

Disciplinary and Other NASD Actions

REPORTED FOR MAY

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 April 2006.

Firm Expelled

RichMark Capital Corporation (CRD #43162, Irving, Texas) was expelled from NASD membership. The sanction was based on findings that the firm manipulated the market and the price of a common stock by permitting a registered representative to buy and sell shares of the stock in his personal accounts to mislead the investing public and market participants, and to give the false appearance of market interest in the stock at the arbitrary price created. The findings stated that the firm made unsuitable recommendations and intentionally or recklessly made material misrepresentations and omissions to public customers in connection with the securities sale. The findings also stated that the firm permitted an unregistered person to associate with the firm and to trade the firm's proprietary account, and prior to letting the person engage in securities business, failed to determine that he had a significant disciplinary history and was subject to statutory disqualification. The findings also included that the firm failed to establish an adequate supervisory system, failed to establish and implement adequate written supervisory procedures, and failed to enforce written supervisory procedures that would comply with securities laws and regulations to prevent the manipulation, unsuitable recommendations and registration violations that occurred at the firm. (NASD Case #CMS040048)

Firms Suspended, Individuals Sanctioned

Franklin Ross, Inc. (CRD #43610, Red Bank, New Jersey) and **Mark Gerald Ross, Jr. (CRD #1287721, Registered Principal, Scarsdale, New York)** submitted a Letter of Acceptance, Waiver and Consent in which they were censured and fined \$20,000, jointly and severally. The firm was also suspended from engaging in any offering of securities on behalf of the firm or any of its affiliates for one year, and Ross was suspended from association with any NASD member in any principal capacity for 10 business 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 Ross, failed to disclose material facts in a private placement memorandum (PPM) to investors.

The firm's suspension began on April 17, 2006, and will conclude at the close of business on April 16, 2007. Ross' suspension began on April 17, 2006, and concluded at the close of business on April 28, 2006. (NASD Case #E072004001501)

Firms Fined, Individuals Sanctioned

Fox & Company Investments, Inc. (CRD #18517, Phoenix, Arizona) and James Wilfred Moldermaker (CRD #858894, Registered Principal, Scottsdale, Arizona) submitted an Offer of Settlement in which the firm was censured and fined \$20,000, jointly and severally with Moldermaker. Moldermaker was also barred from association with any NASD member in any principal capacity, and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Moldermaker obtained \$300,000 by drawing down a personal line of credit at a bank, and caused a funds transfer to an account in the member firm's name at the same bank. At a later time, he caused the bank to transfer the funds from the firm's account to the line of credit account, reducing the firm's line of credit balance to zero. The findings stated that Moldermaker, acting on behalf of his member firm, made and maintained, caused to be made and maintained, or failed to prevent others from making and maintaining, materially inaccurate entries on the firm's books and records with respect to the \$300,000 line of credit transactions. The findings also stated that Moldermaker, acting on behalf of his member firm, submitted materially inaccurate FOCUS reports, resulting from the failure to reflect the \$300,000 transfer from the firm's account to the line of credit account. NASD found that the firm, acting through Moldermaker, submitted late and inaccurate Uniform Termination Notice for Securities Industry Registration (Form U5) amendments.

Moldermaker's suspension began on May 1, 2006, and will conclude at the close of business on June 29, 2006. (NASD Case #E3A2003003201)

Firms and Individuals Fined

Salman Partners (USA) Inc. (CRD #43842, Vancouver, Canada) and Ian D. Todd (CRD #2940041, Registered Principal, North Vancouver, Canada) submitted a Letter of Acceptance, Waiver and Consent in which the firm and Todd 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, as part of its AML program, the firm, acting through Todd, failed to implement its customer identification procedures. (NASD Case #E3B2004004501)

Synergy Investment Group, LLC (CRD #46035, Kannapolis, North Carolina) and Jeffrey Dean Jones (CRD #4188324, Registered Principal, Concord, North Carolina) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$25,000, jointly and severally with Jones, and required to revise the firm's written supervisory procedures and training regarding its online and "deep discount" business. Jones was also suspended from association with any NASD member in any principal capacity for 10 business 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 Jones, failed to establish, maintain and enforce a supervisory system reasonably designed to achieve compliance with applicable laws, rules and regulations with respect to its online and "deep discount" business.

Jones' suspension began on May 1, 2006, and concluded at the close of business on May 12, 2006. (NASD Case #E3A20040356-03)

Firms Fined

Cullum & Burks Securities, Inc. (CRD #46600, Dallas, Texas) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000, jointly and severally, with two individuals. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that, acting through individuals, it engaged in a securities business without having sufficient net capital, filed an inaccurate FOCUS report with NASD, and failed to prepare and maintain accurate financial

books and records. The findings stated that the firm, acting through an individual, designated a person to be the firm's FINOP without the benefit of a FINOP registration. **(NASD Case #E062004019101)**

Desjardins Securities International, Inc. (CRD #112417, Montreal, Canada) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$130,000, and required to revise its procedures with respect to applicable securities laws and regulations, and NASD rules concerning the preservation of electronic communications. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it did not maintain and preserve all email and instant messaging communications, as required by SEC rule 17a-4. The findings stated that the firm failed to complete an annual training needs analysis and to develop and implement its written training plan to achieve compliance with the Firm Element of the Continuing Education Rule. **(NASD Case #E112004005401)**

Dynamex Trading, LLC (CRD #127434, San Francisco, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$22,500. 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 eligible and Consolidated Quotation System (CQS) securities through NASDAQ, and failed to designate some of the last sale reports as late. The findings stated that the firm incorrectly designated last sale reports of transactions in eligible securities reported to NASDAQ as ".SLD" within 90 seconds of execution. The findings also stated that the firm failed to report the correct symbol to NASDAQ indicating whether the firm executed transactions in eligible securities in a principal or agency capacity, and to report the correct symbol indicating whether the transactions were "buy," "sell," "sell short," "sell short exempt" or "cross." NASD found that the firm failed to report the execution time, or the correct execution time for transactions in CQS securities through NASDAQ. NASD also found that the firm failed to show the time, or the correct time, of execution or entry on brokerage order memoranda. In addition, NASD determined that the firm failed to show the correct execution price on brokerage order memoranda. Moreover, 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 trade reporting—Automated Confirmation Transaction Service (ACT) compliance, sales transactions—reporting accurate short sale indicators, and books and records. **(NASD Case #20050021702-03)**

Gabelli & Company, Inc. (CRD #7353, Rye, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$17,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it reported Trade Reporting and Compliance Engine (TRACE)-eligible securities transactions late, and did not report the yield or capacity. The findings stated that the firm failed to establish, maintain and enforce a supervisory system and written procedures reasonably designed to achieve compliance with applicable securities laws and regulations, and NASD rules concerning trading TRACE-eligible securities. **(NASD Case #E9B2004004801)**

Jane Street Markets, LLC (CRD #104485, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it transmitted reports to the Order Audit Trail System (OATS) through a reporting agent that contained inaccurate, incomplete or improperly formatted data in that the reports failed to match the related orders in SuperMontage. The findings stated that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable laws, regulations and NASD rules concerning OATS reporting. **(NASD Case #20050000112-02)**

Lehman Brothers Inc. (CRD #7506, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$70,000, and required to revise its written supervisory procedures regarding NASD Conduct Rule 2110 (90 Second Rule) relating to reporting transactions in CQS securities and Marketplace Rule 6130(b) (20 Minute Rule). Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance

with applicable securities laws and regulations—specifically NASD Conduct Rule 2110 (90 Second Rule), relating to reporting transactions in CQS securities, and Marketplace Rule 6130(b) (20 Minute Rule). The findings stated that the firm failed, within 90 seconds after execution, to transmit last sale reports of transactions in CQS and OTC Equity securities through the ACT, failed to designate last sale reports of transactions in CQS and OTC Equity securities through ACT, and to designate such last sale reports as late. The findings also stated that the firm incorrectly designated last sale reports of transactions in CQS securities reported to ACT as “.SLD” within 90 seconds of execution. The findings also included that the firm incorrectly designated transactions in OTC Equity securities executed during normal market hours through ACT as “.T.” NASD found that the firm failed to accept or decline transactions in which the firm reported as the Order Entry Firm within 20 minutes after execution. **(NASD Case #20042000050-01)**

Maxim Group LLC (CRD #120708, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to immediately display customer limit orders in NASDAQ securities in its public quotation, when each 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 minimis* change in relation to the size associated with the firm’s bid or offer in each such security. The findings stated that the firm failed to report execution reports for Reportable Order Events (ROEs) to OATS. The findings also stated that the firm failed to report the protected customer limit price for ROEs to OATS. **(NASD Case #20042000066-01)**

Merrill Lynch, Pierce, Fenner & Smith, Incorporated (CRD #7691, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$45,000, and required to revise its supervisory procedures regarding registration of associated persons, frontrunning of orders in CQS securities, SEC Rules 11Ac1-5 and 11Ac1-6, and NASD’s three quote rule. Without admitting or denying the

findings, the firm consented to the described sanctions and to the entry of findings that it failed to submit, for the offsetting “riskless” portion of transactions in NASDAQ National Market securities (NNM), either a clearing-only report with a capacity indicator of “riskless principal,” or a non-tape, non-clearing report with a capacity indicator of “riskless principal.” The findings stated that the firm incorrectly designated last sale reports of transactions in NNM securities as “.PRP” through ACT, and failed to report the correct execution time of, and last sale reports of, transactions in eligible securities for which the firm has recording and reporting obligations under NASD Marketplace Rules 6954 and 6955. The findings also stated that the firm failed to report the correct symbol indicating whether the firm executed transactions in eligible securities as principal, riskless principal or agent, and failed to report the correct symbol to ACT indicating whether transactions in eligible securities were “buy,” “sell,” “sell short,” “sell short exempt,” or “cross.”

The findings also included that the firm failed, within 90 seconds after execution, to transmit last sale reports of transactions in CQS securities through ACT, failed to designate last sale reports as late through ACT, and failed to report the correct price in a last sale report of a transaction in a CQS security through ACT. NASD found that the firm made a report on the covered orders in national market system securities that it received for execution from any person available, and it included incomplete information as to the cumulative number of shares of covered orders prior to execution, or the inclusion of “not held” orders. NASD also found that the firm failed to provide written notification disclosing its correct capacity to the transaction and the correct reported price to its customer.

In addition, NASD determined that the firm failed to show the correct time of receipt, execution and the terms and conditions on brokerage order memorandums. Moreover, NASD found that the firm’s supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable laws, regulations and NASD rules concerning associated persons, frontrunning orders in CQS securities, SEC Rules 11Ac1-5 and 11Ac1-6, and NASD’s three quote rule. **(NASD Case #20042000136-01)**

S.W. Bach & Company (CRD #43522, Port Washington, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$40,000. Without admitting or denying the findings, 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 achieve compliance with applicable securities laws and regulations, and NASD rules to detect and prevent excessive trading. The findings stated that the firm permitted an associated person to effect transactions in government securities on its behalf while not being properly registered with NASD. The findings further stated that the firm permitted misleading advertisements and sales literature to be disseminated to the investing public by its former branch office. The findings also included that the firm permitted registered representatives to utilize a name that was not a bona fide division of the firm, and permitted the branch office to post a sign with the same name that incorrectly indicated that it was a division of the firm when, in fact, there was no bona fide business distinction to form the basis for the divisional classification. NASD found that the firm conducted a securities business while failing to maintain its minimum required net capital. **(NASD Case #ELI2003002601)**

UBS Capital Markets, L.P. (CRD #2692, Stamford, Connecticut) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$52,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that, as an Intermarket Trading System/Computer Assisted Execution System (ITS/CAES) market maker, it purchased or sold ITS/CAES securities, whether in a principal capacity or as an agent, at a lower price than the bid or higher than the offer displayed from an ITS Participant Exchange or its ITS/CAES market maker. The findings stated 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 minimis* change in relation to the size associated with the firm's bid or offer in each such security. The findings also

stated that the firm transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data, and failed to submit required information to OATS. 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 the Limit Order Display Rule. **(NASD Case #20050000530-01)**

UBS Securities LLC (CRD #7654, Stamford, Connecticut) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$22,000. 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 quotations, 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 minimis* change in relation to the size associated with the firm's bid or offer in each security. The findings stated that the firm failed to report an execution report for reportable items to OATS. The findings also stated that the firm failed to preserve, for a period of not less than three years, the first two in an accessible place, brokerage order memorandums. **(NASD Case #20042000062-01)**

Wedbush Morgan Securities, Inc. (CRD #877, Los Angeles, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$27,500, and ordered to pay \$742.22, plus interest, in restitution to investors. 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 NNM and NASDAQ Small Cap (SC) securities through ACT, and failed to designate some of the last NNM sale reports as late. The findings stated that the firm incorrectly designated last sale reports of transactions in NNM and SC securities executed during normal market hours as ".T." The findings also stated that the firm incorrectly designated last sale reports of transactions in NNM and SC securities reported to ACT as ".SLD" within 90 seconds of execution. NASD found that the firm failed to use

reasonable diligence, in transactions for or with a public customer, to ascertain the best inter-dealer market, and failed to buy or sell in such market so that the resultant price to its customer was as favorable as possible under prevailing market conditions. (NASD Case #20042000086-02)

Individuals Barred or Suspended

Maurice Wayne Abney (CRD #2733649, Registered Principal, Owensboro, 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, Abney consented to the described sanction and to the entry of findings that, while suspended in any capacity from NASD association with a member firm, he continued to solicit an individual to become a customer. The findings stated that Abney refused to appear at NASD and give testimony. (NASD Case #E8A2004089101)

Imran Ahmad (CRD #3035891, Registered Representative, Staten Island, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$20,000, suspended from association with any NASD member in any capacity for two months, and required to pay \$1,372, plus interest, in restitution to market makers. Without admitting or denying the findings, Ahmad consented to the described sanctions and to the entry of findings that he knowingly and intentionally entered small-lot orders through his own customer account into NASDAQ's SuperMontage to sell (buy) NASDAQ securities to NASDAQ market makers at the inside bid (offer) when the market participant was quoting 100 shares at the NASDAQ Best Bid and Offer (QBBO) and received executions for the orders. The findings stated that Ahmad was aware that after his small-lot orders were executed, the relevant market makers utilized automatic quoting systems designed to keep a consistent spread between their bid and offer, and that this activity created a new QBBO with quotes more favorable to Ahmad. The findings also stated that by knowingly and intentionally engaging in this course of conduct, Ahmad was able to sell (buy) shares of securities at prices that were higher/lower than he would have been able to obtain, but for his entry and execution of the small-lot orders.

Ahmad's suspension began on April 17, 2006, and will conclude at the close of business on June 16, 2006. (NASD Case #20050000415-01)

Lawrence Neil Bensman (CRD #722759, Registered Supervisor, Milwaukee, Wisconsin) submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for nine months. Without admitting or denying the allegations, Bensman consented to the described sanctions and to the entry of findings that he intentionally falsified the holding period and surrender charges on his member firm's 1035 Exchange/Transfer Transmittal Form that the firm used to review exchanges from one fixed annuity to another.

Bensman's suspension began on May 1, 2006, and will conclude at the close of business on January 31, 2007. (NASD Case #E8A2004074201)

Russell James Bjerke (CRD #3178233, Registered Representative, Ashland, Oregon) was barred from association with any NASD member in any capacity. The sanction was based on findings that Bjerke received \$6,187 from a public customer for investment purposes and, instead, deposited the funds in a bank account under his control without the customer's knowledge, authorization or consent, thereby converting the funds for his own use and benefit. NASD found that Bjerke failed to respond to NASD requests for information. (NASD Case #C3B050015/E3B20040062)

John A. B. Black (CRD #2131246, Registered Representative, Wenatchee, Washington) 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, Black consented to the described sanction and to the entry of findings that he recommended and executed securities transactions in public customers' accounts without having reasonable grounds to believe that the recommendations and resultant transactions were suitable for them based upon their other securities holdings, financial situations and needs. The findings stated that Black falsified the information regarding customers on variable annuity applications and variable life insurance policies by falsely stating that the customers had previously purchased investment products that had the "highest" risk tolerance, were "extremely willing" to risk a potential decline in value

for the potential of a higher return, and that customers' investment objectives were "aggressive growth."
(NASD Case #E3B2004013301)

Gregory Thomas Boston (CRD #2064738, Registered Representative, Washington Courthouse, Ohio) was barred from association with any NASD member in any capacity. The sanction was based on findings that Boston served as a public customer's treasurer and financial representative and wrote checks totaling \$23,000 payable to another individual and himself on the customer's account without the customer's authorization, thereby converting the funds for his own use. The findings stated that Boston failed to respond to NASD requests for information. (NASD Case #E8A2004107701)

Michael Allen Butler (CRD #3057650, Registered Representative, Santee, California) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 18 months. The fine must be paid before Butler reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Butler consented to the described sanctions and to the entry of findings that he received a \$20,000 cashier's check from public customers and a completed application to open a mutual fund account on their behalf, but failed to notify them that the mutual fund did not receive the check, and had no record of any accounts for the customers. Instead, he created a fictitious account statement and sent it to them.

Butler's suspension began on April 17, 2006, and will conclude at the close of business on October 16, 2007.
(NASD Case #20050015357-01)

Daniel Castro (CRD #4671318, 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, Castro consented to the described sanction and to the entry of findings that he withdrew and converted \$47,000 from deceased public customers' accounts. The findings stated that Castro failed to respond to NASD requests for an on-the-record interview. (NASD Case #2005001982501)

Ron Davis (CRD #4311644, Registered Representative, Rochester Hills, 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 findings, Davis consented to the described sanction and to the entry of findings that he executed transfers totaling \$65,000 from a public customer's investment account to bank accounts Davis and his wife owned and controlled, without the customer's knowledge, consent or authorization. The findings stated that Davis borrowed \$102,500 from public customers in contravention of his firm's written procedures prohibiting registered persons from borrowing money from customers. The findings also stated that Davis failed to respond to NASD requests for information. (NASD Case #20050004447-01)

Anthony Lucas DeBenedictis (CRD #2326689, Registered Representative, White Plains, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000, ordered to pay \$23,000 in restitution to a public customer and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the findings, DeBenedictis consented to the described sanctions and to the entry of findings that he exercised control over a public customer's account and effected numerous and excessive unsuitable securities transactions using margin.

DeBenedictis' suspension began on April 17, 2006, and will conclude at the close of business on June 15, 2006.
(NASD Case #E9B2004042801)

Michael Frank Dispenza (CRD #1921030, Registered Representative, Treasure Island, Florida) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the findings, Dispenza consented to the described sanctions and to the entry of findings that he purchased municipal securities from public customers at prices that were not fair and reasonable, resulting in losses for the customers. The findings stated that Dispenza accepted reimbursement for one of the losses from the broker's broker for a portion of the price differential without his member firm knowledge or approval.

Dispenza's began on April 17, 2006, and will conclude at the close of business on April 28, 2006. (NASD Case #E052004030201)

Thomas Joseph Downs (CRD #4297709, Registered Representative, Pleasantville, New York) 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 20 business days, and ordered to pay a public customer \$3,900 in restitution. Without admitting or denying the findings, Downs consented to the described sanctions and to the entry of findings that he purchased securities for public customers' accounts without their consent or authorization.

Downs' suspension began on April 3, 2006, and concluded at the close of business on May 1, 2006. (NASD Case #E9B2004043401)

David Dean Dugas (CRD #2876786, Registered Representative, Lafayette, Louisiana) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Dugas reassociates with any NASD member following the suspension, or prior to requesting relief from any statutory disqualification. Without admitting or denying the findings, Dugas consented to the described sanctions and to the entry of findings that he forged a public customer's initials on a Variable Annuity Customer Acknowledgement Form.

Dugas' suspension began on April 3, 2006, and will conclude at the close of business on October 2, 2006. (NASD Case #2005001922301)

Peter Christian Dunne (CRD #2538317, Registered Representative, Bayport, New York) submitted an Offer of Settlement in which he was fined \$15,000 and suspended from association with any NASD member in any capacity for 90 days. Without admitting or denying the allegations, Dunne consented to the described sanctions and to the entry of findings that he effected, or caused to be effected, transactions in public customers' accounts without their prior knowledge, authorization or consent. The findings stated that Dunne failed to amend his Uniform Application for Securities Registration or Transfer (Form U4) in a timely manner.

Dunne's suspension began on April 17, 2006, and will conclude on July 15, 2006. (NASD Case #ELI20040097/CLI050004)

Terry Lee Feibus (CRD# 2923404, Registered Principal, Boca Raton, 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, Feibus consented to the described sanction and to the entry of findings that he engaged in the unregistered offer and sale of securities owned by a registered representative. The findings stated that Feibus made material misrepresentations and failed to disclose material facts to public customers in connection with the unregistered offer and sale of securities. (NASD Case #E072003092501)

David Ferst (CRD #206921, Registered Representative, Palatine, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the findings, Ferst consented to the described sanctions and to the entry of findings that he received checks totaling \$9,376.80 from public customers to invest in College America 529 accounts or purchase insurance policies, but failed to follow the customers' instructions and held the checks and account applications until a later date or his member firm processed them after his termination.

Ferst's suspension began on May 1, 2006, and will conclude at the close of business on April 30, 2007. (NASD Case #E8A2004075201)

Thomas Mitchell Forbes (CRD #4093425, Registered Representative, Debary, 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, Forbes consented to the described sanction and to the entry of findings that he willfully failed to disclose material information on his Form U4. The findings stated that Forbes failed to respond to an NASD request for information. (NASD Case #2005001829202)

Alvin Waino Gebhart, Jr. (CRD #1005905, Registered Principal, Fallbrook, California) and Donna Traina Gebhart (CRD #2708528, Registered Principal, Fallbrook, California) Alvin Gebhart 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 must requalify by exam in all capacities. The SEC sustained the sanctions following appeal of a National Adjudicatory Council decision.

The sanctions were based on findings that the respondents sold unregistered securities that were not exempt from registration, and recklessly misrepresented and omitted material facts in connection with the sale of securities. NASD found that the respondents participated in private securities transactions without providing their member firm with prior written notification describing, in detail, each proposed transaction, their role therein and whether they had received, or might receive, selling compensation.

This action has been appealed to the United States Court of Appeals for the Ninth Circuit, and all sanctions, except for the bar, are not in effect pending consideration of the appeal. (NASD Case #C02020057/E0220010625)

Kenneth Joseph Gilmore (CRD #1047301, Registered Principal, Long Hill, New Jersey) submitted an Offer of Settlement in which he was fined \$40,000, suspended from association with any NASD member in any capacity for six months, barred from association with any NASD member in any principal or supervisory capacity, and required to sell his ownership interest in his member firm within six months. Without admitting or denying the allegations, Gilmore consented to the described sanctions and to the entry of findings that he violated an NASD suspension order to not engage in securities activities during his suspension by performing work-related duties on the firm's premises, communicating with employees regarding work-related matters, providing instruction to the firm's employees, meeting with public customers and soliciting business from customers. The findings stated that Gilmore also attempted to conceal his active role at the firm from NASD in violation of the suspension order.

Gilmore's suspension began on May 1, 2006, and will conclude at the close of business on October 31, 2006. (NASD Case #C9B20050022/E102003130805)

Roy Golladay, Jr. (CRD #1856856, Registered Representative, Mesa, Arizona) 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, Golladay consented to the described sanction and to the entry of findings that he participated in private securities transactions and failed to provide his member firm with prior written notification of his participation in these transactions describing them in detail, his proposed role therein, whether he had received, or might receive, selling compensation in connection with the transactions. The findings stated that Golladay engaged in outside business activities without providing prompt written notice to his member firm. NASD found that Golladay solicited \$2,000,000 from public customers to fund mortgages, but failed to maintain documentation evidencing what he did with these funds, did not use all the money collected for the stated purpose and transferred portions of the money into other business accounts he controlled, thereby commingling customer funds with the funds of other businesses. The findings also stated that Golladay failed to fully respond to NASD requests for documents and information. (NASD Case #2005001378601)

John Henry Groth (CRD #231092, Registered Principal, Bethesda, Maryland) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000, jointly and severally, and suspended from association with any NASD member as a FINOP for 30 days. Without admitting or denying the findings, Groth consented to the described sanctions and to the entry of findings that a member firm, acting through Groth, used the means or instrumentalities of interstate commerce or the mails to effect transactions in non-exempt securities while failing to maintain the minimum required net capital. The findings stated that a member firm, acting through Groth, filed FOCUS reports that were materially inaccurate in that they failed to include amounts in the firm's liabilities relating to an outstanding loan balance with a bank.

Groth's suspension began on April 17, 2006, and will conclude at the close of business on May 16, 2006. (NASD Case #E9A2004056101)

Thomas Mark Hunt (CRD #4517916, Registered Representative, Oklahoma City, Oklahoma) was barred from association with any NASD member in any

capacity. The sanction was based on findings that Hunt received \$1,770 from a public customer for insurance payments, issued the customer an official receipt, but did not apply the payment to the insurance policy. He instead converted the funds for his own personal use and benefit. The findings stated that Hunt failed to respond to NASD requests for information. **(NASD Case #E052004032901)**

Jerry Harold Jones (CRD #718084, Registered Representative, Rockton, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 20 business days. The fine must be paid before Jones reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Jones consented to the described sanctions and to the entry of findings that he failed to timely amend his Form U4 to disclose material information.

Jones' suspension began on May 1, 2006, and will conclude at the close of business on May 26, 2006. **(NASD Case #20050017269-01)**

Ashok Jayantilal Kapadia (CRD #1932646, Registered Representative, Warren, 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 six months. The fine must be paid before Kapadia reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Kapadia consented to the described sanctions and to the entry of findings that he forged a public customer's signature on life insurance applications and on money orders that were purchased to pay the premiums for the life insurance applications.

Kapadia's suspension began on April 17, 2006, and will conclude at the close of business on October 16, 2006. **(NASD Case #E8A20041030-01)**

Tyler McClintock Kerrigan (CRD #2970266, Registered Representative, New Orleans, Louisiana) submitted an Offer of Settlement in which he was fined \$10,000, which includes disgorgement of \$1,912 in financial benefit, and suspended from association with any NASD member in any capacity for 15 business days.

Without admitting or denying the allegations, Kerrigan consented to the described sanctions and to the entry of findings that he recommended and effected securities transactions to public customers without having reasonable basis for believing the transactions were suitable based upon the customers' investment objectives, financial situations and needs. The findings stated that Kerrigan used sales literature without obtaining prior approval from a registered principal, and failed to maintain a copy of the literature for his files.

Kerrigan's suspension began on May 15, 2006, and will conclude at the close of business on June 5, 2006. **(NASD Case #C05050008/E052003035504)**

Jayne Ann Kleven (CRD #1310727, Registered Representative, Mequon, Wisconsin) 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, Kleven consented to the described sanction and to the entry of findings that she failed to respond to NASD requests for information. **(NASD Case #20050025618-01)**

James Bernard L'Esperance (CRD #4150205, Registered Representative, Oxford, Michigan) submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for 10 business days and, in light of his financial status, fined \$2,500. The fine must be paid before L'Esperance reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, L'Esperance consented to the described sanctions and to the entry of findings that he engaged in outside business activities for compensation without providing his member firm with prompt prior notice.

L'Esperance's suspension began on April 3, 2006, and concluded at the close of business on April 17, 2006. **(NASD Case #E8A2002124001)**

Theresa L. Logan (CRD #4614539, Registered Representative, Alvada, Ohio) 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, Logan consented to the described sanction and to the entry of findings that she forged public customers'

signatures on documents related to insurance applications and premiums, and failed to respond to NASD requests for information. (NASD Case #E8A20040943-01)

Edith Lourdes Mechling (CRD #1391048, Registered Representative, Alexandria, 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 three months. Without admitting or denying the findings, Mechling consented to the described sanctions and to the entry of findings that, without prior written authorization from her member firm, she improperly shared in the public customers' losses when she deposited funds totaling \$1,462.50 into the customers' account to cover losses sustained in connection with a bond that had defaulted on an interest payment. The findings stated that she misrepresented that the payment was not taxable due to the bond's default status.

Mechling's suspension began on April 3, 2006, and will conclude on July 2, 2006. (NASD Case #2005002630001)

Philip Benjamin Melnick (CRD #2930299, Registered Representative, Staten Island, New York) was barred from association with any NASD member in any capacity and ordered to reimburse the entity he defrauded \$3,086.44, plus interest. The sanctions were based on findings that Melnick engaged in a series of transactions designed to improve the national best bid or offer quote for NASDAQ securities to enable him to trade in those securities at more favorable prices. The findings stated that, by engaging in this conduct, Melnick caused a communication to be published or circulated that purported to report a transaction, bid price or asked price as bona fide when it was not. (NASD Case #2004200003801)

Elliott Nadel (CRD #812711, Registered Principal, Bayside, New York) was barred from association with any NASD member in any capacity, and ordered to pay a public customer \$46,760.08, plus interest, in restitution. The sanctions were based on findings that Nadel transferred approximately \$80,000 from a public customer's account to a second account without the customer's knowledge, authorization or consent. The findings stated that \$46,760.08 was transferred from the second account to a third account Nadel managed and controlled, and a \$59,000 check payable to Nadel

was drawn from this account. The findings also stated that Nadel failed to respond to NASD requests for information. (NASD Case #ELI2004039602)

Laurence Scott Newman (CRD #735472, Registered Representative, Mt. Tabor, New Jersey) 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 Newman's financial status, no monetary sanction has been imposed. Without admitting or denying the findings, Newman consented to the described sanction and to the entry of findings that he willfully failed to disclose a material fact on his Form U4.

Newman's suspension began on April 3, 2006, and will conclude on July 2, 2006. (NASD Case #2005000480401)

Patrick Orvil Nugent (CRD #1498083, Registered Principal, Sunnyvale, 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 Nugent participated in private securities transactions for compensation without providing prior written notice to, and receiving written approval from, his member firm. (NASD Case #C01040010/E0120020498)

Nike Harriet Oruche (CRD #2160533, Registered Representative, Bensenville, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any NASD member in any capacity. The sanction was based on findings that Oruche affixed public customers' signatures on withdrawal forms without their knowledge and consents, withdrew a total of \$30,500 from their bank accounts, and used the funds for some purpose other than the customers' benefit. (NASD Case #2005001415401)

Sanjay Chatur Patel (CRD #4667819, Registered Representative, Columbus, 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 60 days. The fine must be paid before Patel reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Patel consented to

the described sanctions and to the entry of findings that he completed and affixed public customers' signatures, with their knowledge and consents, on Financial Planning Services Agreements and Financial Planning Services Agreement Special Redemption Request forms, even though his member firm's written supervisory procedures stated that representatives should not sign clients' names to any document—even pursuant to the clients' request.

Patel's suspension began on May 1, 2006, and will conclude at the close of business on June 29, 2006. (NASD Case #E8A2004102001)

Jonathan Charles Raney (CRD #1269317, Registered Principal, Akron, Ohio) 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, Raney consented to the described sanction and to the entry of findings that he induced public customers who received rebate checks from his member firm to send checks payable to Raney, claiming he was owed 10% of the rebate for lost commissions, or that the funds were needed to pay for attorney fees incurred as a result of obtaining the rebates. The findings stated that Raney induced customers to send him checks by falsely claiming that fees were owed for compliance with the "Privacy Act," the "Patriot Act," or that new annual fees were due for various administrative reasons. The findings also stated that Raney made the claims knowing them to be false, cashed the checks, and converted \$4,370 for his personal benefit. (NASD Case #20050013624-01)

Maryann Gehringer Roeglin (CRD #2126129, Registered Representative, Rochester Hills, Michigan) submitted an Offer of Settlement in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Roeglin consented to the described sanction and to the entry of findings that she improperly used a public customer's funds by withdrawing \$77,000 from the public customer's brokerage accounts without the customer's knowledge and approval. The findings stated that Roeglin failed to respond to requests to appear for an NASD on-the-record interview. (NASD Case #E8A20040613-02)

Glen Lee Roundy (CRD #1192329, Registered Principal, Sandy, Utah) 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, Roundy consented to the described sanction and to the entry of findings that he failed to completely respond to an NASD request for information. (NASD Case #2005001182701)

Thomas Alan Sachs (CRD #1013988, Registered Supervisor, Minneapolis, Minnesota) 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 Sachs reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Sachs consented to the described sanctions and to the entry of findings that, pursuant to verbal authority, he exercised discretion in public customers' accounts without obtaining their written authorization and prior written acceptance of the accounts as discretionary from his member firm.

Sachs' suspension began on April 17, 2006, and concluded at the close of business on April 28, 2006. (NASD Case #20050015449-01)

Rooney A Sahai (CRD #1551326, Registered Representative, Ridgewood, New Jersey) was barred from association with any NASD member in any capacity. The NAC imposed the sanction following appeal of an OHO decision. The sanction was based on findings that Sahai forged or public customers' signatures on documents, purchased a variable annuity on behalf of a public customer without her prior knowledge, authorization, and consent, and failed to respond to NASD requests for information. On appeal to the SEC, the SEC set aside the NAC's finding of forgery, sustained the NAC's findings that Sahai purchased a variable annuity without the customer's prior knowledge, authorization and consent, sustained the NAC's finding that Sahai failed to respond to NASD requests for information, and remanded the case to the NAC to consider appropriate sanctions.

On remand, the NAC found that a bar in all capacities is an appropriate sanction for Sahai's failure to respond to

NASD's requests for information. Sahai has appealed, and this bar is in effect pending consideration of the appeal to the SEC. (NASD Case #C9B020032)

David Joseph Sanducci (CRD #2370405, Registered Principal, Brooklyn, New York) and Brian Che Featherstone (CRD #3064465, Registered Representative, Irvington, New York) submitted Offers of Settlement in which they were barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sanducci and Featherstone consented to the described sanction and to the entry of findings that, acting individually and as members of a sales group, they participated in a fraudulent scheme to sell shares of a security to public customers, utilizing classic, boiler-room techniques to induce customers to purchase the security and to dissuade them from selling it. The findings stated that Sanducci and Featherstone used high-pressure sales pitches, material misrepresentations, omissions of fact and unauthorized transactions in customer accounts. The findings also stated that Sanducci and Featherstone failed to provide customers with disclosures concerning the risks associated with investing in penny stocks. NASD found that Sanducci provided false and misleading sworn testimony denying his role at the member firm. (NASD Case #CMS040165/2005000631101)

Raghavan Sathianathan (CRD #1743692, Registered Representative, Montclair, New Jersey) was barred from association with any NASD member in any capacity. The NAC imposed the sanction following appeal of an OHO decision. The sanction was based on findings that Sathianathan recommended and effected transactions in public customers' accounts without having reasonable grounds for believing that such transactions were suitable in view of the nature of the recommended transactions, and in light of the customers' financial situations, investment objectives, circumstances and needs. The findings also stated that pursuant to verbal authority, Sathianathan exercised discretion in a public customer's account without having obtained his prior written authorization.

This action has been appealed to the SEC, and the bar is in effect pending consideration of the appeal. (NASD Case #C9B20030076)

Angelisa Michelle Savage (CRD #3232125, Registered Representative Savannah, Georgia) submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$10,000, suspended from association with any NASD member in any capacity for six months and ordered to disgorge \$1,769.64 in commissions as partial restitution. The fine and disgorgement must be paid before Savage reassociates with any NASD member following the suspension, or before she requests relief from any statutory disqualification. Without admitting or denying the findings, Savage consented to the described sanctions and to the entry of findings that she negligently misrepresented to a public customer that a variable annuity switch would be at no cost, and altered a switch form by adding additional information after the customer signed it.

Savage's suspension began on March 20, 2006, and will conclude at the close of business on September 19, 2006. (NASD Case #E072004064201)

Andrew Sirico (CRD #1848034, Registered Principal, Bayport, 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 seven months. Without admitting or denying the allegations, Sirico consented to the described sanctions and to the entry of findings that he failed to disclose material information on his Form U4, and failed to timely respond to NASD requests for information.

Sirico's suspension began on April 3, 2006, and will conclude at the close of business on November 2, 2006. (NASD Case #ELI2003056602)

John Joseph Stapleton (CRD #2791194, Registered Representative, Atlantic Beach, New York) submitted an Offer of Settlement in which he was fined \$10,000, ordered to pay \$104,073.05 in restitution to a public customer, and suspended from association with any NASD member in any capacity for 60 business days. As a precondition to his reassociation with a member firm, Stapleton must be current with his restitution payments at the time of his application for reassociation. Moreover, Stapleton must remain current with his restitution payments while associated with a member firm. Without admitting or denying the allegations, Stapleton consented to the described sanctions and to the entry of findings that, while

exercising control over a public customer's account, he effected excessive transactions in the account. The findings stated that, 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, he 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 which 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 findings also stated that Stapleton recommended securities transactions to public customers without having reasonable grounds for believing such transactions were suitable for the customers in view of the size and frequency of the transactions, the nature of the account and the customers' financial situation, investment objectives and needs.

Stapleton's suspension began on April 17, 2006, and will conclude at the close of business on July 11, 2006. (NASD Case #E9B2003033501)

Peter David Swiencicki (CRD #2361141, Registered Representative, Westland, Michigan) submitted a Letter of Acceptance, Waiver and Consent in which he was suspended from association with any NASD member in any capacity for two months. In light of Swiencicki's financial status, no monetary sanctions were imposed. Without admitting or denying the findings, Swiencicki consented to the described sanction and to the entry of findings that he affixed a public customer's signature, without her knowledge or consent, to a form to change the servicing representative for the fixed annuity account the customer held at an insurance company.

Swiencicki's suspension began on May 1, 2006, and will conclude at the close of business on June 30, 2006. (NASD Case #2005001468101)

Dennis James Vanbuskirk (CRD #2772340, Registered Representative, Palm Springs, California) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from

association with any NASD member in any capacity for 60 days. The fine must be paid before Vanbuskirk reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Vanbuskirk consented to the described sanctions and to the entry of findings that he engaged in outside business activities for compensation and failed to provide prompt written notice to his member firm. The findings stated that Vanbuskirk failed to fully and promptly respond to NASD requests for information.

Vanbuskirk's suspension began on April 17, 2006, and will conclude at the close of business on June 15, 2006. (NASD Case #20050013644-01)

Thomas Robert Van Tassel (CRD #2115748, Registered Representative, Sparta, Wisconsin) 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 findings, Van Tassel consented to the described sanctions and to the entry of findings that he affixed a public customer's signature to a letter removing the customer's deceased husband from an account, and submitted the document even though Van Tassel's member firm had written supervisory procedures stating that registered representatives were not permitted to sign documents on behalf of clients, even if the clients instructed them to do so, as was the case in this instance. The findings stated that Van Tassel, in spite of firm policy to the contrary, at the request of public customers, affixed their signatures on a Third Party Check Request form and an Authorization to Change form and submitted the documents to his member firm. The findings also stated that Van Tassel affixed a public customer's signature at her request, and submitted the document to his member firm although the firm's supervisory procedures required that all client signatures be original.

Van Tassel's suspension began on April 17, 2006, and will conclude at the close of business on June 15, 2006. (NASD Case #E8A2004085001)

Otto Keith Vaughan, Jr. (CRD #453757, Registered Representative, Aurora, Colorado) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity and

ordered to pay public customers \$129,348 in restitution. Satisfactory proof of the restitution payment must be made before Vaughan reassociates with any NASD member. Without admitting or denying the allegations, Vaughan consented to the described sanctions and to the entry of findings that, while acting as trustee for a trust, he 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 trust's beneficiaries. The findings stated that Vaughan withdrew an additional \$247,000 from the trust's bank accounts and used the funds to pay for personal expenses, and failed to keep any records or documents detailing such withdrawals. The findings also stated that Vaughan failed to 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)

Kai Richardson Walker (CRD #4094767, Registered Representative, Winter Park, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Walker changed the address of record on the account of the estate of a deceased public customer to an address under his control, and issued a debit card and checks to this new address. The findings stated that, using the fraudulently obtained debit card and checks, Walker made purchases totaling \$9,689.11, thereby, converting the funds for his own use and benefit. NASD found that Walker converted funds belonging to his member firm by depositing checks totaling \$1,092.30 into his own personal account. NASD found that Walker failed to respond to NASD requests for information. (NASD Case #2005000688601)

James Michael Wessel (CRD #3273979, Registered Principal, Fishers, Indiana) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the findings, Wessel consented to the described sanctions and to the entry of findings that he received \$18,145 from a public customer to use the funds to make a supplemental deposit to the customer's annuity contract, but failed to timely forward the funds. The findings stated that Wessel resolved a customer complaint by depositing \$2,796.18 into the customer's account without informing his member firm.

Wessel's suspension began on April 17, 2006, and will conclude at the close of business on May 16, 2006. (NASD Case #E8A2003097801)

Individual Fined

Carl Edward Lindros (CRD #310012, Registered Principal, Santa Barbara, California) submitted a Letter of Acceptance, Waiver and Consent in which he was censured and fined \$10,000. Without admitting or denying the findings, Lindros consented to the described sanctions and to the entry of findings that a member firm, acting through Lindros, failed to properly escrow investor funds in accordance with SEC Rule 15c2-4. (NASD Case #E022004004502)

Decisions Issued

The following decision has been issued by the Office of Hearing Officers and has been appealed to or called for review by the NAC as of April 7, 2006. The findings and sanctions imposed in the decisions may be increased, decreased, modified or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notice to Members*.

Dennis Paul Cooper (CRD #2250395, Registered Principal, Ballwin, Missouri) was barred from association with any NASD member in any capacity. The sanction was based on findings that Cooper forged his manager's signature on public customer documents.

This decision has been appealed to the NAC, and the sanction is not in effect pending consideration of the appeal. (NASD Case #C0420050014/E0420040339)

Dana Niles Frankfort (CRD #2243930, Registered Representative, Marina del Rey, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that, in connection with the purchase or sale of securities, Frankfort, directly or indirectly, by the use of means or instrumentalities of interstate commerce or the mails, employed artifices, devices or schemes to defraud, made untrue statements of material facts 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, engaged in acts, practices or courses of business that operated or would operate as a fraud or deceit, and/or effected

transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive, or other fraudulent devices or contrivances. The findings stated that Frankfort recommended and effected securities transactions in public customers' accounts without having reasonable grounds for believing the recommendations and resultant transactions were suitable for them based on their financial situation and needs. NASD found that Frankfort participated in private securities transactions without providing prior written notification to, and receiving written approval or acknowledgment from, his member firm.

This decision has been appealed to the NAC, and the sanction is not in effect pending consideration of the appeal. (NASD Case #C02040032/E0220020728)

John David Kaweske (CRD #2309807, Registered Principal, Miami, Florida) was barred from association with any NASD member firm in any capacity and ordered to pay \$140,000, plus interest, in restitution to public customers. The sanctions were based on findings that Kaweske failed to promptly return investor funds after an offering closed without meeting its sales contingency, failed to establish an escrow account for the contingency offering, made fraudulent misrepresentations in the sale of preferred stock, and willfully failed to disclose material information on his Form U4.

This decision has been appealed to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C07040042)

Kenneth Christopher Shelley (CRD #4478307, Registered Representative, Thomasville, Alabama) was barred from association with any NASD member in any capacity. The sanction was based on the finding that Shelley attempted to cheat on the Series 24 examination and failed to comply with the rules of conduct relating to securities examination.

This decision has been appealed to the NAC, and the sanction is not in effect pending consideration of the appeal. (NASD Case #C3A050003)

Michael Frederick Siegel (CRD #1001893, Registered Representative, Beverly Hills, California). On April 19, 2004, a hearing panel fined Siegel \$30,000 and suspended him from association with any NASD member in any capacity for six months. The sanction

was based on findings that Siegel recommended and effected securities transactions in public customers' accounts without having reasonable grounds for believing that the recommendation and resultant transactions were suitable for them. The findings also stated that Siegel participated in private securities transactions and failed to provide prior written notice to, and approval from, his member firm.

Siegel appealed the hearing panel's decision to the NAC, and Enforcement cross-appealed. The NAC remanded the proceeding and directed the hearing panel to make credibility determinations and related factual findings concerning a narrow set of issues. Pursuant to these instructions, on March 16, 2006, the hearing panel issued supplemental findings of fact.

This matter is currently pending with the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C05020055/E0520020055)

Robert Eugene Strong (CRD #3079588, Registered Principal, New York, New York) was fined \$15,000 and suspended from association with any NASD member in any supervisory capacity for nine months. The sanctions were based on findings that Strong failed to reasonably supervise an employee who made unapproved trades. The findings stated that Strong failed to make certain disclosures in an employee's research reports in that the reports omitted that the employee had a financial interest in the company, a definition of the term "strong buy," an adequate price chart, and the evaluation methods used to set the price target and that the firm made a market in the stock. The findings also stated that Strong's improper supervision allowed the representative to forward a draft report to companies that included a research summary and price target in violation of NASD Rule 2711(c). NASD found that Strong untimely filed the firm's attestation regarding supervisory procedures reasonably designed to ensure that the firm and its employees comply with NASD Rule 2711.

This decision has been appealed to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C04050005)

Complaints Filed

The following complaints were issued by NASD. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by NASD in which findings as to the allegations in the complaint have not been made, and does not represent a decision as to any of the allegations contained in the complaint. Because these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

Jeffrey Leonard Adell (CRD #2638760, Registered Representative, Fishers, Indiana) was named as a respondent in an NASD complaint alleging that he created fake instruction letters purportedly created and signed by a public customer that instructed Adell's member firm to liquidate funds from the customer's account and send the proceeds to Adell's home address. The complaint also alleges that Adell forged the customer's signature on the documents, without the customer's or his estate's permission or knowledge, and falsely certified to his member firm that the forged signatures were authentic. The complaint further alleges that Adell converted \$29,461.43 from the customer's account without the customer's knowledge or consent, deposited the funds into his personal account, and used the funds for his personal expenses and not for the customer's benefit. In addition, the complaint alleges that Adell failed to respond to NASD requests for information. (NASD Case #2005000386701)

Humberto Daniel Advincula (CRD #4158129, Registered Representative, Midvale, Utah) was named as a respondent in an NASD complaint alleging that he received \$20,000 from public customers with the intention that the funds would be invested for the customers' benefit, but failed to invest the customers' funds through their member firm or its subsidiaries and to return the funds to the customers, thereby making improper use of their funds. The complaint alleges that Advincula engaged in an undisclosed outside business activity without providing prompt written notice to his member firm. The complaint also alleges that Advincula failed to respond to NASD requests for information. (NASD Case #20050011788)

Andrew Joseph Hardin (CRD #4534287, Registered Representative, Greenville, South Carolina) was named as a respondent in an NASD complaint alleging

that, pursuant to verbal authority, he exercised discretion in a public customer's account without the customer's written authorization and his member firm's written acceptance of the account as a discretionary account. The complaint alleges that Hardin knowingly and intentionally purchased and parked Certificates of Deposits (CDs) in a customer's account with the intent to resell them to other customers, and instead requested that the original purchases be corrected and reassigned to another customer to whom he had sold the respective CD, therefore misrepresenting to his member firm that the original purchase was mistakenly put in the customer's account. (NASD Case #E072004072501)

Intercoastal Financial Services Corp. (CRD #45557, Jupiter, Florida) was named in an NASD complaint alleging that the firm failed to implement and enforce an AML program reasonably designed to achieve and monitor the firm's compliance with the requirements of the Bank Secrecy Act and the implementing regulations promulgated thereunder by the Department of the Treasury. The complaint alleges that the firm accepted orders from third parties without the customer's prior signed written authorization. The complaint also alleges that the firm failed to maintain accurate books and records relating to, among other things, their business, financial statements, indebtedness, bills and communications regarding its business. The complaint further alleges that the firm sold unregistered shares of a stock that were not entitled to any registration exemption. In addition, the complaint alleges that the firm's supervisory system was not reasonably designed to achieve compliance with applicable securities laws and regulations and with NASD rules in that the firm's written procedures provided that a "registered representative will not accept any order from a third party without prior written authorization signed by the customer," but the firm's supervisory personnel failed to detect widespread, long-term, third party trading without written authorization. (NASD Case #EAF0300770001)

David John Leyshon (CRD #1146050, Registered Representative, Peoria, Arizona) was named as a respondent in an NASD complaint alleging that he recommended and executed unauthorized and excessive securities transactions in a public customer's account without having a reasonable basis for believing the recommendations and resultant transactions were

suitable based upon the customer's objectives, financial situation and needs. The complaint alleges that Leyshon, directly or indirectly, by the use of means or instrumentalities of interstate commerce or 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. The complaint also alleges that Leyshon executed unauthorized transactions in an online account using a password that was intended for a public customer's exclusive use. NASD alleges that Leyshon submitted falsified documents to his member firm and caused the firm's records to be inaccurate and misleading. In addition, the complaint alleges that Leyshon failed to respond to NASD requests for information. **(NASD Case #E3A20040356-01)**

Feltus Barrow McKowen (CRD #1231747, Registered Representative, Baton Rouge, Louisiana) was named as a respondent in an NASD complaint alleging that he effected securities transactions in a public customer's account and received commissions totaling \$25,248 without the customer's prior knowledge or consent. **(NASD Case #E052003017101)**

Thomas Garth Nauman (CRD #1732240, Registered Principal, Kamuela, Hawaii) was named as a respondent in an NASD complaint alleging that he effected, or caused to be effected, excessive securities transactions in public customers' accounts without having a reasonable basis for believing that these recommendations were suitable in light of the customers' investment objectives, financial situations and needs. The complaint alleges that Nauman, 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 securities transactions, 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. The complaint also alleges that Nauman executed unauthorized securities transactions in public customers' accounts. **(NASD Case #E012002049101)**

David John Palen (CRD #2321162, Registered Representative, Scottsdale, Arizona) was named as a respondent in an NASD complaint alleging that he withdrew \$203,464 from public customers' accounts to pay for financial planning fees that the customers had not authorized or approved, and failed to provide the customers with the financial plans. The complaint alleges that Palen lied to the customers regarding an unauthorized withdrawal by assuring them that the money had been moved from one investment to another without the loss of money. The complaint also alleges that Palen signed a public customer's name to an Advisory Service Agreement without the customer's authorization or consent, and submitted it to his member firm to withdraw funds to pay for a financial plan he did not authorize. In addition, the complaint alleges that Palen failed to appear for an NASD on-the-record interview. **(NASD Case #E3A2004036501)**

Mark Jeffrey Sheehy (CRD #2224709, Registered Representative, Scottsdale, Arizona) was named as a respondent in an NASD complaint alleging that he received \$97,500 from a public customer for investment purposes, deposited the funds into his bank account and executed numerous transactions in the customer's account without the customer's prior authorization and consent. The complaint alleges that Sheehy caused the funds transfer from the customer's securities account for the purpose of causing the customer to believe that the funds represented returns on an investment. The complaint also alleges that Sheehy failed to respond to NASD requests for information. **(NASD Case #20050005544-01)**

David Parker Smithey (CRD #4137601, Associated Person, Foothill Ranch, California) was named as a respondent in an NASD complaint alleging that he directly or indirectly, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce or the mails, or of a facility of a national security exchange, 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, 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 other persons. The complaint alleges that Smithey participated in private securities transactions and failed to provide prior written notice

to, and receive written approval from, his member firm. The complaint also alleges that Smithey failed to respond to NASD requests for information.
(NASD Case #E022004050201)

Individuals Barred Pursuant to NASD Rule 9552(h)

John Delgado (a.k.a Yonatan Delgado)
Staten Island, New York
(April 18, 2006)

Ronni Lee Fine-Abramowitz
Roselle, Illinois
(April 17, 2006)

Michael Ross Turner
Manteca, California
(April 4, 2006)

Saleem Zamindar
San Francisco, California
(April 4, 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.)

Joseph John Bieniek
Chicago, Illinois
(April 3, 2006)

Stephane Jacques Coupleux
New York, New York
(April 3, 2006)

Coleman James Flaherty, III
South Boston, Massachusetts
(April 24, 2006)

Anthony Graham Gilchrist
Providence, Rhode Island
(April 12, 2006)

Angel Ann Huzarski
Center Line, Michigan
(April 10, 2006)

Peter Anthony Mazzara
Chicago, Illinois
(April 19, 2006)

Maria D. Roldan
Coconut Creek, Florida
(April 25, 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.)

John Delacruz Barcarse
San Diego, California
(April 27, 2006)

Michael Samuel Bell
Boca Roton, Florida
(April 18, 2006)

Randy Lee Beltramea
Mt. Vernon, Iowa
(April 25, 2006)

Kathy Ann Bowling
Midland, Texas
(April 17, 2006)

Charles Keith Byington
Oldsmar, Florida
(April 10, 2006)

Christopher Edward Chen
Phoenix, Arizona
(April 26, 2006)

Luther Carl Cooper
New York, New York
(April 18, 2006)

Patrick T. Egan
Tinley Park, Illinois
(April 26, 2006)

Scott Joseph Egan
Coconut Creek, Florida
(April 27, 2006)

Thomas William Fox
Greensboro, Pennsylvania
(April 4, 2006)

Thomas Anthony Gallo

Shrewsbury, New Jersey
(April 11, 2006)

Victor David Greco

Hoffman Estates, Illinois & Houston, Texas
(April 26, 2006)

James Dale Green, Jr.

San Diego, California
(April 27, 2006)

William Henry Harris, Jr.

Phoenix, Arizona
(March 30, 2006 to April 4, 2006)

John Wade Howard, III

Smyrna, Georgia
(April 18, 2006)

Chad James Johnson

Dallas, Texas
(April 26, 2006)

David Aaron Jones

Chandler, Arizona
(April 18, 2006 to April 25, 2006)

Jay Moore Kim

Las Vegas, Nevada
(April 18, 2006)

John William Laurienti

Rancho Santa Fe, California
(April 27, 2006)

Carla Susan Mannes

Mesa, Arizona
(April 19, 2006)

Bryan Christopher Marion

Dallas, Texas
(April 26, 2006)

Scott Jonathan McKay Wolas aka Allen Lee Hengst

Orlando, Florida
(April 26, 2006)

Anssy Akhabue Okoebor

Ladera Ranch, California
(April 18, 2006)

Mauro Jose Padilla

San Antonio, Texas
(March 21, 2006)

Stan Paul Parks

Batavia, Illinois
(April 26, 2006)

Scott Allen Rackley

Plano, Texas
(April 26, 2006)

Mark Charles Scharbo

New York, New York
(April 27, 2006)

Robert F Tassinari, Jr.

Oldfield, New York
(April 17, 2006)

Michael Edward Tierney

New York, New York
(April 20, 2006 to April 25, 2006, NASD Arbitration Case #02-02300)
(April 20, 2006 to April 25, 2006, NASD Arbitration Case #03-01092)

Gregory Dubois Walker

San Diego, California
(April 27, 2006)

NASD Fines AIG Affiliate American General Securities, Inc. over \$1.1 Million for Directed Brokerage Violations

NASD has fined American General Securities, Inc. (AGSI), a member company of American International Group, Inc. (AIG) in Houston, TX, more than \$1.1 million in connection with its receipt of directed brokerage in return for providing preferential treatment to certain mutual fund companies and for other violations.

The action involves violations of NASD's Anti-Reciprocal Rule, which prohibits firms from favoring the sale of shares of particular 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.

"NASD remains committed to ensuring that firms comply with our rules in connection with the marketing and sale of mutual fund shares," said NASD Executive Vice President and Head of Enforcement James Shorris. "The Anti-Reciprocal Rule is designed to ensure that firms recommend mutual funds on their merits and not because of the receipt of brokerage commissions, which are assets of the mutual fund shareholders and should not be used for marketing purposes."

NASD found that from January 2002 through September 2003, AGSI operated a shelf space (or revenue sharing) program in which participating mutual fund companies paid a fee in return for preferential treatment by AGSI. That treatment included enhanced access to AGSI's sales force, including being identified as a "Preferred Product Sponsor" on AGSI's internal Web site, being featured in AGSI internal marketing publications distributed to its sales force, and participating in AGSI's "top producer" or training meetings.

The benefits provided by the shelf space program were offered to only 12 mutual fund complexes during the relevant period. These fund companies paid extra fees for the preferential treatment they received. Three of the 12 fund complexes paid their fees for participating in the shelf space program by directing approximately \$2.7 million in mutual fund portfolio brokerage commissions to AGSI. This 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. The remaining nine fund complexes paid their fees in cash for participation in the program.

NASD also found that from July 2003 through September 2003, AGSI failed to promptly forward more than 2,100 customer checks that it had received in connection with certain mutual fund and variable annuity transactions; that from November 2001 through September 2003, AGSI failed to maintain electronic communications in violation of the books and records provisions of the federal securities laws and NASD rules; and, that it failed to establish and maintain a supervisory system and procedures that were reasonably designed to detect and prevent these violations.

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

NASD has brought 30 previous actions for similar violations, including actions against six firms that are wholly owned subsidiaries of AIG Advisor Group, Inc, also an AIG-owned company.

NASD Charges A.B. Watley and Former Brokers With Facilitating Mutual Fund Late Trading and Market Timing for Hedge Funds

Firm's President and Executive Vice President Charged with Supervisory Failures

NASD has filed a complaint against A.B. Watley Direct, Inc. (ABW Direct) of New York, and its former registered representatives, Robert Conway and Kenneth Ng, charging them with facilitating late trading and improper market timing of mutual funds on behalf of hedge fund clients.

NASD also charged ABW Direct's President, Robert Malin, and Executive Vice President, Linus Nwaigwe, with supervisory lapses. Conway and Ng were brokers registered with both ABW Direct and A.B. Watley, Inc. (ABW Inc.). ABW Inc. is an affiliated entity that was formerly a registered broker-dealer, but was expelled by NASD in 2004 for failure to pay fines levied in prior disciplinary actions. Both ABW Direct and ABW Inc. are subsidiaries of A.B. Watley Group, Inc. (ABW Group), a publicly traded company.

"Market timing in violation of a mutual fund's limitations and late trading of fund shares are both unethical and harmful to fund shareholders," said James S. Shorris, NASD Executive Vice President and Head of Enforcement. "Firms cannot enrich a few favored customers at the expense of a fund's long-term shareholders."

In its complaint, NASD charged that from approximately July 2002 until September 2003, Conway and his assistant Ng facilitated late trading. Late trading is the unlawful practice of placing mutual fund orders after the fund has calculated its daily net asset value (NAV)—typically at 4 p.m. EST—but receiving the price based upon that earlier, 4 p.m. calculation. Firms accepting mutual fund orders after the 4 p.m. NAV calculation are supposed to execute them at the following day's NAV in accordance with the Securities and Exchange Commission's "forward pricing rule."

The complaint alleges that Conway and Ng utilized a computerized trading platform that enabled them to enter orders on behalf of ABW Direct and ABW Inc. clients for at least an hour after the 4 p.m. market close without observing the forward pricing requirements. The brokers' hedge fund customers would send emails or faxes containing "indications of interest" in proposed mutual fund transactions that the hedge funds might or might not execute that day. The "indications of interest," however were not the customers' actual orders. Subsequent to sending the "indication of interest," the customers would telephone Conway and Ng and verbally instruct them which of the "indications of interest" to enter as actual orders. In at least 243 transactions at ABW Direct and ABW Inc., Conway and Ng entered transactions after 4 p.m. where emails show that the "indications of interest" were also not received until after 4 p.m., after the funds' NAVs had been calculated.

The complaint further charges that ABW Direct and ABW Inc. failed to maintain required books and records for mutual fund transactions. The firms did not record the time that they received customer orders for the transactions, thus leaving open the possibility that Conway and Ng engaged in late trading in thousands of additional transactions where records showed that Conway and Ng entered orders after 4 p.m.

In addition to the problems regarding late trading, the complaint alleges that during the period of July 2002 to September 2003, Conway and Ng also helped their clients engage in deceptive market timing. Conway and Ng systematically disregarded "block letters" and other directives from mutual fund companies (and from the clearing firm for ABW Direct and ABW Inc.) that restricted the hedge fund clients' market timing trades. NASD charged that in at least 405 instances, Conway and Ng submitted transactions through accounts at ABW Direct and ABW Inc. where they either knew or should have known that the transactions were in violation of funds' restrictions on market timing.

To facilitate the impermissible market timing, the complaint alleges that Conway and Ng helped clients set up multiple accounts, utilizing different names and even different branch codes in an effort to conceal the clients' efforts to evade market timing restrictions; opened multiple accounts for one client at both ABW Direct and ABW Inc. in an effort to conceal the client's

identity; and ignored a directive from ABW Direct's and ABW Inc.'s clearing firm that the firms cease trading in international mutual funds until they had provided a written commitment to the clearing firm that they would abide by mutual fund prospectus trading limitations.

NASD charged that Conway and Ng's misconduct could not have occurred without the supervisory lapses by Nwaigwe and Malin. Nwaigwe is the Chief of Compliance of ABW Direct and also held that position at ABW Inc. Nwaigwe is charged with having failed to perform supervisory duties delegated to him that should have led him to discover the wrongful activity. For example, Nwaigwe did not review Conway's and Ng's incoming and outgoing correspondence and emails and, as a result, never saw the communications from the mutual fund companies and the firms' clearing firm complaining about impermissible market timing. Nwaigwe was also the person with responsibility for updating ABW Direct's and ABW Inc.'s written procedures, and NASD charged that he failed to include procedures designed to prevent late trading and impermissible market timing.

Malin is the President of ABW Direct and held that position at ABW Inc. He is charged with having failed to take reasonable steps to ensure that Nwaigwe was performing supervisory functions assigned to him.

NASD Hearing Panel Suspends, Fines Former GunnAllen Broker for Threatening Public Company Broker Intimidated Company by Threatening to Drive Down Stock Price

An NASD hearing panel has suspended former stock-broker Shawn Aaron for two years and fined him \$50,000 for threatening and intimidating Optelecom-NKF, Inc. (OPTC), a NASDAQ SmallCap company, while he was registered with GunnAllen Financial, Inc., of Tampa, FL. NASD charged that Aaron engaged in a scheme to defraud and extort OPTC by threatening to drive down the price of its stock from \$13 to \$6 per share unless it provided him with confidential business information.

The hearing panel found that Aaron purchased 5,180 shares of OPTC for his own account and another 134,540 shares for 54 of his customers in early April 2004. By mid-April, Aaron and his clients together held 139,720 shares, or about 4 percent of OPTC's outstanding shares. On April 16, 2004, Aaron left a voicemail with OPTC's Chairman and CEO stating that he owned 10 percent of the company's stock and that he wanted to talk to him about taking the stock to "the next level."

On April 19, 2004, Aaron talked to OPTC's investor liaison consultant. Aaron again claimed that he owned 10 percent of the company, or about 300,000 shares. Aaron asked OPTC's investor liaison consultant for reasons to keep buying OPTC. Otherwise, Aaron stated, he "could drive the stock down to six bucks if I dumped 300,000 shares on the market, unless you have institutions lined up." Aaron boasted that he was GunnAllen's top producer and claimed to have a special relationship with its president, with whom he shared his "best ideas" about promoting stocks. Aaron also claimed he was instrumental in increasing the stock prices of at least two other publicly traded companies.

The hearing panel concluded that Aaron made material misrepresentations and threatened OPTC, and that these "misrepresentations, threats, and intimidation plainly overstepped the bounds" of permissible behavior, violating NASD rules requiring brokers to observe high standards of commercial honor and just and equitable principles of trade. In arriving at its sanctions, the hearing panel noted that Aaron's conduct was intentional, was for the purpose of some monetary

or other gain, and that he did not take responsibility for his actions. It also noted that in 1999, Aaron agreed to withdraw his registration in Massachusetts and not re-apply for 25 years to resolve the state regulator's charges that he "used high pressure sales tactics, did not disclose material facts and made false and misleading statements" to investors to sell speculative stocks.

Optelecom-NKF is a Germantown, MD-based company that designs and manufactures communications products that transport data, video and audio over the Internet and fiber optic cables.

Because the hearing panel's decision was not appealed, the decision is now final and the sanctions the panel imposed have taken effect. Aaron's two-year suspension will continue through April 18, 2008.