

## Disciplinary and Other NASD Actions

### REPORTED FOR SEPTEMBER

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 August 2006.

### Firms Fined, Individuals Sanctioned

**Davrey Financial Services, Inc. (CRD #38914, Tacoma, Washington) and Pravin Roy Davrey (CRD #2243197, Registered Principal, Tacoma, Washington).** The firm was censured and fined \$35,000, and the firm and Davrey are required to submit all of the firm's proposed advertising to NASD's Advertising Regulation Department for pre-use approval for two years. Pravin Davrey was suspended from association with any NASD member in a financial and operations principal (FINOP), general securities and registered representative capacities for two years, and must requalify by exam as a FINOP and general securities principal. The suspensions shall run concurrently. The United States Securities and Exchange Commission (SEC) sustained the National Adjudicatory Council's (NAC) decision following an appeal. The sanctions were based on findings that the firm, acting through Davrey, failed to maintain accurate books and records, and engaged in a securities business when the firm did not meet its minimum net capital requirement. The findings stated that the firm, acting through Davrey, made exaggerated, unwarranted and misleading statements in its television advertisement and failed to submit a script, outline, list of questions or other material used in the preparation of the TV advertisement, or any portion thereof, to the NASD Advertising Regulation Department for approval at least 10 days prior to its use. The findings also stated that the firm, acting through Davrey, did not include a warning in the TV advertisement to the effect that options are not suitable for all investors, portions of statement of risks were not reflected, failed to state the name and address of a person from whom a current options disclosure document might be obtained, and used a projected performance figure in portions of the TV options advertisement.

The suspensions are in effect from February 6, 2006 through February 5, 2008. (NASD Case #C3B20020015)

**Great American Investors, Inc. (CRD #28489, Overland Park, Kansas) and David Kennedy Richards (CRD #375518, Registered Principal, Shawnee Mission, Kansas)** submitted a Letter of

Acceptance, Waiver and Consent in which they were fined \$12,500, jointly and severally, and Richards was suspended from association with any NASD member in any supervisory capacity for 30 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 Richards, failed to adequately supervise a registered representative by allowing him to trade excessively in a public customer's account when Richards knew, or should have known, that these transactions were unsuitable for the customer. The findings stated that the firm, acting through Richards, failed to make and maintain a memorandum of each transaction in the form that the SEC and NASD required.

The suspension in any supervisory capacity is in effect from August 21, 2006 through September 19, 2006. (NASD Case #E0420030367-02)

**Peyton, Chandler & Sullivan, Inc. (CRD #113517, Roseville, California) and Richard Scott From (CRD #703869, Registered Principal, Rocklin, California)** submitted a Letter of Acceptance, Waiver and Consent in which they were censured and fined \$10,000, jointly and severally. From was suspended from association with any NASD member in a principal capacity for 10 business days. Without admitting or denying the findings, the firm and From consented to the described sanctions and to the entry of findings that the firm, acting through From, conducted a securities business while failing to maintain the required minimum net capital.

The suspension in a principal capacity is in effect from September 5, 2006 through September 18, 2006. (NASD Case #20050011549-01)

**Sands Brothers & Co., Ltd. (CRD# 26816, New York, New York) and Steven Brett Sands (CRD #730742, Registered Principal, Locust Valley, New York)** submitted an Offer of Settlement in which the firm was censured and fined \$150,000, \$100,000 of which was assessed jointly and severally with Sands. Sands was also suspended from association with any NASD member in a principal capacity for 60 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Sands, failed to file a continuing membership application with NASD seeking approval for the transfer of customer accounts and

registered representatives to another firm Sands had founded. The findings stated that the firm, acting through Sands, permitted an individual to engage in the firm's investment banking and securities business without the benefit of registration. The findings also stated that Sands failed to disclose a material fact on his Uniform Application for Securities Industry Registration or Transfer (Form U4).

The suspension in a principal capacity is in effect from August 21, 2006 through October 19, 2006. (NASD Case # E102004106801)

## Firms and Individuals Fined

**Cambridge Legacy Securities, LLC (CRD #103722, Dallas, Texas) and Oran Ben Carroll (CRD #1295071, Registered Principal, Granbury, Texas)** submitted a Letter of Acceptance, Waiver and Consent in which they were censured and fined \$10,000, jointly and severally. Without admitting or denying the findings, the firm and Carroll consented to the described sanctions and to the entry of findings that the firm, acting through Carroll, commenced a best efforts, "minimum-maximum" offering an affiliated company conducted, and failed to deposit the checks the first two public customers sent into a bank escrow account, and held the funds for a period of time before transferring them to an escrow account. The findings stated that the firm, acting through Carroll, held customers' funds by virtue of its failing to place the funds raised in the offering into a *bona fide* escrow account and instead, deposited the funds into an account on which Carroll had signature authority. The findings also stated that the firm, acting through Carroll, conducted a securities business while failing to maintain its required minimum net capital. (NASD Case #E062005004001)

**GFI Securities LLC (CRD #19982, New York, New York) and Donald Patrick Fewer (CRD #1415123, Registered Principal, Staten Island, New York)** submitted a Letter of Acceptance, Waiver and Consent in which they were censured and fined \$30,000, jointly and severally, and the firm was fined an additional \$7,500. Without admitting or denying the findings, the firm and Fewer consented to the described sanctions and to the entry of findings that the firm failed to report required yield information for corporate bond transactions eligible for Trade Reporting and Compliance

Engine (TRACE) reporting. The findings stated that the firm, acting through Fewer, permitted an individual to act in a capacity requiring registration with NASD when the individual was not registered in any capacity. (NASD Case #E102005015602)

**The Dratel Group, Inc. (CRD #8049, East Hampton, New York) and William Marshall Dratel (CRD #843025, Registered Principal, East Hampton, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm and Dratel were censured and fined \$15,000, jointly and severally. Without admitting or denying the findings, the firm and Dratel consented to the described sanctions and to the entry of findings that the firm, acting through Dratel, failed to timely report statistical and summary information regarding a settlement with a public customer to NASD. The findings stated that the firm failed to timely amend Dratel's Form U4 to disclose a material fact. The findings also stated that the firm, acting through Dratel, failed to timely obtain an opinion of counsel concerning a lawsuit asserting a claim that could have had a material impact on the firm's net capital, failed to include the claim in the calculation of aggregate indebtedness and failed to timely notify the SEC or NASD of the deficiencies. (NASD Case #2005001123301)

## **Firms Fined**

**A.C.R. Securities, Inc. (CRD #43645, Cedarhurst, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$10,000 and required to certify to NASD that the firm has reviewed its procedures regarding email retention and has established systems and procedures reasonably designed to achieve compliance with the laws, regulations and rules concerning the retention of electronic mail communications. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that the firm did not have a system to retain electronic communications the firm or its registered representative sent or received, and failed to preserve copies of electronic communications relating to its business sent or received by the firm or its registered representative. (NASD Case #2006003890001)

**A.G. Edwards & Sons, Inc. (CRD #4 St. Louis, Missouri)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$125,000 and ordered to pay \$17,017.50, plus interest, in restitution to public customers. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions. The findings stated that the firm failed to establish, maintain and enforce written procedures for its fixed income department and supervise its associated persons' activities that were reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning best execution of debt securities. The findings also stated that the firm failed to register individuals as the firm's principals when each was actively engaged in the management of its securities business as supervisors. (NASD Case #20050001631-02)

**Aegis Capital Corp. (CRD #15007, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$50,000 and required to revise its supervisory procedures regarding registration and qualifications, limit order display, limit order protection, best execution, SEC Rules 11Ac1-5 and 11Ac1-6, anti-intimidation/coordination, trade reporting, affirmative determination, bid test compliance, firm quote compliance, the Order Audit Trail System<sup>SM</sup> (OATS<sup>SM</sup>), books and records, order handling and execution, sale transactions, other trading rules and rules relating to Chinese walls. 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 order was at a price that would have improved its bid or offer in each security, or when the order was priced equal to the firm's bid or offer in each security; or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each 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 the correct symbol indicating

whether the firm executed transactions in eligible securities in a principal or agency capacity to the Automated Confirmation Transaction Service<sup>SM</sup> (ACT<sup>SM</sup>) (now known as the NASDAQ Market Center). The findings also stated that the firm failed to report the correct symbol indicating whether the transaction was a "buy," "sell," "sell short," "sell short exempt" or "cross" in last sale reports of transactions and the correct number of shares in last sale reports in OTC Equity transactions through ACT; and incorrectly reported the first and second legs of "riskless" principal transactions in Over-the-Counter (OTC) Equity securities to ACT and the NASDAQ Market Center, because the firm incorrectly designated the capacity of the transactions as principal or agent. The findings also included that the firm failed to submit required order information to OATS, and transmitted a report to OATS that failed to match a NASDAQ Market Center trade report.

NASD found that the firm failed to provide written notification disclosing to its customers that transactions were executed at an average price. NASD also found that the firm made a report on its routing of non-directed orders in covered securities publicly available that included incorrect information as to the identity of the venues to which non-directed orders for NASDAQ securities were routed for execution and the percentages of total non-directed orders for NASDAQ securities routed to the venues. In addition, NASD determined that the firm failed to show the terms and conditions, the entry time and the correct execution time (or any execution time) on brokerage order memoranda; failed to make and keep a copy of the confirmation of the sale of securities for a customer's account; and failed to show the contra side executing broker on brokerage order memoranda. Moreover, NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning registration and qualifications, limit order display, limit order protection, best execution, SEC Rules 11Ac1-5 and 11Ac1-6, anti-intimidation/coordination, trade reporting, affirmative determination, bid test compliance, firm quote compliance, OATS, books and records, order handling and execution, best execution, sale transactions, other trading rules and rules relating to Chinese walls. (NASD Case #20042000170-01)

**Archipelago Securities L.L.C. (CRD #102500, Chicago, Illinois)** 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 OATS that contained inaccurate, incomplete or improperly formatted data, in that the reports failed to match the related order reports submitted to SuperMontage or SelectNet. (NASD Case #20050000137-01)

**B-Trade Services, LLC (CRD #41262, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$20,000 and required to revise its written supervisory procedures regarding firm quote compliance. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to execute orders to buy or sell securities for the purpose of SEC Rule 11Ac1-1 presented to it by another broker or dealer at a price at least as favorable to the buyer or seller as the firm's published bid or offer in any amount up to its published quotation size. The findings stated that the firm failed to execute transactions for at least a normal unit trading at its displayed quotation as disseminated in the NASDAQ Stock Market at the time of receipt of any such offer. The findings also stated that the firm made offers to buy or sell a security at a stated price without purchasing or selling at the price and under the conditions as stated at the time of the offer to buy or sell. The findings also included that the firm's conduct was the result of its failure to properly enable a broker-dealer's acronym for access to the firm through the NASDAQ Stock Market's SuperMontage system. NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning firm quote compliance. (NASD Case #20050016956-01)

**Bear, Stearns & Co., Inc. (CRD #79, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$42,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report to the NASDAQ Market Center the correct symbol indicating whether it executed transactions in eligible securities in a principal, riskless principal or agency capacity. The

findings stated that the firm failed to report to the NASDAQ Market Center the correct symbol indicating whether the transaction was a "buy," "sell," "sell short," "sell short exempt" or "cross" for a transaction in eligible securities, and failed to report the contra side executing broker in transactions in eligible securities. The findings also stated that the firm failed to report the correct number of shares through the NASDAQ Market Center in a last sale report of a transaction in an eligible security and executed proprietary short sales in listed securities at a price that was below the security's last sale price. The findings also included that the firm failed, within 90 seconds after execution, to transmit last sale reports of transactions in OTC Equity securities to the NASDAQ Market Center and failed to designate such last sale reports as late. NASD found that the firm incorrectly designated last sale reports of transactions in OTC equity securities executed during normal market hours as ".T" through the NASDAQ Market Center, and failed, within 90 seconds after execution, to transmit last sale reports of transactions in CQS securities through NASDAQ Market Center. (NASD Case #20042000210-01)

**Bishop, Rosen & Co., Inc. (CRD #1248, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$12,000 and required to revise its written supervisory procedures concerning trade reporting. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to accept or decline transactions in eligible securities in the NASDAQ Market Center within 20 minutes after execution. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws, regulations and NASD rules concerning trade reporting. (NASD Case #20050002661-01)

**Citigroup Global Markets Inc. (CRD #7059, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$350,000 and required to undertake a comprehensive review of its disclosure in its technical and quantitative (tech/quant) research reports. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to include in its tech/quant research reports whether the firm or the analyst had an ownership

interest in the company, had a material conflict of interest, received income from investment banking transactions with the company, whether the analyst or a member of his household held a position as officer or director or whether the firm acted as a market maker for the stock. The findings also stated that none of the firm's tech/quant research reports included a description of the ratings used, a distribution of the ratings or a price chart illustrating closing prices for particular stocks. NASD found that the firm failed to establish and maintain a supervisory system reasonably designed to detect and prevent the firm's violations of Rule 2711(h) and failed to implement the Rule in a timely manner. (NASD Case #2005000792101)

**Commerce One Financial Inc. (CRD #100340, Westbury, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$19,250. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to timely file Uniform Termination Notices for Securities Industry Registration (Forms U5). The findings stated that the firm failed to timely report statistical and summary information relating to customer complaints to NASD. The findings also stated that equity transactions the firm executed revealed that order tickets did not reflect the order entry time, were not maintained by the firm and did not reflect the order execution time. (NASD Case #ELI2005000401)

**Credit Suisse Securities (USA) LLC (CRD #816, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$225,000, and required to review a meaningful sample of its research reports, and describe the methodology used to review this sample of reports and certify in writing to NASD that the firm is in compliance with NASD Rules 2711(h)(7) and 2711(h)(10) with respect to such sample, including the requirement that price target valuation methods and risks that might impede achievement of the price target be disclosed in a clear, comprehensive and prominent manner. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it published research reports that failed to clearly and prominently disclose the valuation methods used to determine price target valuation methods and the risks that might impede achievement of the price target. The findings stated that the firm's disclosures concerning

risks that might impede achievement of the price target were comparably deficient. The findings also stated that the firm failed to establish, maintain and enforce its written supervisory procedures reasonably designed to ensure compliance with NASD rules concerning price target disclosures. (NASD Case #EAF0401490001)

**Feltl & Company (CRD #6905, Minneapolis, Minnesota)** 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 adopt and implement written supervisory procedures reasonably designed to achieve compliance concerning research reports. The findings stated that the firm published research reports that contained misleading statements. (NASD Case #E0420050042-02)

**Financial America Securities, Inc. (CRD #5100, Cleveland, Ohio)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$10,000 and required to revise its written supervisory procedures concerning trade reporting. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit last sale reports of transactions in OTC equity securities through the NASDAQ Market Center. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws, regulations and NASD rules concerning trade reporting. (NASD Case #20050026999-01)

**First Republic Group, LLC (CRD #39781, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$85,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to timely report TRACE-eligible customer transactions to TRACE. The findings stated that the firm inaccurately reported the execution time and incorrectly reported the yield to TRACE. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to TRACE reporting. The findings also included that the firm failed to preserve copies of all electronic mail

communications relating to its business for three years and/or maintain electronic mail in an accessible place for the first two years. NASD found that the firm did not have adequate systems or procedures in place that were reasonably designed to retain and/or make accessible electronic communications to achieve compliance with SEC and NASD rules. (NASD Case #E102004016101)

**Goldman, Sachs & Co. (CRD# 361, New York, New York)** submitted a Letter of Acceptance, Waiver and consent in which the firm was censured, fined \$50,000 and required to adopt and implement policies and procedures for compliance with MSRB Rules concerning minimum denominations. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it executed numerous trades in municipal securities below the minimum denomination, and failed to provide written disclosures to public customers as the MSRB requires. The findings stated that the firm's supervisory systems and procedures were not reasonably designed to ensure compliance with MSRB rules concerning minimum denomination restrictions and disclosure requirements. (NASD Case #2005002574201)

**Goldman, Sachs & Co. (CRD #361, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it executed proprietary short sales, failed to properly mark the order tickets as short and incorrectly reported each transaction as a long sale. The findings stated that the firm transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data. (NASD Case #20050023340-01)

**Harris Nesbitt Corp. n/k/a BMO Capital Markets Corp. (CRD #16686, New York, New York)** 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 to properly report "riskless" principal transactions to ACT. The findings stated that the firm failed to report the correct symbol indicating whether it executed transactions in eligible securities in a principal or agency capacity to the NASDAQ Market Center and failed to report the correct symbol indicating whether

the transaction was a “buy,” “sell,” “sell short,” “sell short exempt” or “cross” for transactions in eligible securities. The findings also stated that the firm incorrectly designated a last sale report of a transaction in an eligible security reported within 90 seconds of execution as “.SLD” through the NASDAQ Market Center. The findings also included that the firm failed to provide written notification disclosing to its customers that it was a market maker in each security when it acted as principal for its own account, failed to provide written notification disclosing to its customers its correct capacity in transactions and failed to provide written notification to its customers that transactions were executed at an average price. NASD found that the firm made available a report on the covered orders in national market system securities that it received for execution from any person that included incorrect information. (NASD Case #20042000208-01)

**Hold Brothers On-Line Investment Services, LLC (CRD #36816, Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$50,000 and required to revise its written supervisory procedures concerning OATS. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it transmitted Combined Order/Route Reports to OATS that contained inaccurate, incomplete or improperly formatted data, in that the reports failed to include the User Order ID and inaccurate Market Participant Identifier (MPID) symbols, and failed to timely report Reportable Order Events (ROEs) to OATS. The findings stated that the firm’s supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws, regulations and NASD rules concerning OATS. (NASD Case #20050003130-01)

**Intervest Securities Corporation (CRD #41799, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that, in connection with the recommendations to, and purchases of, public offerings by public customers, the firm failed to maintain records evidencing the basis for its suitability determinations; and for recommendations to, and purchases by, additional customers, the firm did not maintain

documentation that it had considered these customers’ investment objectives in determining suitability. (NASD Case #E102004087101)

**InTrade, LLC (CRD #104047, 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 intermittently failed to submit required information to OATS. (NASD Case #20050002091-01)

**JMP Securities, LLC (CRD #22208, San Francisco, California)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$11,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it published quotations in an OTC equity security, or directly or indirectly submitted such quotations for publication, in a quotation medium, and did not have the documentation the SEC required in its records. The findings stated that the firm failed to file a Form 211 with NASD at least three business days before its quotations were published or displayed in a quotation medium. The findings also stated that the firm’s supervisory system did not provide for supervision reasonably designed to achieve compliance with the applicable securities laws, regulations and NASD rules relating to compliance with SEC Rule 15c2-11 and NASD Rule 6740. (NASD Case #20050021280-01)

**Keating Securities, LLC (CRD #36402, Greenwood Village, Colorado)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that, in connection with work being done on the firm’s electronic mail backup system, it failed to preserve any of its internal or external email communications. (NASD Case #E3A2005001301)

**LaBranche Financial Services, Inc. (CRD #7432, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$10,000 and required to revise its written supervisory procedures regarding trade reporting. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry

of findings that it reported last sale reports of NASDAQ National Market securities through the NASDAQ Market Center it was not required to report, and improperly reported trade reports of NASDAQ National Market securities through the NASDAQ Market Center. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning trade reporting. **(NASD Case #20050000663-01)**

**Legg Mason Wood Walker, Incorporated (CRD #6555, Baltimore, Maryland)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$50,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it executed trades in municipal securities below the minimum denomination of the issues and outside the exceptions the MSRB established. The findings stated that the firm's supervisory systems and procedures were not reasonably designed to ensure compliance with MSRB rules concerning the minimum denomination restrictions and disclosure requirements. **(NASD Case #2005002113401)**

**Manhattan Beach Trading Financial Services, Inc. (CRD #30330, El Segundo, California)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data, in that the reports failed to match to a NASDAQ Market Center trade report. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with the applicable securities laws, regulations and NASD rules concerning OATS reporting. **(NASD Case #20050005989-01)**

**Morgan Stanley DW Inc. (CRD#7556, Purchase, New York)** submitted a Letter of Acceptance, Waiver and consent in which the firm was censured, fined \$50,000 and required to adopt and implement policies and procedures reasonably designed to ensure compliance with MSRB rules concerning minimum denominations. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry

of findings that it executed trades in municipal securities below the minimum denomination of the issues and outside the exemptions the MSRB established. The findings stated the firm's supervisory systems and procedures were not reasonably designed to ensure compliance with MSRB rules concerning the minimum denomination restrictions and disclosure requirements. **(NASD Case #2005002113001)**

**Neuberger Berman, LLC (CRD #2908, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$75,000 and required to review and assess the adequacy of its supervisory system and procedures concerning ensuring the accuracy of the firm's MSRB reporting for compliance with NASD rules and federal securities laws and regulations, and staffing and resources for ensuring the accuracy of its MSRB reporting. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that, under its MPID symbol "NBLB," through its broker-dealer affiliate, it reported municipal securities agency transactions to the MSRB as principal transactions, failed to report the yield for any of the transactions and reported the transactions with the wrong "buy" and "sell" indicators. The findings stated that the firm, through a clearing firm, reported municipal securities agency transactions that had been executed under the MPID symbol "NBLB" as having been executed under another MPID symbol. The findings also stated that the firm failed to establish written supervisory procedures reasonably designed to achieve compliance with MSRB rules concerning trade reporting. **(NASD Case #E102004030401)**

**Orion Securities, (USA) Inc. (CRD #38108, Toronto, Canada)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$10,000 and required to revise its written supervisory procedures concerning SEC Rule 606 disclosures. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to make a report on its routing of non-directed orders in covered securities publicly available for a period of time. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with the applicable securities laws, regulations and NASD rules concerning SEC Rule 606 disclosures. **(NASD Case #20050033922-01)**



**RBC Dain Rauscher, Inc. (CRD #31194, Minneapolis, Minnesota)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to submit required information for reporting members to OATS. (NASD Case #20050004427-01)

**Reliant Trading (CRD #32496, St. Francis, Wisconsin)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report municipal transactions to the MSRB. The findings stated that the firm effected transactions in debt securities and failed to report them to TRACE. The findings also stated that the firm failed to establish, maintain and enforce adequate written supervisory procedures reasonably designed to achieve compliance with applicable NASD rules related to TRACE reporting. (NASD Case #E8A2005017201)

**Stoeber, Glass & Company, Inc. (CRD #7031, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$15,000 and required to revise the firm's written supervisory procedures regarding TRACE reporting. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report transactions in TRACE-eligible securities executed on a business day during TRACE system hours to TRACE within 45 minutes of the execution time. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws, regulations and NASD rules concerning TRACE reporting. (NASD Case #20050001795-01)

**UVEST Financial Services Group, Inc. (CRD #13787, Charlotte, North Carolina)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report transactions in TRACE-eligible securities executed on a business day during TRACE system hours to TRACE within 30 minutes of the execution time. The findings stated that the firm double-reported

transactions in TRACE-eligible securities and transactions to TRACE that it was not required to report. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with the applicable securities laws, regulations and NASD rules concerning TRACE reporting. (NASD Case #20050004550-01)

**W.G. Nielsen & Co. (CRD #41093, Denver, Colorado)** 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 implement its anti-money laundering (AML) compliance program when dealing with investors purchasing interests in private placements through the firm, in that it did not verify the investors' identities as the joint Treasury-SEC rules pertaining to customer identification programs requires. (NASD Case #E3A20050033-01)

## Individuals Barred or Suspended

**Richard Henry Angelotti (CRD #2352882, Registered Representative, Sarasota, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the findings, Angelotti consented to the described sanctions and to the entry of findings that he participated in an outside business activity, for compensation, and engaged in private securities transactions without providing his member firm with prompt written notice.

The suspension in any capacity is in effect from August 7, 2006 through November 6, 2006. (NASD Case #E072004089701)

**Gary Steven Artzt (CRD #2009945, Registered Principal, Marbella, Spain)** submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 45 days. Without admitting or denying the allegations, Artzt consented to the described sanctions and to the entry of findings that he failed to ensure that his member firm timely and completely complied with the undertakings specified in a previous Letter of Acceptance, Waiver and Consent.

The suspension in any capacity is in effect from September 5, 2006 through October 19, 2006. (NASD Case #E102004103701)

**Elias Emile Ashooh (CRD #867625, Registered Principal, Manchester, New Hampshire)** was barred from association with any NASD member in any capacity and ordered to pay \$13,900, plus interest, in restitution to a public customer. The sanctions were based on findings that Ashooh borrowed \$13,900 from a public customer despite his member firm's written supervisory procedures prohibiting such conduct. The findings stated that Ashooh attempted to borrow an additional \$10,750 from the customer, but his member firm did not process the customer's request. The findings also stated that Ashooh falsely certified to his member firm that he had no outstanding loans or other financial dealings with customers. (NASD Case #2005000923801)

**Daniel Forrest Barrett (CRD #1789580, Registered Representative, Irving, Texas)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Barrett failed to respond to NASD requests to appear for an on-the-record testimony. The findings stated that Barrett recommended and effected unsuitable transactions in a public customer's account. The findings also stated that Barrett should have known the recommendation was unsuitable in light of the customer's age, financial status, investment objective and risk tolerance. (NASD Case #E062003043403)

**Cathy Louise Biehl (CRD #1415634, Registered Representative, Yakima, Washington)** submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$8,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Biehl reassociates with any NASD member following the suspension, or before she requests relief from any statutory disqualification. Without admitting or denying the findings, Biehl consented to the described sanctions and to the entry of findings that she photocopied signatures onto account-related documents for public customers without the customers' authorization, knowledge or consent.

The suspension in any capacity is in effect from August 21, 2006 through February 20, 2007. (NASD Case #2005002294701)

**Chekelea Fikira Brazelton (CRD #5053255, Associated Person, Minneapolis, Minnesota)** 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, Brazelton consented to the described sanction and to the entry of findings that, while taking the Series 6 examination, she took a piece of paper containing written formulae into her testing session and transferred the written formulae from the piece of paper to scratch paper the testing center distributed. (NASD Case #20050033691-01)

**Nesil Caliskanalp (CRD #4923941, Associated Person, Scottsdale, Arizona)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Caliskanalp willfully failed to disclose material information on his Form U4. The findings stated that Caliskanalp failed to respond to NASD requests for information. (NASD Case #20050015978-01)

**Brandon John Cook (CRD# 2446836, Registered Representative, Reston, Virginia)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Cook consented to the described sanction and to the entry of findings that without a public customer's knowledge or authorization, he caused checks to be issued to the customer drawn against her securities account, forged her endorsement on the checks or caused her endorsement to be forged on them, negotiated the checks, caused the funds to be wired out of the customer's account to an account he controlled at another institution and used them for his own benefit. The findings stated that Cook failed to respond to NASD requests to provide information and appear for testimony. (NASD Case #2005003206201)

**Willie Lee Cotton, III (CRD #4792022, Registered Representative, Cincinnati, Ohio)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. The fine must be paid before Cotton reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Cotton consented to the described sanctions and to the entry

of findings that he failed to timely amend his Form U4 to disclose material information.

The suspension in any capacity is in effect from September 5, 2006 through September 18, 2006. (NASD Case #2005001922601)

**Thomas James Czarnik (CRD #1576079, Registered Representative, Niles, 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 30 days. Without admitting or denying the findings, Czarnik 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 suspension in any capacity is in effect from September 5, 2006 through October 4, 2006. (NASD Case #E8A2004084701)

**Nancy Gold D'Anna (CRD #2889646, Registered Representative, Tuckahoe, New York)** 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 30 days. Without admitting or denying the findings, D'Anna consented to the described sanctions and to the entry of findings that she signed public customers' names to account-related documents without their knowledge or authorization.

The suspension in any capacity is in effect from September 5, 2006 through October 4, 2006. (NASD Case #2005002485302)

**Leonard Levite Daigle (CRD #2722527, Registered Representative, Grand Rapids, Minnesota)** submitted a Letter of Acceptance, Waiver and Consent in which he was suspended from association with any NASD member in any capacity for six months. In light of Daigle's financial status, no monetary sanction was imposed. Without admitting or denying the findings, Daigle consented to the described sanction and to the entry of findings that he engaged in private securities transactions and failed to provide his member firm with detailed written notice of the transactions and his proposed role therein, and without receiving prior written approval from his member firm to engage in the transactions.

The suspension in any capacity is in effect from September 5, 2006 through March 4, 2007. (NASD Case #20050001401-01)

**Miguel Angel Davilla (CRD #4621198, Registered Representative, Oviedo, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Davilla consented to the described sanction and to the entry of findings that, in order to earn production credits so that he could attend an upcoming sales meeting, he prepared Insurance Cover Memos and Allotment Authorization forms for public customers, falsely represented to his member firm that the customers wanted to buy insurance and forwarded the documents to his firm for processing without the customers' authorization. (NASD Case #2005002588901)

**Glen Steven Davis (CRD #1070334, Registered Principal, Portland, Oregon)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$25,000 and suspended from association with any NASD member in any supervisory or principal capacity for 23 business days. Without admitting or denying the findings, Davis consented to the described sanctions and to the entry of findings that he approved new broker codes for brokers when, in fact, he knew that the brokers were engaging in extensive market-timing activity. The findings stated that Davis did not monitor the brokers' activity to ensure that they did not use the new broker codes for illicit market-timing. The findings also stated that the brokers used these broker codes for the purpose of evading potential monitoring by mutual fund companies to detect and prevent market-timing.

The suspension in any supervisory or principal capacity was in effect from August 7, 2006 through September 7, 2006. (NASD Case #EAF0400370004)

**Frank Paul Eisele (CRD #76516, Registered Representative, Bronx, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Eisele consented to the described sanction and to the entry of findings that he willfully failed to disclose material information on his Form U4. (NASD Case #2005002670601)

**Steven Emil Ennis (CRD #4415429, Registered Representative, Blaine, 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 one year. The fine must be paid before Ennis reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Ennis consented to the described sanctions and to the entry of findings that he forged a public customer's signature on a new account form and submitted it to his member firm. The findings stated that, when Ennis was questioned about this signature, he claimed that the customer's fiancé signed the form with her approval and impersonated the customer's fiancé over the telephone to attempt to provide verification for his claim.

The suspension in any capacity is in effect from August 21, 2006 through August 20, 2007. (NASD Case #20050033860-01)

**David Kristian Evansen (CRD #1579910, Registered Representative, Boca Raton, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000, suspended from association with any NASD member in any capacity for 30 business days and ordered to pay \$810, plus interest, in restitution to the parties involved in the cited transactions. Without admitting or denying the findings, Evansen consented to the described sanctions and to the entry of findings that he knowingly and intentionally entered priced limit orders for a contract in separate options for his account into his former member firm's systems that were routed to an International Securities Exchange (ISE) Electronic Access Member at prices he knew, or should have known, would improve the ISE best offer (ISE BBO) in the options, in that the full price and size of the orders would be reflected in the public quotation system as the best prices and sizes at which a market participant was willing to sell the options. The findings stated that the one-contract orders at the improved inside offer caused the primary market maker on the ISE in each option to lower its offer to the improved inside offer for nine contracts, creating an inside offer at the price of Evansen's one contract for a total of 10 contracts for which he entered orders to buy the contracts when he knew, or should have known, that they would be executed at the improved ISE BBO. The findings also

stated that Evansen would not have been able to buy the options at the lower prices if he had not entered the priced limit orders. The findings also included that after Evansen received the executions of the order that he had entered for his trading account at the firm, the ISE BBO returned to a higher offer. Evansen bought several options in this manner numerous times, therefore he obtained a financial benefit of \$810.

The suspension in any capacity is in effect from August 21, 2006 through October 2, 2006. (NASD Case #20050000359-01)

**Lonney James Evon (CRD #4809200, Registered Representative, Coldwater, Michigan)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for two months. The fine must be paid before Evon reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Evon consented to the described sanctions and to the entry of findings that he forged a public customer's signature on his member firm's 1035/Switch letter that his member firm required before approving the transfer of assets from one mutual fund to another.

The suspension in any capacity is in effect from September 5, 2006 through November 4, 2006. (NASD Case #2005003446101)

**José Luis Fernandez (CRD #2903983, Registered Representative, South Miami, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 30 business days. The fine must be paid before Fernandez reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Fernandez consented to the described sanctions and to the entry of findings that he caused a public customer's variable annuity policy to be extended from a five-year policy to a seven-year policy without the customer's authorization, knowledge or consent.

The suspension in any capacity is in effect from August 21, 2006 through October 2, 2006. (NASD Case #2005002427001)

**David Nathaniel Garcia (CRD #1335400, Associated Person, Santa Fe, New Mexico)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Garcia received funds from public customers to be applied to the payment of insurance premiums and instead, used the cash payments for office expenses and failed to submit the checks for insurance premium payments. The findings stated that Garcia failed to respond to NASD requests for information. (NASD Case #2005000551401)

**Jennifer Lynn Glowacki (CRD #4703747, Associated Person, Philadelphia, Pennsylvania)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Glowacki failed to respond to NASD requests for information. The findings also stated that Glowacki willfully failed to disclose material information on her Form U4. (NASD Case #2005002369801)

**Jeffrey Scott Hart (CRD #2286859, Registered Representative, Holtsville, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the findings, Hart consented to the described sanctions and to the entry of findings that he failed to properly disclose an outside brokerage account held in his wife's name at another member firm over which he had discretionary trading authority.

The suspension in any capacity was effective from August 21, 2006 through September 1, 2006. (NASD Case #2005001735401)

**Charles Lowell Hedrick, Jr. (CRD #1049314, Registered Representative, Salt Lake City, Utah)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$12,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Hedrick reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Hedrick 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 written notice.

The suspension in any capacity is in effect from August 21, 2006 through February 20, 2007. (NASD Case #2005002282601)

**John Vincent Hull (CRD #252861, Registered Representative, Liberty Lake, Washington)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity and required to cooperate with NASD or any other regulator in any further investigation and hearing relating to his former member firm, including but not limited to, meeting with and being interviewed by NASD, without the need of NASD to resort to Rule 8210, and testifying at any hearing. Without admitting or denying the findings, Hull consented to the described sanctions and to the entry of findings that he engaged in a series of pre-arranged and other manipulative trades, including trades with Canadian firms. The findings stated that Hull made a market in a thinly traded pink sheet stock, and moved his quotes and traded over 7.5 million shares of the stock, at the direction of an individual barred by NASD. The findings also stated that Hull's manipulative trading of the stock contributed to an increase of over 600 percent in the inside bid price of the stock, and his trading and other conduct created the false appearance of trading volume and market interest in the stock and artificially affected the security's market price. The findings also included that as a result of this trading, Hull generated \$18,500 in his wife's IRA account. (NASD Case #2005000094002)

**Craig L. Josephberg (CRD #2709288, Registered Representative, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$15,000 and suspended from association with any NASD member in any capacity for 35 days. Without admitting or denying the findings, Josephberg consented to the described sanctions and to the entry of findings that he opened several accounts for hedge fund clients for the purpose of market-timing mutual funds. The findings stated that Josephberg received increasing numbers of account blocks and trade rejects from mutual funds that were monitoring his clients' market-timing activities for excessive market-timing. The findings also included that Josephberg, in an effort to hide from mutual funds that monitored for brokers that engaged in excessive market-timing, requested new broker codes for his market-timing account and executed trades with the new broker codes in mutual

funds that had already blocked a trade he had attempted to execute with his pre-existing broker codes. NASD found that Josephberg was able to trade for clients in funds that may have been monitoring for and may have rejected trades associated with, his pre-existing broker codes generating \$34,000 in profits for his clients. In addition, the findings stated that Josephberg processed trades in a mutual fund after that fund had blocked his broker code from placing any further trades generating \$86,000 in profits for his clients.

The suspension in any capacity is effective from August 21, 2006 through September 24, 2006. (NASD Case #EAF0400370005)

**Susan Barbara Kalla (CRD #2807573, Registered Representative, Riverside, Connecticut)** submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$30,000 and suspended from association with any NASD member as a research analyst for 30 days. Without admitting or denying the findings, Kalla consented to the described sanctions and to the entry of findings that, on numerous occasions, a member of Kalla's household effected a purchase or sale of securities issued by a company Kalla followed in their personal account in contravention of the restrictions against trading during periods before and after the issuance of a research report set forth in NASD Rule 2711(g)(2). The findings stated that some of the transactions were inconsistent with Kalla's recommendation as reflected in the most recent research report that she prepared concerning the respective company. The findings also stated that Kalla purchased and sold shares of a company's common stock in a securities account she owned individually at another member firm. Kalla's sale of that stock was inconsistent with the recommendation reflected in her published research report. The findings also included that Kalla prepared research reports that failed to disclose that a member of her household owned shares of the company's common stock. In addition, the findings stated that Kalla maintained a personal securities account at two other NASD member firms and failed to promptly notify those firms in writing of her association with her member firm, and failed to promptly notify her member firm in writing about a personal securities account she maintained.

The suspension as a research analyst is in effect from September 4, 2006 through October 3, 2006. (NASD Case #E9A2005004701)

**Jonathan Edward Kruse, Sr. (CRD #862563, Registered Representative, Oak Harbor, Washington)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$25,750, which includes disgorgement of \$15,750 in financial benefits received, and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Kruse reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Kruse consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, and approval from, his member firm. The findings stated that Kruse settled a customer complaint by purchasing back securities he had sold them without informing his member firms.

The suspension in any capacity is in effect from August 7, 2006 through August 6, 2007. (NASD Case #2005001626001)

**Daniel Carlos Lacey (CRD #4312702, Registered Representative, Austin, Texas)** submitted an Offer of Settlement in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Lacey consented to the described sanctions and to the entry of findings that he made an unsuitable recommendation to a public customer without having reasonable grounds for believing that his recommendation and the resulting variable annuity transaction were suitable for the customer based on her financial situation and needs. The findings stated that Lacey falsely represented to his member firm, in writing, that the transaction was unsolicited.

The suspension in any capacity is in effect from September 5, 2006 through September 18, 2006. (NASD Case #E062004000201)

**Richard Lewis Lee (CRD #1017833, Registered Representative, Taylorsville, Utah)** 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 90 days. The fine must be paid before Lee reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Lee consented to the described sanctions and to the entry of findings that he entered into a promissory note with public customers in contravention of the firm's written procedures prohibiting registered persons from borrowing money from customers.

The suspension in any capacity is in effect from August 21, 2006 through November 18, 2006. (NASD Case #2005002016801)

**Mark L. Lewis (CRD #1568287, Registered Principal, Lansing, Michigan)** 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 10 business days. The fine must be paid before Lewis reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Lewis consented to the described sanctions and to the entry of findings that he borrowed \$650 from a public customer without first obtaining his member firm's written approval. Lewis' member firm's written procedures prohibited its representatives from accepting or borrowing funds from customers.

The suspension in any capacity was in effect from August 21, 2006 through September 1, 2006. (NASD Case #E8A2004106201)

**Suk Ku Lim (CRD# 2407363, Registered Representative, Arlington, Virginia)** submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 50 days. Without admitting or denying the allegations, Lim consented to the described sanctions and to the entry of findings that he shared in the loss of a public customer's account by paying her \$35,000 for sustained losses in her securities brokerage account. The findings stated that Lim entered into oral settlement agreements with public customers and did not provide prior notification to his member firm of such settlements.

The suspension in any capacity is in effect from September 5, 2006 through October 24, 2006. (NASD Case #E072003075201)

**Michael Kevin Maunsell (CRD #3224997, Registered Principal, Oxford, Connecticut)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before Maunsell reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Maunsell consented to the described sanctions and to the entry of findings that he made a recommendation to a public customer without having a reasonable basis for believing that such recommendation was suitable based on the customer's investment objectives, financial situation and needs.

The suspension in any capacity is in effect from September 4, 2006 through October 3, 2006. (NASD Case# 2005001930501)

**Feltus Barrow McKowen (CRD #1231747, Registered Representative, Baton Rouge, Louisiana)** submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for six months. In light of McKowen's financial status, no monetary sanction was imposed. Without admitting or denying the allegations, McKowen consented to the described sanction and to the entry of findings that he effected securities transactions in a public customer's accounts without the customer's prior knowledge or consent.

The suspension in any capacity is in effect from August 7, 2006 through February 6, 2007. (NASD Case #E052003017101)

**Fredd E. Montoya (CRD# 5084788, Associated Person, Miami, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Montoya consented to the described sanction and to the entry of findings that he willfully failed to disclose material facts on his Form U4. The findings stated that Montoya failed to respond to NASD requests for information. (NASD Case #2006004240801)

**Scott Douglas Patterson (CRD #1395972, Registered Representative, Memphis, Tennessee)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Patterson consented to the described sanction and to the entry of findings that he forged a public customer's signature on documents necessary to effect the disbursements from a trust account and to effect the switch of the proceeds from one annuity to another. The findings stated that Patterson failed to respond to NASD requests for testimony. (NASD Case #2005002493201)

**Eric Jason Pydynowski (CRD #4287089, Registered Representative, Orlando, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Pydynowski consented to the described sanction and to the entry of findings that he submitted falsified life insurance applications to his member firm on which he forged the signatures of the purported applicants without their knowledge or authorization. (NASD Case #2005001555201)

**David Austin Pryor (CRD #1780676, Registered Representative, Kalamazoo, Michigan)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for two months. The fine must be paid before Pryor reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Pryor consented to the described sanctions and to the entry of findings that he forged a public customer's signature on an application to open an IRA account with his member firm.

The suspension in any capacity is in effect from September 5, 2006 through November 4, 2006. (NASD Case #2005003580101)

**Daniel Peter Ray (CRD #2533515, Registered Representative, Rocky Point, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Ray consented to the described sanction and to the entry of findings that he made improper use of customer funds, in that he cashed money orders

intended to purchase securities that were erroneously made out to him instead of his member firm, and then provided the proceeds to another registered representative so that the representative could satisfy gambling debts. (NASD Case #2005002115301)

**Queen Esther Robinson (CRD #1743613, Registered Representative, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver and Consent in which she was suspended from association with any NASD member in any capacity for 30 days. In light of Robinson's financial status, no monetary sanction was imposed. Without admitting or denying the findings, Robinson consented to the described sanction and to the entry of findings that she engaged in an outside business activity without providing her member firm with prompt written notice.

The suspension in any capacity is in effect from August 21, 2006 through September 19, 2006. (NASD Case #20050008859-01)

**Michael Antoine Rooms (CRD #2187994, Registered Principal, Littleton, Colorado)**. The United States Court of Appeals for the Tenth Circuit upheld the SEC's decision affirming the NAC's bar of Rooms in all capacities. The sanction was based on the NAC's findings that Rooms violated certain provisions of the SEC's penny stock rules by, among other things, recommending and selling penny stocks to customers without providing certain required disclosures. The findings also stated that Rooms violated just and equitable principles of trade by attempting to obstruct NASD's investigation of the penny stock violations. Rooms used two methods to create the false impression that he had complied with the penny stock rules. First, he pressured his customers to sign forms that falsely indicated that the transactions had not been recommended—an important factor because the penny stock rules in question only apply to recommended sales. Second, he backdated the forms, giving the false impression that the customers had signed the forms contemporaneously with the transactions. The firm then provided the misleading forms to NASD as part of a document production. (NASD Case #C0620020003/E0619980215)

**Marcelo S. Samson (CRD #2701995, Registered Representative, Fountain Valley, California)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying



the findings, Samson consented to the described sanction and to the entry of findings that he willfully failed to amend his Form U4 to disclose material facts. The findings stated that Samson failed to respond to NASD requests for information. **(NASD Case #20050031428-01)**

**Zelman Sanders, III (CRD #4837422, Associated Person, East St. Louis, Illinois)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Sanders failed to respond to NASD requests for information. The findings stated that Sanders failed to disclose material facts on his Form U4. **(NASD Case #E8A2004086101)**

**Todd Austin Scott (CRD #4403760, Registered Representative, Massillon, 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, Scott consented to the described sanction and to the entry of findings that he received funds from public customers for investment purposes or to deposit in their brokerage accounts and instead, used some of the funds for his personal benefit or for the benefit of someone other than the customer. **(NASD Case #2005001739101)**

**Manmeet Sethi (CRD #2525427, Associated Person, White Plains, New York)** submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Sethi reassociates with any NASD member, or before she requests relief from any statutory disqualification. Without admitting or denying the findings, Sethi consented to the described sanctions and to the entry of findings that she signed and caused to be signed customer names on certain account-related documents to facilitate the processing of their transactions without the customers' authorization or consent.

The suspension in any capacity is in effect from September 5, 2006 through March 4, 2007. **(NASD Case #2005002485303)**

**Gregory Francis Summers (CRD #1080556, Registered Representative, Watchung, New Jersey)** submitted an Offer of Settlement in which he was fined \$50,000 and suspended from association with any NASD member in any capacity for 15 months. The fine must be paid before Summers reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Summers consented to the described sanctions and to the entry of findings that he caused his member firm to tender shares of a Class B common stock to the issuer in response to its tender offer, although his member firm did not have a net long position of the shares tendered. The findings stated that Summers effected trades in the security to create the false impression that his member firm, through its affiliate, had a net long position of shares on the date when he caused his firm to tender the shares to the issuer. The findings also stated that Summers, in effecting trades for an entity, executed transactions in the security that involved no change in the beneficial ownership for the purpose of creating or inducing a false appearance of activity in an eligible security. The findings also included that Summers, by effecting the trades, caused to be published or circulated a notice or communication that purported to report transactions as a purchase or sale of securities when he did not believe, or had no reasonable basis to believe, that the transactions were *bona fide*.

The suspension in any capacity is in effect from August 7, 2006 through November 6, 2007. **(NASD Case #E052003030702)**

**Jerry Todd Swicegood (CRD #1446723, Registered Principal, Manteo, North Carolina)** 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 20 business days. Without admitting or denying the findings, Swicegood consented to the described sanctions and to the entry of findings that he settled securities-related customer complaints against him without notifying his member firm and provided false information to his former member firm in response to its inquiry concerning the settlement of the customer complaint.

The suspension in any capacity was in effect from August 7, 2006 through September 1, 2006. **(NASD Case #2005002683001)**

**Bryan Christopher Terra (CRD #4717215, Registered Representative, Monroe, Louisiana)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Terra, in his capacity as a personal banker, came into possession of a \$650 check for deposit to a customer's bank account and converted the customer's funds by depositing the check into his personal bank account. The findings stated that Terra failed to respond to NASD requests for information. (NASD Case #2005000870801)

**Timothy Robin Touloukian (CRD #2803832, Registered Representative, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$15,000 and suspended from association with any NASD member in any capacity for 45 days. Without admitting or denying the findings, Touloukian consented to the described sanctions and to the entry of findings that he opened several accounts for hedge fund clients for the purpose of market-timing mutual funds. The findings stated that Touloukian received increasing numbers of account blocks and trade rejects from mutual funds that were monitoring his clients' market-timing activities for excessive market timing. The findings also included that Touloukian, in an effort to hide from mutual funds that monitored for brokers that engaged in excessive market timing, requested new broker codes for his market-timing account and executed trades with the new broker codes in mutual funds that had already blocked a trade he had attempted to execute with his pre-existing broker codes. NASD found that Touloukian was able to trade for clients in funds that may have been monitoring for, and may have rejected trades associated with, his pre-existing broker codes, generating \$30,000 in profits for his clients.

The suspension in any capacity is effective from August 7, 2006 through September 20, 2006. (NASD Case #EAF0400370003)

**John Fitzgerald Tyus (CRD #1475677, Registered Representative, Jamaica, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the findings, Tyus consented to the described sanctions and to the entry of findings that he borrowed \$30,000 from a public customer without first obtaining written approval from his member firm.

The suspension in any capacity is in effect from August 21, 2006 through September 1, 2006. (NASD Case# 2005003253401)

**Michael Howard Whims (CRD #464828, Registered Representative, Redmond, 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, Whims consented to the described sanction and to the entry of findings that he affixed, or caused to be affixed, public customers' signatures to his firm's switch letters in order to effect the liquidation of certain mutual fund shares and the purchase of other mutual fund shares without the customers' knowledge or consent. (NASD Case #2005002177401)

**Robert Philip Yorba, III (CRD #1086000, Registered Representative, Del Mar, 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 six months. Without admitting or denying the findings, Yorba consented to the described sanctions and to the entry of findings that, in an attempt to stop a public customer from transferring her accounts to another firm, and without the customer's knowledge, authorization and consent, he created a letter to his firm and affixed a copy of the customer's signature through which she purportedly asked the firm to disregard her earlier transfer request.

The suspension in any capacity is in effect from August 21, 2006 through February 20, 2007. (NASD Case #20050013421-01)

**Stanley Yung aka Quang Chi Dung (CRD #4165273, Registered Representative, San José, California)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Yung consented to the described sanction and to the entry of findings that, with an accomplice's help, he reactivated an inactive customer's savings account and without the knowledge, authorization or consent of a second customer, arranged for the transfer of \$60,000 from that customer's account to the savings account, had his accomplice cash out the savings account, received the cash proceeds, and used the funds for his own personal use and benefit. The findings stated that Yung withdrew \$50,000 from a

third customer's account without the customer's knowledge, authorization or consent and transferred the funds into his accomplice's own bank account. However, the bank froze the accomplice's bank account before the funds could be removed from it. (NASD Case #20050025144-01)

## Individual Fined

**Carole Gurgone Ferraro (CRD #1174904, Registered Representative, Boynton Beach, Florida)** submitted an Offer of Settlement in which she was censured and fined \$10,000. Without admitting or denying the allegations, Ferraro consented to the described sanctions and to the entry of findings that she recommended and effected securities transactions in public customers' account without having reasonable basis for believing the transactions were suitable for the customers. (NASD Case #C0520050005)

## 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 August 4, 2006. The NAC may increase, decrease, modify or reverse the findings and sanctions imposed in the decisions. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notice to Members*.

**Geoffrey Ortiz (CRD #1808280, Registered Representative, Malibu, California)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Ortiz made, or caused to be made, handwritten markings on public customers' ACCESS Account Applications that materially changed the terms of the agreement between the firm and the customers, and placed, or caused to be placed, the customers' initials on the amended applications without the customers' knowledge, authorization or consent. The findings stated that Ortiz increased, or caused to be increased, the applicable annual fee for the customers' ACCESS accounts and submitted the amended applications to his member firm without the customers' knowledge, authorization or consent. The findings also stated that Ortiz provided false and misleading information in response to NASD requests for information and during an on-the-record interview.

This decision has been appealed to the NAC and the sanction is not in effect pending consideration of the appeal. (NASD Case #E0220030425-01)

## Complaints Filed

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

**Michael Lawrence Baldwin (CRD #1966870, Registered Principal, Kansas City, Missouri)** was named as a respondent in an NASD complaint alleging that he recommended and effected excessive securities transactions in a public customer's account without having reasonable grounds for believing the transactions were suitable for the customer in light of the customer's financial situation and needs. The complaint alleges that Baldwin failed to approve option order tickets before they were submitted to his member firm's clearing firm for execution, and failed to ensure that the options transactions were appropriate for the customer accounts. (NASD Case #E0420030367-01)

**Jeffrey Michael Martinous (CRD #3011007, Registered Representative, Quincy, Massachusetts)** was named as a respondent in an NASD complaint alleging that without a public customer's consent or authority, he sold the customer's funds and used the proceeds to purchase shares of another fund. The complaint also alleges that without the customer's consent or authority, Martinous signed, or caused to be signed, the customer's signature on documents that were required to effect a mutual fund transaction. (NASD Case #20050016241-01)

**Donald Joseph Tintle (CRD #4855119, Associated Person, Middletown, Connecticut)** was named as a respondent in an NASD complaint alleging that he misused public customer funds, in that he received checks totaling \$27,000 from customers for investment purposes and deposited the funds in a bank account he controlled. The complaint also alleges that Tintle sent an

email to a customer falsely representing that she owned shares of a common stock and falsely represented to the customers that he possessed various securities licenses. The complaint also alleges that Tintle failed to respond to NASD requests for information and documents. (NASD Case #2005003330001)

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

The following firm was suspended from NASD membership for failing to comply with formal written requests to submit financial information to NASD. The action was based on the provisions of NASD Rule 9552.

(The date the suspension commenced is listed after the entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.)

**CMG Institutional Trading LLC**  
Chicago, Illinois  
(April 19, 2006 - August 30, 2006)

**The Draken Group, Inc.**  
Lawrenceville, Georgia  
(August 15, 2006)

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

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

**Salomon Grey Financial Corporation**  
Dallas, Texas  
(August 2, 2006)

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

**Jonathan Bruce Abrams**  
River Edge, New Jersey  
(August 10, 2006)

**Dean Daniell Giasi**  
Staten Island, New York  
(August 10, 2006)

**Michael Louis Lieb**  
Kettering, Ohio  
(August 10, 2006)

**Marc Christopher Newton**  
Pickerington, Ohio  
(August 10, 2006)

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

**Richard Joseph Arena, Jr.**  
E. Patchogue, New York  
(August 9, 2006)

**Sandeep Bardia**  
Maspeth, New York & Newark, Delaware  
(August 28, 2006)

**Clark M. Chasten, II**  
Glenwillow, Ohio  
(August 7, 2006)

**Charles Dean Crystal**  
Colorado Springs, Colorado  
(August 9, 2006)

**John Derek Elwin**  
Lake Worth, Florida  
(August 7, 2006)

**Damascus Isaiha Lee**  
Brooklyn, New York  
(August 7, 2006)

**Kenneth Lee McLaughlin**  
Akron, Ohio  
(August 21, 2006)

**Todd Michael Newman**  
Royal Palm Beach, Florida  
(August 28, 2006)

**Mark Ivan Sikkenga**  
Kalamazoo, Michigan  
(August 21, 2006)

**Thomas William Yurachek**  
St. Charles, Missouri  
(August 1, 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.)

**Michael Andrew Capul**  
Manhasset Hills, New York  
(August 21, 2006)

**Luther Carl Cooper**  
New York, New York  
(August 28, 2006)

**Michael L. Donaldson**  
Jamaica, New York  
(August 29, 2006)

**John Michael Legreca**  
Port Charlotte, Florida  
(August 2, 2006)

**Cheryl Janette Suggs**  
Rockingham, North Carolina  
(August 1, 2006)

**Timothy Donald Trimmer**  
North Myrtle Beach, South Carolina  
(August 29, 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.)

**Matthew Harold Adams**  
Westbury, New York  
(August 2, 2006)

**Neal Albert Bohlman**  
St. Louis, Missouri  
(August 28, 2006)

**May Yan Brisbin**  
Glendale, California  
(August 23, 2006)

**Ronald Louis Bronson**  
Boca Raton, Florida  
(August 1, 2006)

**Mark Vernon Brown**  
New Port Richey, Florida  
(August 7, 2006)

**Walter Buhay, II**  
Charlestown, Massachusetts  
(August 28, 2006)

**Sean Francis Carrington**  
Thiells, New York  
(August 3, 2006)

**Carl Edward Cherasia**  
Toms River, New Jersey  
(August 3, 2006)

**Stephen Andrew Comeau**  
Ft. Lauderdale, Florida  
(August 1, 2006)

**David Edward Cook**  
Warren, Ohio  
(August 1, 2006)

**Dermot J. Durnin**  
San Francisco, California  
(August 23, 2006)

**Ali Feke**  
Irvine, California  
(August 3, 2006)

**Michael Edward Frontera**  
Staten Island, New York  
(August 2, 2006)

**Steven P. Galko**  
Dallas, Texas  
(August 21, 2006)

**Jose Enrique Garcia, Jr.**  
El Paso, Texas  
(August 21, 2006)

**Thomas Randall Griffin**  
San Antonio, Texas  
(August 3, 2006)

**Christopher Alan Halstead**  
Hoboken, New Jersey  
(August 1, 2006)

**Francis Hartley-Edwards**  
San Francisco, California  
(August 24, 2006)

**Timothy Joseph Heitmann**  
Washington, District of Columbia  
(August 21, 2006)

**Cheryl Diane Jimerson**  
Sayville, New York  
(August 2, 2006)

**Randy Rene Jones**  
Sandy, Oregon  
(August 23, 2006 - August 28, 2006)

**Andrew Scott Koppel**  
Baltimore, Maryland  
(August 1, 2006)

**Rafael Leal**  
El Paso, Texas  
(August 3, 2006)

**Michael Joseph Mazzarisi**  
Cumming, Georgia  
(August 21, 2006)

**James Curtis McCauley**  
Longview, Texas  
(August 1, 2006)

**Mark Wellington McKoan**  
Bradenton, Florida  
(August 3, 2006)

**Franklyn Ross Michelin**  
Boca Raton, Florida  
(August 2, 2006)

**Brad Jason Mitchell**  
Aventura, Florida  
(August 21, 2006)

**Edmund Burke Pearson**  
Dayton, Ohio  
(August 3, 2006)

**Edward Joseph Strafaci**  
Colts Neck, New Jersey  
(August 3, 2006)

**Roland Paul Sturgill, Jr.**  
Nokomis, Florida  
(August 1, 2006)

**Stephen Jefferson Sumner**  
Orlando, Florida  
(August 8, 2006)

**David William Svete**  
Spring Valley, Ohio & Dayton, Ohio  
(August 3, 2006)

**Elise Clydean Tanner**  
Kansas City, Missouri  
(August 1, 2006)

**Richard Hartwell Thompson**  
Dallas, Texas  
(August 3, 2006)

**Marcus Rodney Valenzuela**  
Plantation, Florida  
(August 1, 2006)

**Lynn Elizabeth Welch**  
Bayonne, New Jersey  
(August 3, 2006)

## **NASD Fines BRUT \$2.2 Million for Publishing Erroneous Execution Quality Reports, Other Violations**

NASD ordered New York's BRUT, LLC to pay \$2.2 million for rule violations relating to publication of erroneous order execution quality reports, backing away from the firm's posted quotes, failure to maintain two-sided quotations, failure to comply with the rules applicable to trade-throughs and locked and/or crossed markets, non-retention of emails, OATS deficiencies and inadequate supervision. In addition to the fine, BRUT agreed to revise certain of the firm's written supervisory procedures within 30 days.

BRUT's erroneous order execution reports related to orders sent to the firm's ECN. BRUT's share of monthly NASDAQ trading volume amounted, at times, to more than 13 percent of NASDAQ executions. "Monthly order execution reports provide data that must be made public under federal securities regulations," said NASD Senior Executive Vice President Stephen Luparello. "BRUT's inaccurate reports compromised the ability of the investing public and other market participants to accurately assess execution quality and compare venues for execution."

NASD found that from October 2001—shortly after the requirement to publish order execution reports took effect—through July 2005, BRUT published execution reports that contained critical errors. Specifically, when subscribers of BRUT's ECN entered orders that included a "reserve size component," BRUT's treatment of these reserve size orders resulted in execution reports that did not include the full size of each such order. Instead, after each portion of a reserve size order was executed, the newly displayed portion of the original order was counted as a separate order in BRUT's execution reports. The incorrect treatment of reserve size orders impacted BRUT's reported order size, reduced the order execution time and increased the number of covered orders.

The effect of the errors contained in BRUT's execution reports varied. Certain errors may have resulted in certain execution quality statistics appearing to be better than was actually the case. Other errors may have resulted in execution quality statistics appearing to be either better or worse than was actually the case.

NASD also found other regulatory violations by the firm. At certain times between April 2004 and June 2005, BRUT failed to execute certain orders presented to the firm at its published quotation in an amount up to its published quotation size. In addition, in certain instances between April 2003 and June 2005, BRUT failed as an ITS/CAES market maker to maintain a continuous two-sided quotation for certain securities. Further, in certain instances between September 2003 and September 2005, BRUT submitted millions of OATS reports that were rejected, inaccurate, incomplete, improperly formatted or late. Finally, BRUT failed to implement effective supervisory systems and written supervisory procedures reasonably designed to detect and prevent the kinds of violations detailed above.

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

## **NASD Fines Four ING Broker-Dealers \$7 Million For Directed Brokerage Violations**

NASD announced a total of \$7 million in fines against four broker-dealers affiliated with ING America Insurance Holdings, Inc. (ING) in connection with the receipt of directed brokerage in exchange for preferential treatment for certain mutual fund companies.

The four broker-dealers are Financial Network Investment Corporation, Inc. of El Segundo, CA., which was fined over \$3.4 million; ING Financial Partners Inc. of Des Moines, IA., which was fined nearly \$1.3 million; Multi-Financial Securities Corporation, Inc. of Denver, CO., which was fined over \$1.2 million; and Prime Vest Financial Services, Inc. of St. Cloud, MN., which was fined over \$1 million.

NASD charged that the conduct by the four ING broker-dealers violated its Anti-Reciprocal Rule, which prohibits arrangements in which brokerage commissions are used to compensate firms for selling mutual fund shares. The rule is also designed to ensure that execution of portfolio transactions is guided by the principle of "best execution" and not by other considerations.

"The use of directed brokerage commissions from a mutual fund as an incentive towards the marketing or preferred treatment of those funds is an impermissible

use of customer assets,” said James S. Shorris, NASD Executive Vice President and Head of Enforcement. “NASD will continue to pursue mutual fund sales practices that put the interests of firms ahead of the interests of customers.”

To date, NASD has brought more than 30 enforcement actions for similar violations.

NASD found that from 2001 through 2003, the four broker-dealers, which together constituted the ING Advisors Network, an umbrella business unit affiliated with ING, provided a host of marketing benefits to 10 mutual fund complexes that participated in the shelf-space (or revenue-sharing) program, known as the Strategic Partners Program. These benefits, which were generally not provided to non-Strategic Partners, included yearly sales goals, special placement on the ING firms’ Intranet Web sites, direct links to the Web sites of the participating fund companies, increased exposure to the registered representatives of the ING firms, participation in annual national meetings, waiver of ticket charges for registered representatives on sales of participants’ funds and other marketing opportunities.

In return, mutual funds paid the ING broker-dealers millions of dollars to participate in the Strategic Partner program. Eight of the 10 participating mutual fund complexes paid a portion of their fees by directing approximately \$25.7 million in mutual fund portfolio brokerage commissions to the four broker-dealers, despite the fact that none of the firms played any role in the execution of the trades that generated the commissions. The remaining two fund companies paid their fees in cash.

In settling with NASD, the ING broker-dealers neither admitted nor denied the allegations, but consented to the entry of NASD’s findings.

## **NASD Orders Citigroup To Pay Over \$1.1 Million For Failing To Prevent Brokers’ Submission Of False Information To Mutual Funds**

### **Brokers Improperly Obtained Mutual Fund Sales Load Waivers by Falsely Claiming Customers Were Disabled—Even Hedge Funds**

NASD fined Citigroup Global Markets Inc. \$400,000 for supervisory and recordkeeping violations in connection with a ploy by more than 100 of its brokers to improperly obtain waivers of mutual fund sales charges by falsely claiming that their customers were disabled. The firm was also ordered to pay \$715,000 in restitution to the affected mutual fund entities.

NASD found that the ruse was carried out from June 2001 through June 2002. With respect to possible improper waivers pre-dating June 2001, the firm agreed to contact the distributors of affected mutual funds, notify them that there may have been improper disability waivers and give them an opportunity to make additional restitution claims. To date, NASD has taken disciplinary action against five Citigroup registered representatives relating to this misconduct. NASD investigations into other Citigroup brokers are continuing.

NASD also ordered Citigroup to review its policies, systems, procedures and training relating to Contingent Deferred Sales Charge (CDSC) waivers in mutual fund transactions. For one year, Citigroup must also provide a quarterly certification to NASD that it has reviewed all CDSC disability waivers granted, has verified that they were appropriately granted (or corrected those waivers that were not appropriately granted), and has retained required supporting documentation. The firm was also required to provide appropriate training regarding CDSC waivers to its retail managers and representatives.

“Firms are obligated to be alert for supervisory ‘red flags’ and address systemic weaknesses that could permit widespread abusive behavior,” said NASD Executive Vice President and Head of Enforcement James S. Shorris. “In this case, because Citigroup effectively failed to address a known problem, its representatives were able to improperly exploit the mutual funds’ fee waiver provisions that were specifically reserved for disabled individuals—extending



them even to hedge funds. This widespread failure contributed to the ability of Citigroup representatives to process over 2,400 improper waivers based on false disability claims.”

A CDSC is the sales charge that mutual fund companies impose on investors who sell/redeem their Class B shares within a certain period after purchase. CDSCs may be waived under certain circumstances as defined by the mutual fund prospectus—typically death, disability or a qualified distribution. In order to obtain a disability-based waiver for a customer, a broker is often required to obtain and/or submit certain documentation evidencing the customer’s eligibility for a CDSC waiver as defined by the IRS or the particular fund’s prospectus. The eligibility for a CDSC waiver is further narrowed by the timing of the disability; the waivers are generally available only when the customer becomes disabled after the mutual fund purchase. Further, in most cases, the disability-based waiver can be taken only within one year of the date the customer becomes disabled.

NASD found that, from June 1, 2001 through June 30, 2002, Citigroup representatives improperly entered disability waivers for hundreds of customers in connection with 2,419 mutual fund transactions totaling \$47 million. Those registered representatives, in most cases, misrepresented on Citigroup’s electronic order entry system that their customers were entitled to CDSC waivers because they were disabled. In several instances, Citigroup registered representatives even entered CDSC waivers for hedge funds, thereby claiming that those entities were “disabled” individuals as defined by the Internal Revenue Service or in the applicable prospectus.

NASD also found that Citigroup failed to maintain, update and enforce reasonable internal policies, systems and procedures in a number of respects, including:

- The firm’s electronic order entry system provided an unsupervised method for its representatives to obtain CDSC waivers for customers. Citigroup failed to develop any exception reports, or otherwise provide for reasonable steps to ensure registered representatives’ compliance with the applicable prospectus terms.
- While Citigroup issued a Compliance Memo in 1999 to its managers and directors

advising that CDSC waivers could not be granted “except in circumstances specified in the fund prospectus,” the firm failed to implement policies or procedures reasonably designed to ensure compliance with this directive.

- In those instances where a fund prospectus and/or dealer agreement specifically required the representative to obtain and/or submit certain documentation to support the CDSC waiver claim or, at minimum, to determine that the customer had become disabled, Citigroup had no system or procedures designed to ensure compliance with these documentation requirements and in fact failed to ensure that its registered representatives had obtained and/or submitted this information or otherwise complied with such requirements.

In addition, Citigroup failed to act on “red flags” and provide for effective follow-up and review, or otherwise monitor mutual fund transactions, to ensure that CDSC waivers were granted in accordance with the terms of the applicable mutual fund prospectus:

- Following disciplinary actions filed in 1997 against two of the firm’s registered representatives for obtaining CDSC waivers for their customers under false pretenses, the firm failed to implement any new procedures reasonably designed to prevent recurrence of such misconduct, and otherwise failed to conduct a meaningful follow-up and review in subsequent years to determine whether it had successfully addressed the problems noted in the cases.
- In several instances, Citigroup registered representatives entered CDSC waivers for multi-million dollar mutual fund transactions by hedge funds, making the inexplicable claim that those entities were “disabled individuals” as defined by the IRS or in the applicable prospectus. Even when four of the transactions, totaling approximately \$21 million, were blocked by the mutual fund companies, Citigroup failed to scrutinize those transactions.

- Over a 13-month period, CDSC waivers based on an improper and/or unsupported claim of customer disability were entered in 2,419 transactions totaling approximately \$47 million, an extraordinarily high number for approximately 100 brokers. Yet Citigroup failed to scrutinize those transactions or make inquiry of the brokers entering those transactions. For example, one representative entered disability-based CDSC waivers for over 80% of his customer base. Most of those customers were not disabled, and, in many cases, they subsequently used the proceeds to make new investments.

NASD also found that the improper CDSC waivers entered by Citigroup's registered representatives caused the firm's books and records to contain false information regarding the disability status of customers and their entitlement to such waivers.

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

To date, NASD has filed disciplinary actions against five Citigroup registered representatives for seeking CDSC waivers based on false claims that their customers were disabled. On Nov. 2, 2005, NASD barred former Citigroup broker Patricia Kwan from association with any member firm. Kwan consented to the bar without admitting or denying NASD's findings. On Feb. 14, 2006, NASD's Department of Enforcement filed a complaint against two current and two former Citigroup brokers—Timothy Behany, Edward M. VanGrouw, Carl Martin Trevisan and David Joseph Cottam. The complaint is currently being litigated.

Under NASD rules, a firm or individual named in a complaint can file a response and request a hearing before an NASD disciplinary panel. Possible remedies include a fine, censure, suspension or bar from the securities industry, and disgorgement of gains associated with the violations.

The 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 this complaint is unadjudicated, interested persons may wish to contact the respondent before drawing any conclusions regarding the allegations in the complaint.

### **Prudential Securities, Inc. Ordered to Pay Regulators \$600 Million to Resolve Fraud, Other Charges Relating to Improper Market Timing**

#### **NASD Investigation Uncovers More Than \$116 Billion in Mutual Fund Transactions Conducted Through 1,600 Customer Accounts in Market Timing Scheme; Firm Also Had Deficient Procedures Relating to Prevention of Late Trading**

NASD, federal and state securities regulators and the Department of Justice announced parallel settlements and a total of \$600 million in monetary sanctions against Prudential Securities, Inc. (PSI)—now known as Prudential Equity Group—for misconduct relating to improper market timing. NASD's settlement with PSI resolves charges of fraudulent activities and supervisory deficiencies relating to mutual fund market timing and for recordkeeping violations.

PSI also entered into separate settlements with the Department of Justice, the Securities and Exchange Commission (SEC), the New York Attorney General's Office, New York Stock Exchange Regulation, the New Jersey Bureau of Securities and the Massachusetts Securities Division to resolve charges relating to this misconduct.

PSI has been ordered to pay \$270 million into a distribution fund administered by the SEC, which will be used to compensate the affected mutual funds and shareholders for losses sustained as a result of the improper market timing activity. The Department of Justice imposed an additional fine of \$325 million, and the Massachusetts Securities Division imposed a separate \$5 million civil penalty.

In its investigation, NASD found that from at least January 1, 2001, to July 1, 2003, certain of PSI's registered representatives engaged in deceptive activities in order to make improper market timing transactions in mutual funds on behalf of their clients. As a result, at least 1,600 customer accounts were collectively able to purchase and sell mutual fund shares worth more than \$116 billion, earning those clients more than \$162 million in net profits. Those market timing transactions also earned PSI nearly \$50 million in gross commissions.

"The scale of the fraudulent market timing activity that was allowed to occur through this firm and that went unchecked by the firm's supervisory systems is unprecedented," said NASD Senior Executive Vice President Stephen Luparello. "The firm was aware that this activity was occurring and yet failed to take action to halt the conduct—except in its own proprietary mutual funds."

NASD found that the PSI brokers defrauded mutual funds and their shareholders by misrepresenting their own identities and the identities of their brokerage clients to engage in market timing after the mutual funds had placed blocks attempting to prohibit such trading. The brokers used multiple customer account numbers and representative numbers (also referred to as "FA numbers" at the firm) to evade the trading restrictions (blocks) that certain mutual funds imposed on market timing transactions. For example, following the imposition of a block, the brokers placed the market timing trades in another account or, if an FA number had been restricted, the brokers placed trades using another FA number. PSI failed to prevent this activity.

NASD found that PSI received in excess of 1,000 letters and emails from more than 50 different mutual fund companies relating to the market timing activities of just five brokers in its Boston branch office. In numerous cases, PSI did not prevent subsequent trading that circumvented these blocks. In January 2003, based on the number of block letters it had received, PSI announced a market timing policy, two years after it had already stopped market timing in its proprietary mutual funds. The policy required PSI's brokers to adhere to the restrictions on the frequency of trading set forth in each mutual fund's disclosure documents. PSI, however, did not enforce that policy and the improper market timing continued.

In addition, NASD found that even though the firm had been aware since at least 1998 that several of its offices had brokers that primarily engaged in market timing transactions, PSI failed to have an adequate supervisory system and written supervisory procedures relating to market timing activities, mutual fund exchanges and detecting and preventing any late trading of mutual fund shares.

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. Firms executing mutual fund orders must establish and maintain supervisory systems and procedures reasonably designed to detect and prevent the occurrence of late trading.

NASD found that PSI, like other firms, processed mutual fund orders after the market close. PSI, however, lacked a reasonably designed supervisory system to ensure that only orders submitted by the customers before the market close received that day's NAV. Moreover, the volume of market timing business in the Boston branch office created significant risk of late trading. Nevertheless, certain PSI brokers routinely failed to document the time the customer order was received. Therefore, PSI would not have been able to detect and prevent any unlawful late trading in mutual fund shares.

Finally, NASD found that PSI failed to maintain accurate books and records relating to mutual fund transactions.

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

## **NASD Hearing Panel Fines American Funds Distributors \$5 Million for Directed Brokerage Violations**

An NASD Hearing Panel ruled that American Funds Distributors, Inc. (AFD) violated NASD's Anti-Reciprocal Rule by directing brokerage commissions to securities firms that were the top sellers of American Funds mutual funds from 2001 through 2003. The panel censured AFD and imposed a \$5 million fine. The ruling resolves charges brought by NASD's Department of Enforcement in February 2005.

AFD is the principal underwriter and distributor of American Funds, the second largest mutual fund family in the United States. The directed brokerage commissions—amounting to more than \$98 million during the relevant period—were paid by AFD's parent company, Capital Research and Management Company (CRMC), which is also the investment advisor to American Funds.

According to the panel's decision, the "evidence in this case shows ... that AFD requested and arranged for CRMC to direct brokerage to its 50 leading retail firms" and that those recommendations were "conditioned upon their past sales of American Funds—indeed, that they were among the top 50 in the prior year's sales—and ... the target amount AFD recommended was conditioned upon the specific amount of sales attained by the retailer."

The panel noted that the Anti-Reciprocal Rule was intended to abolish "reciprocal business practices in connection with the distribution of mutual fund shares, *i.e.*, the use of portfolio brokerage of mutual funds to reward broker-dealers for sales of mutual fund shares." Describing AFD's use of brokerage commissions to reward top-selling firms, the panel said, "This sort of reciprocal use of mutual fund brokerage is precisely what the rule was intended to proscribe ... A clearer use of directed brokerage to further reciprocal arrangements, contrary to the purpose of (the Anti-Reciprocal Rule), is difficult to imagine."

But the panel rejected NASD Enforcement's arguments that AFD engaged in a pattern of misconduct over a period of years that was intentional or at least reckless. It noted that AFD's use of directed brokerage was consistent with practices that had arisen in the mutual fund industry over a number of years, that regulators did not express concern about those practices until 2001, and that, unlike its competitors, AFD acted voluntarily to change those practices when regulators began expressing those concerns.

"Under these circumstances, the Panel found that AFD's violations while serious, were not egregious."

The panel rejected NASD Enforcement's call for sanctions in the amount of the total directed brokerage payments, noting that the trades were placed and the commissions were actually paid by CRMC—which is not subject to NASD regulation. Emphasizing that the sanctions can only address AFD's misconduct; the panel imposed what it termed "a very substantial fine" of \$5 million.

Unless the matter is appealed to NASD's National Adjudicatory Council (NAC), or is called for review by the NAC, the hearing panel's decision becomes final after 45 days.