in one week in March 2002, there were approximately 1,324 mutual fund switches reported by the FAC. Moreover, NASD found that several ISAs recommended mutual fund switches that were not suitable for their customers. For example, ISAs had an obligation, before making a recommendation, to consider whether many of those switches were necessary given that reasonable, free-exchange alternatives were available for customers within their existing mutual fund families. NASD also found that, in connection with the unsuitable switches, certain of the ISAs made false representations to customers, and/or omitted material facts, concerning costs and other important information.

NASD found that, from 2001 through 2004, Merrill Lynch lacked an adequate supervisory system and procedures reasonably designed to supervise the ISAs, particularly given the growth of the FAC. Merrill Lynch, among other things, lacked adequate written supervisory procedures regarding mutual fund recommendations (including switch transactions); did not employ a sufficient number of properly trained and qualified supervisors to monitor activities within the FAC; and failed to conduct annual compliance audits for the FAC’s two most active years. Thousands of mutual fund switches were not reviewed or were not adequately reviewed by Merrill Lynch principals.

NASD also found that Merrill Lynch’s form “switch letters” sent to customers were often inaccurate. Specifically, the letters represented that the administrative manager signing the letter had discussed the mutual fund switch with the ISA to confirm that proper disclosure of costs had been made to the customer. In fact, the administrative managers rarely discussed this issue with the ISA before sending the switch letters.

Merrill Lynch allowed its FAC sales managers to exercise direct supervisory responsibility over the ISAs. The majority of those sales managers, however, were not properly registered as securities principals. They were therefore not qualified to supervise ISAs. NASD also found that, even with approximately 300 ISAs generating thousands of trades per day, Merrill Lynch employed only three to six registered principals to review all of the transactions.

NASD’s investigation showed that, in 2002, the FAC conducted three sales contests that violated the non-cash compensation rule because they favored the sale of Merrill Lynch’s proprietary mutual funds. NASD rules prohibit non-cash compensation arrangements between firms and their brokers for sales of mutual funds and variable contracts that are not based on concepts of “total production” and “equal weighting”—that is, the contests must be based on total sales of all products within a single category, such as mutual funds.

NASD found that the firm offered and awarded various forms of non-cash compensation to the contest winners. For example, one contest rewarded the six ISAs who sold the most proprietary mutual fund products with tickets to a rock concert. Another offered a total of \$10,000 in expense credits to the top four teams of ISAs in total of proprietary product sales. These contests, along with several other contests based on overall production, contributed to a dramatic increase in the volume of proprietary mutual fund sales by the FAC. For example, in the first half of 2002, gross sales of proprietary products increased from \$36.4 million in the first quarter to \$138.7 million in the second quarter—an increase of nearly 300 percent.

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

### **NASD Hearing Panel Dismisses Profit Sharing Complaint Against Invemed**

An NASD hearing panel dismissed an April 2003 NASD disciplinary complaint against Invemed Associates of New York, which charged Invemed with unlawful profit-sharing activities in late 1999 and early 2000 in connection with “hot” IPO shares it allocated to its customers.

In its complaint, NASD Enforcement alleged that Invemed engaged in improper profit sharing by accepting higher-than-normal commission rates from customers seeking IPO allocations. The complaint also alleged that Invemed violated NASD's corporate finance rules by failing to file information disclosing Invemed's receipt of the inflated rate commission payments and Invemed's profit sharing in its customers' accounts; that Invemed failed to maintain accurate books and records that reflected the shared customers' profits; that Invemed failed to supervise its registered representatives because it failed to follow up on numerous "red flags" of improper profit sharing; and that Invemed failed to establish, maintain and enforce an adequate supervisory system and written supervisory procedures reasonably designed to achieve compliance with applicable federal securities laws and NASD rules regarding allocation of IPO shares, the receipt of commissions and the supervision of employees who allocated IPO shares.

The hearing panel concluded that NASD Enforcement failed to prove that Invemed shared in the profits of its customers' accounts or engaged in conduct that contravened high standards of commercial honor or just and equitable principles of trade. It therefore dismissed the primary charges as well as the related corporate finance rule charge, the books and records charge and the failure to supervise charge, since those charges depended upon an affirmative finding of improper profit sharing. The panel also concluded that NASD Enforcement failed to prove its inadequate supervisory system and procedures allegations, and dismissed that remaining charge as well. Unless the matter is appealed to NASD's National Adjudicatory Council (NAC), or is called for review by the NAC, the hearing panel's decision becomes final after 45 days.

### **NASD Fines Boston Capital Securities \$1.2 Million for Corporate Financing Disclosure and Compensation Violations**

#### **Firm Continued to Sell Limited Partnerships to Public Despite NASD Notice of Deficiency**

NASD has fined Boston Capital Securities, Inc. (BCSI) \$1.2 million for violations relating to the firm's public offerings of tax-advantaged limited partnership interests. NASD also charged BCSI for supervisory deficiencies relating to the firm's underwriting of public securities offerings.

NASD found that BCSI conducted a 2004-2005 public offering of approximately \$60 million in limited partnership investments without obtaining the necessary NASD clearance. Moreover, BCSI continued selling the limited partnerships even after receiving notice from NASD's Corporate Financing Department that it needed to provide additional information before the offering could commence.

Separately, NASD found that BCSI received approximately \$700,000 in excessive underwriting compensation from a 2002 public offering, and inaccurately disclosed its underwriting compensation in the prospectus for that 2002 offering.

"Full and accurate disclosure of material information in public offering documents is critical for the operation of our capital markets," said NASD Senior Vice President and Acting Head of Enforcement James Shorris. "NASD's Corporate Financing rules are designed to ensure that the required disclosures are made to investors and that the terms of each underwriting are fair and reasonable."

NASD's Corporate Financing rule prohibits any member firm from participating in certain public offerings of securities unless specified offering documents have been filed and reviewed by NASD's Corporate Financing Department. Further, the member firm cannot begin selling the public offering until the Corporate Financing Department has notified the firm in writing that NASD has no objections to the proposed underwriting. NASD rules also require that all offering expenses be fair and reasonable and limit a broker dealer's compensation based on the type of offering and the gross proceeds in the offering. Further, underwriting compensation must be disclosed accurately in the offering's prospectus.

NASD found that, on Aug. 23, 2004, BCSI began a public offering of certificates issued by Boston Capital Tax Credit Fund V L.P., even though the firm had not received the necessary NASD clearance. Moreover, on the following day, NASD's Corporate Financing Department issued a "Defer Opinion Letter" to BCSI, with a copy to its outside counsel, requesting further information about the proposed offering. NASD required a response to that letter, including the requested information, before the offering could commence. BCSI, however, continued the offering and sold approximately \$60 million in certificates without obtaining the required NASD clearance.

NASD also found that, in connection with a 2002 public offering of limited partnership interests, BCSI received approximately \$700,000 more in underwriting compensation than permitted under NASD rules. The firm failed to disclose its true compensation in the pre-offering filing it submitted to NASD's Corporate Financing Department and in the prospectus distributed to investors.

In addition, NASD found that BCSI lacked an adequate supervisory system and written procedures relating to the firm's underwriting of public securities offerings. The firm failed to provide for adequate follow-up and review to ensure that the public offerings received the necessary regulatory approvals, that the firm complied with underwriting compensation limitations and that there was accurate and complete prospectus disclosure.

BCSI's system for forecasting and accounting for underwriting expenses was also found to be inadequate. Throughout the relevant period, BCSI and its affiliates shared common operating and accounting procedures and systems. The firm's procedures were not reasonably designed to ensure that its wholesaling and related expenses/reimbursements for each offering were recorded separately from those of the issuer. As a result, BCSI improperly allocated certain underwriting expenses as issuer costs.

In concluding this settlement, BCSI neither admitted nor denied the charges, but consented to the entry of NASD's findings.