

Disciplinary and Other NASD Actions

REPORTED FOR APRIL

NASD® has taken disciplinary actions against the following firms and individuals for violations of NASD rules; federal securities laws, rules and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this *Notice* is current as of the end of February 2007.

Firms and Individuals Fined

VanthedgePoint Securities, LLC (CRD #133097, New York, New York) and Geoffrey Michael Tudisco (CRD #3076410, Registered Principal, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which they were censured and fined \$17,500, jointly and severally. The firm was fined an additional \$500. Without admitting or denying the findings, the firm and Tudisco consented to the described sanctions and to the entry of findings that the firm, acting through Tudisco, underwent material changes in its business operations without first receiving NASD approval. The findings stated that the firm did not seek approval from NASD for its omnibus broker-dealer and options business until later. The findings also stated that the firm, acting through Tudisco, engaged in a securities business while failing to maintain sufficient net capital and that the firm failed to maintain a general ledger. **(NASD Case #20060048009-01)**

Wilbanks Securities, Inc. (CRD #40673, Oklahoma City, Oklahoma), Aaron Bronelle Wilbanks (CRD #1983697, Registered Principal, Oklahoma City, Oklahoma) and Randall Lee Wilbanks (CRD #2675482, Registered Principal, Oklahoma City, Oklahoma) submitted a Letter of Acceptance, Waiver and Consent in which they were censured. The firm was fined \$25,000, Randall L. Wilbanks was fined \$25,000, joint and several with the firm, and Aaron Wilbanks was fined \$20,000, joint and several with the firm. Without admitting or denying the findings, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Aaron and Randall Wilbanks, failed to specify a cycle for the inspection of non-branch locations in its written supervisory procedures and to conduct inspections of 55 non-branch locations as NASD Rule 3010 (c)(1)(C) requires. The findings stated that the firm and Randall Wilbanks failed to file quarterly reports with NASD that disclosed information regarding customer complaints. The findings also stated that the respondents failed to preserve its received and sent electronic communications, including inter-office memoranda and communications, in an easily accessible place and to establish, maintain and enforce written supervisory procedures regarding the preservation of electronic mail correspondence. **(NASD Case #E052005008501)**

Firms Fined

Ameritrade, Inc. (CRD #5633, Bellevue, Nebraska) 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 timely report Reportable Order Events (ROEs) to the Order Audit Trail SystemSM (OATSSM). **(NASD Case #20050016221-01)**

Bear, Stearns Securities Corporation (CRD #28432, Brooklyn, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$250,000 and required to revise its written supervisory procedures regarding short interest position reporting. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it submitted inaccurate short interest position data in securities and inaccurately reported, or failed to report, its short interest positions to NASD. 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 short interest position reporting. **(NASD Case #20041000025-01)**

Burnham Securities Inc. (CRD #22549, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$17,500 and required to revise its written supervisory procedures with regard to the Trade Reporting and Compliance Engine (TRACE). 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's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning TRACE. **(NASD Case #2005001403701)**

Canaccord Adams Inc. (CRD #1020, Boston, Massachusetts) 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 submitted inaccurate short interest position reports to NASD. The findings stated that the firm erroneously provided written notification disclosing to its customers that transactions were executed at an average price. The findings also stated that when the firm acted as principal for its own account, it failed to provide written notification disclosing to its customers that it was a market maker in each security and failed to provide written notification disclosing to its customers its correct capacity in transactions. The findings also included 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 as to order classification and order execution. NASD found that the firm failed to submit accurate trading information through the submission of electronic blue sheets in response to NASD requests for the information. NASD also 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 short interest reporting and the submission of electronic blue sheet data. **(NASD Case #20041000253-01)**

Cantella & Co., Inc. (CRD #13905, Boston, Massachusetts) submitted an Offer of Settlement in which the firm was censured, fined \$65,000 and required to review its procedures regarding the preservation of electronic communications and reporting obligations for compliance with NASD rules and the federal securities laws and regulations, and to notify NASD, in writing, that it has established systems and procedures reasonably designed to achieve compliance with those rules, laws and regulations. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to timely amend Uniform Applications for Securities Industry Registration or Transfer (Forms U4) and Uniform Termination Notices for Securities Industry Registration (Forms U5). The findings stated that the firm failed to report customer complaints, filed customer complaints late, failed to properly code customer complaints and failed to disclose the disputed amount in a customer complaint. The findings also stated that the firm failed to maintain and preserve all email communications. The findings also included that Cantella reported TRACE-eligible transactions late, failed

to include the appropriate modifier on some late transactions and incorrectly reported the yield for the late TRACE-eligible transactions. NASD also found that the firm did not have written supervisory procedures relating to TRACE reporting. **(NASD Case #E112004003101)**

Carlin Equities, LLC (CRD #31295, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$77,000 and required to revise its written supervisory procedures regarding NASD membership and registration rules 1021 and 1031, NASD Marketplace Rule 2320 (crossing customer orders), NASD Marketplace Rule 6130 (short sale indicator reporting), NASD Conduct Rule 3370 (affirmative determination), NASD Marketplace Rule 6541 (order handling), NASD Conduct Rule 2320 (three quote rule), NASD Marketplace Rule 4632 (third-party trade reporting), SEC Rule 200, NASD Conduct Rule 3110 and NASD Marketplace Rule 6130 (short sales), NASD Marketplace Rule 6955 (OATS), SEC Rules 17a-3 and 17a-4 (books and records), SEC Rule 605 (disclosure of order execution information) and Chinese Walls. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it accepted or effected customer short sale orders in securities and for each order, failed to make/annotate an affirmative determination that the firm would receive delivery of the securities on the customer's behalf or that the firm could borrow the securities on the customer's behalf for delivery by settlement date. The findings stated that the firm reported through the NASDAQ Market Center or the Trade Reporting & Comparison Service (TRACS) a last sale report of a transaction in NASDAQ National Market securities it was not required to report; failed to report last sale reports of transactions in NASDAQ securities; incorrectly designated a last sale report of a transaction in a NASDAQ security as ".PRP"; failed to report the correct symbol indicating whether a transaction was a buy, sell, sell short, sell short exempt or cross for a transaction in an eligible security; reported last sale reports of transactions in OTC equity securities it was not required to report; failed to report last sale reports of transactions in OTC equity securities; and failed to make available reports on the covered orders in national market system securities that it received for execution from any person. The findings also stated that the firm failed to report to the NASDAQ Market Center the

correct symbol indicating whether it executed transactions in eligible securities in a principal or agency capacity; failed to submit required information to OATS; and failed to provide written notification disclosing to its customers that transactions were executed at an average price, the correct capacity in the transactions and that it was a market maker in each security. The findings also included that the firm failed to show the execution time on brokerage order memoranda, failed to document the customer name or account number of brokerage order memoranda and failed to preserve for not less than three years, the first two in an accessible place, a brokerage order memorandum.

NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with securities laws, regulations and NASD rules concerning NASD membership and registration rules 1021 and 1031, NASD Marketplace Rule 2320 (crossing customer orders), NASD Marketplace Rule 6130 (short sale indicator reporting), NASD Conduct Rule 3370 (affirmative determination), NASD Marketplace Rule 6541 (order handling), NASD Conduct Rule 2320 (three quote rule), NASD Marketplace Rule 4632 (third-party trade reporting), SEC Rule 200, NASD Conduct Rule 3110 and NASD Marketplace Rule 6130 (short sales), NASD Marketplace Rule 6955 (OATS), SEC Rules 17a-3 and 17a-4 (books and records), SEC Rule 605 (disclosure of order execution information) and Chinese Walls. NASD also found that the firm failed to enforce its written supervisory procedures concerning NASD Rules 2320, 3350, 3370, 6955 and SEC Rules 202 and 202T. In addition, NASD determined that the firm transmitted Route or Combined Order/Route reports that contained inaccurate, incomplete or improperly formatted data to OATS. Moreover, NASD found that the firm submitted reports with respect to equity securities traded on the NASDAQ Stock Market that were not in the NASD-prescribed electronic form to OATS. The OATS system rejected the reports and notice of such rejection was made available to the firm on the OATS Web site, but the firm did not correct or replace most of the reports. **(NASD Case #20042000248-01)**

Hibernia Southcoast Capital, Inc. nka Capital One Southcoast, Inc. (CRD #44158, New Orleans, Louisiana) 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 include conflict of interest disclosures in research reports as NASD Rule 2711(h) requires. **(NASD Case #2006003763801)**

Hornor, Townsend & Kent, Inc. (CRD #4031, Horsham, Pennsylvania) 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 violated NASD Conduct Rule 2830 by maintaining programs in which participating mutual fund companies and other financial services companies paid fees and, in return, received preferential treatment from the firm, including exclusive listings on the firm's internal Web site, the use of "blast" emails to the firm's representatives, participation in conference calls and speaking arrangements at various firm meetings. The findings stated that the mutual fund companies paid for their fees by directing a minimum of \$90,790 in brokerage commissions to the firm. The findings also stated that the firm violated NASD's recordkeeping requirements by failing to make and keep adequate records concerning the compensation received from offerors who participated in the shelf space programs. **(NASD Case #E9A2005005701)**

HSBC Securities (USA) Inc. (CRD #19585, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report the correct trade execution time for TRACE-eligible securities. The findings stated that the firm failed to show the correct execution time on order memoranda in TRACE-eligible securities and failed to report in a timely manner transactions in TRACE-eligible securities executed on a business day during TRACE system hours within 30 minutes of execution. **(NASD Case #20050023706-01)**

Jackson Securities LLC (CRD #19897, Atlanta, Georgia) 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 operated while under its required net capital, filed materially inaccurate Financial

and Operational Combined Uniform Single (FOCUS) reports and filed a materially inaccurate annual audited financial statement. The findings stated that the firm maintained inaccurate trial balances and net capital computations and failed to report municipal securities transactions within the timeframe MSRB Rule G-14 requires. **(NASD Case #2006005614401)**

Pershing Advisor Solutions LLC (CRD #36671, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to accurately report client cross trades in TRACE-eligible corporate bond transactions. The findings stated that the firm prepared order tickets in TRACE-eligible corporate bond transactions and municipal securities transactions that contained inaccurate and/or missing information relating to trade date, execution time, capacity and other required items. **(NASD Case #2006003831801)**

Pershing LLC (CRD #7560, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$40,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to accurately and/or timely report to the MSRB municipal securities transactions executed for and on behalf of one of its introducing correspondent broker-dealer firms, and failed to accurately and/or timely report TRACE-eligible corporate bond transactions executed for and on behalf of one of its introducing correspondent broker-dealer firms. **(NASD Case #2006003831901)**

Terwin Capital, LLC (CRD #122463, 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 the firm failed to maintain its minimum net capital requirement while conducting a securities business. The findings also stated that the firm's books and records were inaccurate. **(NASD Case #20060064130-01)**

Thornes & Associates, Inc. Investment Securities (CRD #40868, Redlands, 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 allowed registered individuals to maintain their registrations as general securities representatives while they were not actively involved in the firm's investment banking or securities business, and were not functioning as the firm's representatives. The findings stated that the firm failed to establish, maintain, and enforce a system of supervisory control and policies, and procedures reasonably designed to achieve compliance with NASD rules to prevent the firm from maintaining the registration of any registered representative not actively involved in the firm's investment banking or securities business, and not functioning as a representative of the firm. (NASD Case #E0220050156-01)

Wachovia Securities, LLC (CRD #19616, Richmond, Virginia) 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 it received approximately \$33,856.35 in special cash compensation for the sale of a particular mutual fund during an Individual Retirement Account (IRA) promotion that was not available to all firms that distributed the same mutual fund shares. The findings stated that the details of the arrangement, including naming Wachovia, were not disclosed in the fund's prospectuses or Statements of Additional Information. (NASD Case #E8A2003062017)

William Blair & Company LLC (CRD #1252, Chicago, Illinois) 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 it transmitted reports that contained inaccurate, incomplete or improperly formatted data to OATS, and failed to submit required information regarding one order to OATS. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning SEC Rule 604. The findings also stated that the firm 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 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. (NASD Case #20050001403-01)

Individuals Barred or Suspended

David Acosta (CRD #2497744, Registered Principal, Austin, Texas) 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 six months and ordered to pay \$26,000, plus interest, in restitution to a public customer. The fine and restitution must be paid before Acosta reassociates with any NASD member firm following the suspension, or before his firm requests relief from any statutory disqualification. Without admitting or denying the findings, Acosta consented to the described sanctions and to the entry of findings that he participated in private securities transactions without requesting or obtaining his member firm's prior written approval.

The suspension in any capacity is in effect from February 20, 2007, through August 19, 2007. (NASD Case #2005003264801)

Richard Joseph Alderman Jr. (CRD #3027749, Registered Representative, Pittsburgh, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Alderman consented to the described sanction and to the entry of findings that he failed to provide any notice to his member firm of his outside employment with another member firm. The findings stated that Alderman also failed to disclose his continuing employment with his member firm to the new firm. The findings also stated that Alderman failed to appear for an NASD on-the-record testimony. (NASD Case #2006005141601)

Kevin Eugene Beamon (CRD# 722656, Registered Representative, Lawrenceville, Georgia) 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 four months.

The fine must be paid before Beamon reassociates with any NASD member following the suspension, or before his firm requests relief from any statutory disqualification. Without admitting or denying the findings, Beamon consented to the described sanctions and to the entry of findings that he engaged in outside business activities, for compensation, without providing prompt written notice to, and receiving approval from, his member firm.

The suspension in any capacity is in effect from March 5, 2007, through July 4, 2007. **(NASD Case #2005003331601)**

John Edward Brigandi (CRD #1388900, Registered Representative, Greenvale, New York) was barred from association with any NASD member in any capacity. The National Adjudicatory Council (NAC) imposed the sanction following appeal of an Office of Hearing Officers (OHO) decision. The sanction was based on findings that Brigandi made unsuitable recommendations to a public customer based on the customer's financial situation, investment objectives and needs. **(NASD #C1020040025)**

Carolyn Sue Callahan (CRD #4115887, Registered Representative, South Bend, Indiana) was barred from association with any NASD member in any capacity. The sanction was based on findings that Callahan received \$45,000 from a public customer to be invested in mutual funds, forged the funds issuer's endorsement on the checks, deposited the funds in her business checking account and never paid the funds to the issuer, thereby misusing customer funds. **(NASD Case #2005000724301)**

Thanh Viet Jeremy Cao (CRD #4830211, Registered Representative, Rancho Santa Margarita, California) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Cao reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Cao consented to the described sanctions and to the entry of findings that he failed to provide his member firm with prompt written notice of his outside business activities. The findings stated that Cao participated in private securities transactions without providing prior written notice to, and receiving

prior written approval from, his member firm.

The suspension in any capacity is in effect from February 20, 2007, through February 19, 2008. **(NASD Case #20050021917-01)**

Charles Albert DaCruz (CRD #2444684, Registered Representative, Williston Park, New York) and **Thomas John Linda (CRD #2404854, Registered Representative, Atlanta, Georgia)** were barred from association with any NASD member in any capacity. In addition, DaCruz and Linda were ordered to disgorge the financial benefit of their misconduct as fines in the amount of \$67,000 and \$165,000, respectively. The NAC imposed the sanctions following appeal of an OHO decision. The sanctions were based on findings that DaCruz and Linda failed to disclose material information and made baseless price predictions when recommending a security to public customers. **(NASD Case #C3A20040001)**

Philippe Alfred DeSaint (CRD #4292420, Registered Representative, New York, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that DeSaint falsified documents regarding the price of convertible bonds in an effort to hide the excess market risk created by his losses accumulated from selling 10-year Treasury Note futures. The findings stated that by falsifying documents, DeSaint caused his member firm to fail to preserve accurate books and records in compliance with SEC Rule 17a-4. The findings also stated that DeSaint failed to respond to NASD requests for information. **(NASD Case #E102004090301)**

Kenneth Duane Feldhacker (CRD #1801281, Registered Representative, Phoenix, Arizona) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Feldhacker consented to the described sanction and to the entry of findings that he opened a joint brokerage account with a public customer without the customer's authorization or consent. The findings stated that Feldhacker forged customers' names on various account documents, and used blank forms the customers signed to withdraw funds from their accounts. The findings also stated that by forging customer signatures, Feldhacker initiated redemptions in the accounts that belonged to the customers and transferred money from mutual funds, variable and

fixed annuities, and/or life insurance accounts to the joint account without the customers' knowledge or consent. The findings also included that Feldhacker made unauthorized and fraudulent withdrawals and transfers from the customers' accounts to the joint account, thereby converting funds in excess of \$250,000 for his own use and benefit. (NASD Case #2006004151201)

William Daniel Fleno (CRD #735474, Registered Principal, Bridgewater, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which he was fined and suspended from association with any NASD member in any capacity for four months. In light of Fleno's financial status, the fine imposed was \$5,000. Without admitting or denying the findings, Fleno consented to the described sanctions and to the entry of findings that he aided and abetted a registered representative in his fraudulent and manipulative parking scheme by participating in the non-*bona fide* sale and purchase of municipal bonds. The findings stated that Fleno purchased bonds into his member firm's proprietary account to hold the bonds for several days so the registered representative could purchase them back within several days.

The suspension in any capacity is in effect from March 19, 2007, through July 18, 2007. (NASD Case #20050003239-04)

Ricardo Gonzalez (CRD #3204187, Registered Representative, Fort Lauderdale, 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, Gonzalez consented to the described sanction and to the entry of findings that he forged public customers' signatures on annuity withdrawal request forms, withdrew \$31,200 from their fixed annuity without their knowledge, authorization or consent, and converted the funds to his own use and benefit. The findings stated that Gonzalez failed to respond to NASD requests for information. (NASD Case #2005001852801)

Dennis Todd Lloyd Gordon (CRD #1614614, Registered Principal, Rosenberg, Texas) and Sterling Scott Lee (CRD #1848950, Registered Principal, Austin, Texas) were barred from association with any NASD member in any capacity and ordered to pay

\$20,832.40, plus interest, in restitution to public customers. The NAC imposed the sanctions following appeal of an OHO decision. The sanctions were based on findings that Gordon and Lee allowed a statutorily disqualified individual to function as the firm's principal without his properly being registered and failed to disclose the individual's association with the firm on a Uniform Application for Broker-Dealer Registration (Form BD). The sanctions were based on findings that Gordon and Lee caused their firm to charge retail customers fraudulently excessive markups and failed to disclose the markups on customer confirmations.

This decision has been appealed to the SEC. The SEC denied Gordon's request for a stay of the bar. The sanctions, other than the bars, are not in effect pending consideration of the appeal. (NASD Case #C06040027)

Thomas Michael Greenjack (CRD #3188356, Registered Representative, Williamstown, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the findings, Greenjack consented to the described sanctions and to the entry of findings that he falsified an annuity liquidation form in that he took a form a public customer signed and submitted in connection with an earlier withdrawal, altered the withdrawal's date and dollar amount and then submitted the falsified annuity liquidation form to the insurance company for processing.

The suspension in any capacity is in effect from March 19, 2007, through June 18, 2007. (NASD Case #2006006488001)

Jimmie Lee Griffith (CRD #2321620, Registered Representative, Richmond, California) was fined \$13,200 and suspended from association with any NASD member in any capacity for three months. The NAC imposed the sanctions following appeal of an OHO decision. The sanctions were based on findings that Griffith effected two unauthorized trades for an account owned by a trust.

This decision has been appealed to the SEC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C01040025)

John D. Helm (CRD #5057124, Registered Representative, Owensboro, Kentucky) was barred from association with any NASD member in any capacity. The sanction was based on findings that Helm failed to respond to NASD requests for information. The findings stated that Helm failed to amend his Form U4 with material information. (NASD Case #2006004264801)

John Joseph Heyrich (CRD #5033079, Associated Person, Brookside, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Heyrich consented to the described sanction and to the entry of findings that he willfully failed to disclose material facts on his member firm's employment application and on his Form U4. (NASD Case #20050030485-01)

Isac Huberman (CRD #251958, Registered Principal, Dallas, Texas) submitted an Offer of Settlement in which he was fined \$15,000 and suspended from association with any NASD member in any principal capacity for six months. Without admitting or denying the allegations, Huberman consented to the described sanctions and to the entry of findings that a member firm, acting through Huberman, failed to establish and maintain a supervisory system, including but not limited to, the establishment and maintenance of written procedures reasonably designed to ensure that the firm and its associated persons complied with NASD's Research Analyst and Research Report Rule. The findings stated that Huberman failed to ensure the timely filing of Forms U5. The findings also stated that Huberman continued to act in a registered capacity even though he became inactive for failing to complete the Regulatory Element of Continuing Education.

The suspension in any principal capacity is in effect from March 5, 2007, through September 4, 2007. (NASD Case #E062004003004)

Bobby Glenn James (CRD #1311728, Registered Representative, Parker, Texas) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the findings, James consented to the described sanctions and to the entry of findings that he effected discretionary transactions in

variable annuity sub-accounts public customers owned without the customers' prior written authorization and his member firm's prior written acceptance of the accounts as discretionary.

The suspension in any capacity was in effect from March 19, 2007, through March 30, 2007. (NASD Case #2005001463701)

Charles Roger Jeffries III (CRD #5151515, Associated Person, Las Vegas, Nevada) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member firm in any capacity for three months. The fine must be paid before Jeffries reassociates with any NASD member following the suspension, or before his firm requests relief from any statutory disqualification. Without admitting or denying the findings, Jeffries consented to the described sanctions and to the entry of findings that he failed to disclose a material fact on his Form U4.

The suspension in any capacity is in effect from February 20, 2007, through May 19, 2007. (NASD Case #20060058564-01)

Larry D. Koets (CRD #1973836, Registered Representative, Springfield, Oregon) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity and ordered to pay a public customer \$37,700 in restitution. Satisfactory proof of payment of restitution must be made before his firm requests relief from any statutory disqualification. Without admitting or denying the findings, Koets consented to the described sanctions and to the entry of findings that he signed a public customer's name to Account Service Request forms and used the forged documents to withdraw approximately \$37,700 from the customer's accounts without her knowledge or authorization. (NASD Case #20050033302-01)

Dickson Virchill Lee (CRD #1612056, Registered Principal, Kent, Washington) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$65,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Lee reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the findings, Lee consented to the

described sanctions and to the entry of findings that a member firm, acting through Lee, failed to record private placement transactions on its books and records. The findings stated that a company, acting through Lee, entered into a written agreement with an unregistered individual and retained him as an independent contractor to offer and sell its securities, and Lee caused the company to pay commissions to the individual, thus dealing with him on terms and conditions different from those it accorded the general public. The findings also stated that Lee knew, or should have known, that the independent contractor effected transactions in securities without registration as a broker or dealer in violation of Section 15(a)(1) of the Securities Exchange Act of 1934. The findings also included that, in connection with his company's offers and sales of securities, Lee caused his company to make untrue statements of material fact and omitted to state material facts necessary in order to make the statements that it made, in light of the circumstances in which they were made, not misleading.

The suspension in any capacity is in effect from March 5, 2007, through March 4, 2008. **(NASD Case #E3B2004020501)**

Kenneth Eugene Marsh (CRD #2571431, Registered Principal, Coral Springs, Florida) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Marsh consented to the described sanction and to the entry of findings that he engaged in outside business activities without providing his member firm with notice, written or otherwise, and indicated on firm compliance forms that he was not engaged in, and had no intent to engage in, outside business activities. The findings stated that Marsh failed to respond to NASD requests for information. **(NASD Case #E062005017501)**

John M. Meyers (CRD #2580153, Registered Principal, Coram, New York) and **Brian Craig Klein (CRD #2723977, Registered Representative, Farmingdale, New York)** were barred from association with any NASD member in any capacity. In addition, Meyers was fined \$213,957 and Klein was fined \$174,676. The NAC imposed the sanctions following appeal of a hearing panel decision. The sanctions were based on findings that Meyers and Klein engaged in fraud by recklessly failing to disclose to public customers

potential sales incentives for selling a particular recommended stock. The sanctions were also based on the hearing panel's findings that Meyers and Klein made fraudulent price predictions for the stock in order to induce customers to purchase it. **(NASD Case #C3A040023)**

Jason Charles Midgley (CRD #4623081, Registered Representative, Boynton Representative, Boynton Beach, Florida) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Midgley consented to the described sanction and to the entry of findings that he participated in private securities transactions without notifying his member firm. The findings stated that Midgley made an unsuitable recommendation to a public customer, failed to respond to NASD requests for information and failed to appear for testimony. **(NASD Case #2005002411701)**

Long Bao Nguyen (CRD #5049602, Associated Person, Portland, Oregon) submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for eight months. The fine must be paid before Nguyen reassociates with any NASD member following the suspension, or before his firm requests relief from any statutory disqualification. Without admitting or denying the allegations, Nguyen consented to the described sanctions and to the entry of findings that he failed to disclose a material fact on his Form U4. The findings also stated that Nguyen failed to timely respond to NASD requests for information.

The suspension in any capacity is in effect from February 20, 2007, through October 19, 2007. **(NASD Case #2005003352701)**

Alonzo Russell (CRD #1993366, Registered Principal, Mesa, Arizona) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Russell consented to the described sanction and to the entry of findings that he failed to respond to an NASD request for documents and information. **(NASD Case #2006005133901)**

Daniel J. Varley (CRD #5063467, Registered Representative, Munhall, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Varley consented to the described sanction and to the entry of findings that he made false entries into his member firm's internal customer relationship system that reflected he had had several contacts with a client regarding the client's preceding purchase of mutual funds through an external wholesaler when, in fact, those contacts had not occurred. The findings stated that, based on the purported contacts, Varley would have been entitled to receive compensation in connection with the purchase if the firm had not discovered that the entries were false. **(NASD Case #2006006237801)**

James Frane Wilkes (CRD #1344175, Registered Representative, Portland, Oregon) 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 Wilkes reassociates with any NASD member following the suspension, or before his firm requests relief from any statutory disqualification. Without admitting or denying the findings, Wilkes consented to the described sanctions and to the entry of findings that he signed a public customer's name to documents without the customer's knowledge or consent, and submitted them to his member firm for processing.

The suspension in any capacity is in effect from February 20, 2007, through April 19, 2007. **(NASD Case #20060049314-01)**

Complaints Filed

NASD issued the following complaints. Issuance of a disciplinary complaint represents NASD's initiation of a formal proceeding 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 these allegations in the complaint.

Eric Whetham Carlton (CRD #3078425, Registered Supervisor, Laguna Beach, California) was named as a respondent in an NASD complaint alleging that he submitted documents to his member firm and represented the documents to be genuine, when he knew, or should have known, that the signatures were not genuine and/or the documents had been altered. The complaint alleges that by submitting forged and falsified documents to his member firm, Carlton caused the firm's records to be falsified. The complaint also alleges that Carlton misused \$33,000 of public customers' funds by causing unauthorized transfers from the customers' Family Trust Account to other clients' accounts. The complaint further alleges that Carlton engaged in unauthorized trading in the customer's account by purchasing securities without the customer's knowledge, authorization or consent. In addition, the complaint alleges that Carlton forged, or caused to be forged, customers' signatures on a Letter of Authorization that directed the transfer of \$5,250 out of the customers' Family Trust Account. **(NASD Case #2005000726801)**

Lynette Joan Jacobs aka Lynette Davis (CRD #1932387, Registered Representative, New Brunswick, New Jersey) was named as a respondent in an NASD complaint alleging that she misused a public customer's funds in that she received and endorsed an \$8,500 check drawn on the customer's variable annuity account and made it payable to an alias Jacobs used. The complaint alleges that Jacobs and a third party endorsed the check, and deposited it in the third party's personal bank account. The complaint also alleges that Jacobs failed to respond to NASD requests to appear for an on-the-record interview. **(NASD Case #2005001763401)**

William Dennis Mattes Sr. (CRD #3251539, Registered Representative, Wheeling, Illinois) was named as a respondent in an NASD complaint alleging that he converted \$3,900 from a public customer by creating an ATM card and using the card to withdraw \$300 from the customer's checking and savings accounts on numerous occasions, without the customer's knowledge or consent. **(NASD Case #2006005936701)**

Firms Canceled Pursuant to NASD Rule 9553 for Failure to Pay Arbitration Fees

Amerifinancial dba Fareri Financial Services, Inc.
Boca Raton, Florida
(February 26, 2007)

Essex & York, Inc.
New York, New York
(February 26, 2007)

Milestone Group Management LLC
Lake Success, New York
(February 26, 2007)

Firm Suspended Pursuant to NASD Rule 9553 for Failure to Pay Annual Assessment Fees

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

Black Knight Ventures, Inc.
Tampa, Florida
(October 10, 2006, to February 13, 2007)

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

Gary Steven Artzt
Marbella, Spain
(February 1, 2007)

Dmitry Gorodetsky
Brooklyn, New York
(January 27, 2006, to February 28, 2007)

Kenneth Lee McLaughlin
Akron, Ohio
(February 1, 2007)

Individuals Barred Pursuant to NASD Rule 9552(h)

Shannon Durham
Carrollton, Texas
(February 27, 2007)

John Michael Legreca
Port Charlotte, Florida
(February 16, 2007)

Margie Emilia Minnalez
Seattle, Washington
(February 26, 2007)

Daniel Edward Schott-Bardol
Hickory, North Carolina
(February 22, 2007)

Seth Abraham Strader
Santa Cruz, California
(February 13, 2007)

Timothy Donald Trimmer
North Myrtle Beach, South Carolina
(February 9, 2007)

Omar Rene Valqui
Pembroke Pines, Florida
(February 20, 2007)

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.)

Noel Andrew Dent Jr.
Bronxville, New York
(February 13, 2007)

Gerald Costante Gonzalez
St. Petersburg, Florida
(February 26, 2007)

Neil Curtis Haeger Jr.
West Palm Beach, Florida
(February 5, 2007)

Michael Andre Jones
Topanga, California
(February 6, 2007)

Thomas Spaeth Koon
St. Louis, Missouri
(February 5, 2007)

Michael Kevin McNulty
Levittown, New York
(February 20, 2007)

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

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

Adam R. Ayers
Columbus, Ohio
(December 27, 2006, to February 23, 2007)

Stephen Christopher Hayward
Grand Rapids, Michigan
(February 20, 2007)

Stephen Wilson Horn
Sherman, Texas
(February 20, 2007)

Kevin W. Parsells
Holmdel, New Jersey
(February 26, 2007)

Dennis Alvin Pearson Jr.
San Diego, California
(December 19, 2005, to February 16, 2007)

Richard Walter Simpson
San Diego, California
(December 19, 2005, to February 16, 2007)

George Michael Tamborello
Seaford, New York
(February 13, 2007)

Gregory Owen Trautman
New York, New York
(February 20, 2007)

Samuel Morton Wasserman
Riverdale, New York
(February 20, 2007)

NASD Fines Four Fidelity-Affiliated Broker-Dealers \$3.75 Million for Registration, Supervision and Email Retention Violations

Fidelity Funds Distributor Failed to Supervise for Compliance with Ethics, Conflicts of Interest Policies In Connection With Gifts and Entertainment

NASD has fined four Boston-based Fidelity broker-dealers a total of \$3.75 million for improperly maintaining NASD registrations for 1,100 individuals, failing to assign registered supervisors to 1,000 individuals, failing to retain the email of 1,900 registered individuals, and other electronic recordkeeping failures. NASD also ordered the four broker-dealers to conduct comprehensive audits of the firms' systems, policies and procedures relating to registration and electronic recordkeeping.

NASD further found that, in connection with the receipt of gifts and entertainment, Fidelity Distributors Corporation (FDC), the principal underwriter of the Fidelity family of mutual funds, failed to supervise certain registered individuals for compliance with Fidelity's ethics and conflicts of interest policies applicable to all Fidelity employees. These individuals worked as traders for FMR Co., the investment advisor to the Fidelity family of funds, but were registered with FDC. In addition to FDC, the other firms charged were Fidelity Brokerage Services LLC, the introducing broker-dealer for all of Fidelity's retail customer accounts; Fidelity Investments Institutional Services Company, Inc., which markets non-retirement and retirement plan products and services; and National Financial Services LLC, the clearing broker for FBS and other introducing firms.

"It is inexcusable that four affiliated brokerage firms would fail to comply with essential registration, supervision and email requirements," said James S. Shorris, NASD Executive Vice President and Head of Enforcement. "These failures were especially significant here because they permitted an environment where improperly registered employees of a Fidelity investment advisor were able to engage in conduct that created actual or apparent conflicts of interest involving the employees, Fidelity and its fund customers."

NASD found that broker-dealer FDC permitted certain new employees hired by the investment advisor FMR Co. to “park” NASD licenses they held prior to joining Fidelity—even though they did not perform any functions for the broker-dealer. NASD further found that together, the four Fidelity broker-dealers improperly maintained registrations for 1,100 individuals who did not perform jobs for which an NASD license is required or permitted. By parking and/or improperly maintaining those licenses, the Fidelity broker-dealers effectively gave those individuals the ability to rejoin a brokerage firm at a later time without the re-testing required of those who are unregistered for two or more years. NASD’s qualification and registration requirements are intended to afford reasonable assurance to the investing public that registered individuals maintain and update their knowledge about products and services available to investors, as well as applicable rules, regulations, and policies governing the investment banking and securities business.

In addition, NASD found that the four broker-dealers failed to assign registered supervisors to 1,000 registered individuals. None of the broker-dealers had any mechanism, policy or procedure in place to ensure that registered individuals to whom no registered supervisor was assigned complied with NASD rules. These violations occurred because the Fidelity broker-dealers permitted employees from every aspect of the Fidelity-wide enterprise to maintain registrations if they chose to do so, and they did not assess on an individual basis whether the activities of each individual fell within the “permitted” or “required” categories for NASD registration.

NASD also found that, from 2002 through 2004, at least nine of the FMR Co. investment advisor traders whose licenses were parked at FDC received gifts and entertainment valued at hundreds of thousands of dollars from employees of brokerage firms who sought business from FMR Co. During that time, FDC’s gift policy and Fidelity’s corporate-wide gift policy prohibited employees from giving or receiving gifts with a value of more than \$100 per calendar year from a current or prospective customer. Likewise, Fidelity’s entertainment policy prohibited employees from giving or accepting transportation (other than local ground transportation), lodging or other travel-related expenses to attend an entertainment event with customers without reimbursement from or to the customer for the

expense. Fidelity also maintained a general policy governing professional conduct and conflicts of interest which provided that “Fidelity expects employees to have high standards of performance, integrity, productivity and professionalism.” This general policy also required employees to be familiar with and adhere to the more particular standards set forth in Fidelity’s gift and entertainment policies. NASD found that FDC failed to take any action to identify or examine the nature, frequency, extent and expense of the gifts and entertainment received by the investment advisor traders to determine if the gifts and entertainment were in compliance with Fidelity’s policies.

Examples of gifts provided by brokerage firm employees to the investment advisor traders included: several private chartered flights, including flights provided to an NASD-registered Fidelity trader and his wife for their honeymoon, tickets and lodging at expensive hotels for Wimbledon tennis tournaments, tickets to a Justin Timberlake/Christina Aguilera concert, tickets to the US Open Tennis Tournament, and twenty bottles of expensive wine, including twelve bottles of 1993 Chateau Petrus (Pomerol).

Examples of entertainment provided by brokerage firm employees to the investment advisor traders included: private chartered flights to various destinations including, but not limited to, Palm Beach and Miami Beach, FL, and Nantucket, MA, for overnight and weekend golf outings, a bachelor party for one of the registered investment advisor traders, and tickets to the 2004 Super Bowl. The golf outings included annual, multiple-day golf trips at venues such as Las Vegas, NV, Cabo San Lucas, Mexico, and Arizona. These events included extravagant private accommodations for the investment advisor traders.

NASD also found that, from 2001 through 2004, the Fidelity broker-dealers failed to retain email related to their business as such as required by NASD rules and federal securities laws. Pursuant to a written, corporate-wide policy applicable to each broker-dealer, the Fidelity broker-dealers retained email of only certain registered individuals and failed to keep email of 1,900 other registered individuals—totaling approximately 18 percent of all registered individuals at the time. This group consisted of NASD-registered individuals whom the firms determined were not doing the work of the broker-dealer. In connection with NASD’s recent

investigation of gift and entertainment activities by registered individuals, NASD requested that the Fidelity broker-dealers produce email for the investment advisor traders. The Fidelity broker-dealers, however, could not ensure that they had produced all email that should have been retained for these individuals and that they had fully complied with NASD's regulatory requests. In addition, prior to December 2002, the Fidelity broker-dealers recorded over back-up tapes and, from 2001 to August 2003, failed to capture and preserve all Instant Messages and Bloomberg email.

The Fidelity broker-dealers settled the action without admitting or denying the charges, but consented to the entry of NASD's findings.

NASD Charges Two Former Prudential Brokers with Facilitating Hedge Fund Manager's Deceptive Market Timing in Variable Annuities

Branch Manager Charged with Supervisory Failures

NASD has charged two Utah brokers, Jeffrey Doerr and David Corn, with facilitating a hedge fund manager's deceptive practices to market time through variable annuities offered by three different life insurance companies. Both Doerr and Corn were registered with Prudential Securities, Inc. (PSI)—now known as Prudential Equity Group—but have since left the firm. NASD also charged the brokers' branch manager, Darrel Trost, with failing to supervise their activities.

"Deceptive market timing violates ethical standards and can harm long-term investors in mutual funds and variable annuities," said James S. Shorris, NASD Executive Vice President and Head of Enforcement. "Brokers who actively facilitate the deceptive market timing conduct of their customers will be held accountable for this kind of misconduct."

In its complaint, NASD alleges that Doerr and Corn actively facilitated market timing activities by their customer—Paul Saunders, a hedge fund manager, registered broker and Chairman, CEO and majority owner of James River Capital Corporation of Richmond, VA. NASD fined Saunders \$2.25 million in October 2006—the largest sanction ever against an individual for deceptive market timing.

NASD alleges that Doerr and Corn assisted Saunders by opening 20 brokerage accounts at PSI for him between 2000 and 2003, in the names of numerous limited partnerships he created that had the same beneficial owners as his market-timing hedge fund. NASD alleges that Doerr and Corn knew or should have known that Saunders would use these accounts to market time variable annuities and that the limited partnerships shared the same beneficial owners.

NASD further alleges that, with Doerr and Corn's assistance, Saunders executed approximately 900 variable annuity sub-account exchanges between October 2001 and September 2003 that violated insurance company restrictions or limitations, earning approximately \$5.2 million in profits. Doerr and Corn each made approximately \$45,000 in commissions from this activity.

In its complaint, NASD alleges that after Saunders began market timing sub-accounts through Doerr and Corn, the brokers received notices from insurance companies attempting to restrict or block Saunders from further market timing. The complaint alleges that after receiving the restriction notices, Doerr and Corn assisted Saunders in evading the insurance company restrictions by engaging in the following deceptive practices, separately or together:

- Opening multiple contracts for Saunders in a variable annuity, in the names of different related limited partnerships, and simultaneously entering trades for Saunders in those annuity contracts.
- Handling Saunders's purchase of new contracts in a variable annuity in the names of other limited partnerships that shared the same beneficial owners as the partnerships that had been restricted or blocked by insurance companies.
- Handling Saunders's purchase of new contracts in the same variable annuity, with Saunders identifying a different annuitant. The brokers knew or should have known that all the annuitants used by Saunders were employees of entities Saunders controlled.
- Submitting applications for Saunders in much smaller dollar amounts after certain insurance companies rejected an annuity contract because it was purchased with a large initial investment.

The complaint alleges that Doerr and Corn used four separate broker identification numbers to help Saunders evade efforts by insurance companies to restrict his market timing activities. After one annuity contract opened with one number was restricted, the brokers would open a new contract with a different number.

NASD also charged Trost with failing to supervise Doerr and Corn. Trost knew or should have known that Saunders opened accounts for limited partnerships that shared common ownership, and that Saunders was engaging in prohibited market timing. He reviewed notices from insurance companies restricting Saunders's market timing, but did not restrict the accounts from continuing that activity. The complaint further alleges that Trost failed to adequately respond to repeated requests by PSI's Compliance Department regarding Saunders' market-timing activities.

NASD also alleges that Doerr, Corn and Trost also separately failed to update each of their Forms U4 for over seven months—and then only at the prompting of NASD staff—to reflect that each was the subject of an investigation that could result in a disciplinary proceeding.

The complaint follows related NASD actions not just against Saunders, but against PSI. On Aug. 28, 2006, NASD, federal and state securities regulators and the Department of Justice announced settlements and \$600 million in monetary sanctions against PSI for misconduct involving improper market timing of mutual funds.

NASD Fines Raymond James Financial Services, Inc. \$2.75 Million for Lax Supervision of Producing Branch Managers

Former Raymond James Branch Manager Donna Vogt Barred for Making Unsuitable Recommendations to Retirees

NASD has fined Raymond James Financial Services, Inc. (RJFS) of St. Petersburg, FL, \$2.75 million for failing to maintain an adequate supervisory system to oversee the sales activities of over 1,000 producing branch managers working in offices throughout the United States.

In a related action, NASD permanently barred one of those branch managers—Donna Vogt, who worked for the firm from her home office in Cambellsport, WI.

Vogt recommended unsuitable mutual fund and variable annuity purchases to elderly or retirement age customers, and made misleading statements to customers in correspondence. RJFS failed to detect these sales practice abuses because of deficiencies in its supervisory system. RJFS also failed to have an adequate system in place to properly supervise sales of variable annuities.

"RJFS's supervisory system was inadequate because it allowed producing branch managers to supervise themselves," said James S. Shorris, NASD's Executive Vice President and Head of Enforcement. "This flawed supervisory system created a situation where the unsuitable sales of variable annuities and risky mutual funds to elderly and risk-averse customers went undetected."

From early 2000 through September 2004, RJFS employed over 1,100 producing registered principals, or branch managers, most of whom worked in small, geographically dispersed offices. These branch managers were allowed to act as the primary supervisors of their own business activities. They approved their own transactions, opened and accepted new accounts, and reviewed their own correspondence. The firm relied on an electronic transaction surveillance system maintained by RJFS's Compliance Department, and a series of exception reports, to flag transactions that required further review. It also assigned supervisory responsibility for these 1,100 branch managers to three sales managers. The activities commonly associated with daily supervision, however, were conducted by the branch managers, who in many cases, in effect, supervised themselves. By permitting these principals to engage in self-supervision, RJFS's supervisory system was not reasonably designed to achieve compliance with securities rules and regulations.

One such producing manager was Donna Vogt, whose sales practice violations went undetected for approximately four years. Vogt was the branch manager and the only registered person working in her office in Wisconsin. She maintained hundreds of customer accounts and sold mainly mutual funds and variable annuities. Many of her customers were of retirement age or older. NASD found that, in determining which products to recommend, Vogt treated her customers as a homogeneous group, regardless of age, financial status, investment experience and objectives. Of her

approximately 700 accounts, more than 90 percent listed their primary investment objective as “growth” and risk tolerance as “medium.” RJFS never questioned the fact that Vogt listed these objectives and strategies for almost all of her customers. In fact, the person who reviewed and accepted the customer account documents was Vogt herself.

NASD found that Vogt recommended unsuitable purchases and concentrations of aggressive mutual funds and variable annuities to at least five customers who were elderly, retired or nearing retirement. These transactions were unsuitable due to the over-concentration in aggressive growth funds, and because access to their funds was limited by the variable annuity surrender charges.

RJFS failed to detect or prevent these unsuitable transactions by Vogt. The firm also failed to prevent Vogt from sending misleading communications to some of her customers, in part because the firm allowed all of its producing branch managers, including Vogt, to review their own incoming and outgoing correspondence.

NASD found additional supervisory deficiencies at RJFS. The firm failed to maintain an adequate system and written procedures to reasonably supervise sales of variable annuities. Branch managers reviewed and endorsed most of their own variable annuity activities. RJFS’s Compliance Department screened variable annuity purchases using only three exception reports. The exception reports did not screen variable annuity transactions for suitability based on customer net worth, annual income, investment experience or concentration of variable annuity holdings as a percentage of net worth. As a result, Vogt’s unsuitable variable annuity recommendations went undetected. In addition, there was no system in place at the firm for reviewing the suitability of variable annuity sub-account transactions recommended by branch managers, nor was there any system for ensuring that a record of sub-account recommendations and transactions was maintained. NASD also found deficiencies in the firm’s branch audit program, and found that RJFS failed to maintain certain books and records.

Neither RJFS nor Vogt admitted or denied the charges, but consented to the entry of NASD’s findings.

NASD Fines Scudder Distributors, Putnam Retail Management, AllianceBernstein for Improper Training and Education Expenditures

Firms Improperly Entertained Brokers, Reimbursed Guest Expenses Under Guise of Education and Training

NASD has fined three distributors—Scudder Distributors, Inc. of Chicago, Putnam Retail Management Limited Partnership of Boston and AllianceBernstein Investments, Inc. of New York—a total of \$700,000 for violations of NASD’s non-cash compensation rules, including improperly providing entertainment and paying for guest expenses at training and education meetings.

NASD imposed a \$425,000 fine against Scudder, which distributes the investment products of Scudder Investments; a \$175,000 fine against Putnam, which distributes its own investment products; and a \$100,000 fine against AllianceBernstein, which distributes the investment products of AllianceBernstein, L.P.

NASD limits the use of compensation—including non-cash compensation such as reimbursement for travel expenses, meals and lodging in connection with training and education meetings—to help ensure the integrity of investment recommendations. NASD rules are designed to prevent point-of-sale incentives from compromising a broker’s objectivity in matching the investment needs of the customer with the appropriate investment product.

NASD found that the three distributors, which rely on retail brokerage firms and their brokers to recommend and sell the investment products they distribute, improperly provided and paid for entertainment and attendees’ spouse and guest expenses in connection with training and education meetings.

“Today’s enforcement action underscores the need for distributors of mutual funds and variable annuities to understand the limits surrounding the use of non-cash compensation.” said James S. Shorris, NASD Executive Vice President and Head of Enforcement. “Non-cash compensation of the sort found in this case is prohibited because it can induce brokers to put their own interests ahead of their clients’ interests.”

Scudder

NASD found that between 2001 through 2004, Scudder provided three types of impermissible non-cash compensation in connection with education and training meetings it sponsored. First, NASD found that Scudder permitted spouses to attend educational events and paid for or reimbursed their expenses, including expensive meals at premier restaurants in New York City. Second, the firm paid for impermissible entertainment at educational events, including “theme” parties such as an elaborate rock-and-roll party in 2002 which involved recreating the “Whiskey-A-Go-Go” bar of the 1970’s and bringing in make-up artists to make attendees “look the part.” Finally, Scudder paid for additional nights of lodging for selected attendees, without adequately ensuring that the cost of these extended stays was justified by cost savings associated with the extended stay. This included paying for Scudder attendees to engage in activities such as golf, fishing and horseback riding, followed by dinner with live entertainment on a Saturday when there were no scheduled educational or training activities. Scudder also failed to have adequate systems and procedures in place to provide reasonable assurance that it complied with NASD’s non-cash compensation rules.

Putnam

NASD found that Putnam violated NASD rules relating to non-cash compensation from 2001 through 2004. During that period, Putnam paid for meals and ground transportation expenses of brokers’ spouses and guests in connection with numerous training and education meetings. Putnam also paid for entertainment at training and education meetings for brokers and their guests in connection with two training and education meetings in 2001, including tickets to a Boston Red Sox game in connection with one such meeting. Two of the meetings at which Putnam paid for guest meal expenses occurred in late April 2004, three weeks after Putnam received advice from outside counsel that such payments were contrary to NASD rules. Putnam’s compliance materials were updated to reflect this advice, but the firm still paid for guest meal expenses at the two meetings. NASD also found that Putnam failed to have in place systems and procedures reasonably designed to achieve compliance with NASD’s non-cash compensation rules.

AllianceBernstein

NASD found that in 2001, AllianceBernstein improperly paid for brokers’ guests to attend dinners at prominent New York City restaurants and attend Broadway plays in connection with numerous training and education meetings. AllianceBernstein’s improper spending on entertainment occurred at six meetings in 2001, and its improper spending on meals for guests of meeting attendees occurred at 10 other meetings in 2001. NASD also found that the firm failed to have in place systems and procedures reasonably designed to achieve compliance with NASD’s non-cash compensation rules.

In settling with NASD, Scudder, Putnam, and AllianceBernstein neither admitted nor denied the allegations, but consented to the entry of NASD’s findings.