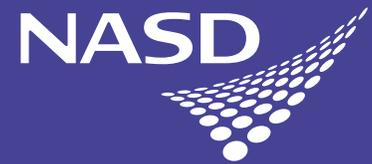


# Regulatory & Compliance Alert



A PUBLICATION OF NASD

## New NASD Publication to Aid Member Firms' Compliance

In order to assist member firms' compliance efforts, NASD is now issuing "Improving Examination Results," a new communication that can be found on NASD's Web Site at [http://www.nasdr.com/5200\\_improving\\_results.asp](http://www.nasdr.com/5200_improving_results.asp). For your convenience, we have also published the first issue of this communication in this *Regulatory & Compliance Alert*. The publication is divided into two sections: "Examination Priorities" and "Frequently Found Violations," both of which relate to the Department of Member Regulation's routine examinations of firms. All firms must establish their own compliance programs and supervisory procedures to address their unique business and structure; however, NASD believes it would be helpful to share its overall priorities so that firms can focus on issues that are particularly timely and be better prepared for regulatory examinations. By citing frequently found violations, NASD hopes to alert firms to areas of recurring problems, and to offer practical advice on how to avoid common pitfalls. This communication will be updated on the Web periodically during the year.

### Examination Priorities

NASD believes that the following areas are of particular importance to the examination program in the coming year.

**Anti-Money Laundering.** The recently adopted Anti-Money Laundering (AML) Rule (NASD Rule 3011) requires that firms establish and implement AML programs. The new and extensive obligations imposed by the PATRIOT Act and Rule 3011 are critical components in ensuring that the broker/dealer community responds to its obligations to detect and prevent money laundering. This area is an examination priority in order to assist member firms in meeting their obligations and to ensure that these obligations are being fulfilled. View our AML Web Page at <http://www.nasdr.com/money.asp>.

continued

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**Internal Controls.** Market volatility and the events of September 11, 2001, have highlighted the necessity that all member firms have in place a system of internal controls to ensure their long-term success. Member firms should have established risk management procedures addressing all aspects of their businesses, prudent financial controls, and well thought-out business continuity plans. In order to avoid breakdowns in the future, examination efforts will be focused on ensuring that firms have addressed these issues.

**Analysts' Conflicts of Interest.** Conflicts of interest are created when research analysts make recommendations regarding the securities of companies in communications to the public when the firms that employ the analysts have investment banking or other business relationships with the company or when the analysts own securities of the recommended company. To the extent that these conflicts affect the recommendations of the analysts, it compromises the integrity of the information flowing to investors and to the market place. Significant regulatory efforts are being devoted to reviewing these relationships at firms and statements that have been and are being made to the public. View our Analyst Recommendations Web Page at [http://www.nasdr.com/analyst\\_guide.htm](http://www.nasdr.com/analyst_guide.htm).

**Branch Office Supervision.** Sales practice violations by individual registered representatives are a continuing area of concern, many of which could have been prevented or detected through more diligent supervision. As such, regulators are placing an increasingly greater focus on evaluating the adequacy of supervision and supervisory procedures, particularly at the branch office level. Similarly, a high level of regulatory scrutiny is being directed towards the adequacy of supervision of producing branch managers and on registered principals working alone in independent offices.

**Variable Annuities.** The complexity of these products, coupled with the significant number of sales practice violations and supervisory failures, continue to make this area a priority in our examination program. (See *NASD Notice to Members 99-35: "The NASD Reminds Members Of Their Responsibilities Regarding The Sales Of Variable Annuities"* at [http://www.nasdr.com/2610\\_1999.asp#99-35](http://www.nasdr.com/2610_1999.asp#99-35).)

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## Frequently Found Violations Update

### Written Supervisory Procedures (NASD Conduct Rule 3010(b))

**Violation:** Members are required to establish, maintain, and enforce written supervisory procedures (WSPs). One of the most common problems that NASD finds during examinations of firms is that written procedures adopted by the firms are inadequate. Although the product lines and procedural areas cited for inadequate procedures vary from firm to firm, frequently the general issue is that the procedure does not in fact describe what the firm will do to supervise the activity.

For example, in a recent examination the member's WSPs for Free-Riding and Withholding read: "Shares of new issues cannot be sold in violation of NASD Rule 2110." Another firm's procedures in the same area contained a similar prohibition and then reproduced all of IM-2110-1. Both procedures are inadequate.

**Why this is a problem:** These are not supervisory procedures. Rather, they are compliance guidelines for the firm's employees.

**The solution:** Firms can avoid the problem by ensuring that their written supervisory procedures identify:

WHO is responsible for supervision

WHAT steps that person will take to ensure his/her firm is in compliance with the rule

WHEN the supervisory steps will be taken

HOW the supervision will be evidenced.

*NASD Notice to Members 99-45 ([http://www.nasdr.com/2610\\_1999.asp#99-45](http://www.nasdr.com/2610_1999.asp#99-45)) provides comprehensive and practical guidance for developing adequate WSPs.*

### Municipal Securities Trade Reporting (MSRB Rule G-14)

**Violation:** Municipal brokers and dealers are required to submit information about their municipal trades to the Municipal Securities Rulemaking Board (MSRB) in a timely and accurate manner, according to the formats and timeframes specified by the rule. Examinations of a number of introducing firms, however, have disclosed errors in trade reports, one of the most common of which is the reporting of trades under the identifier of the clearing firm, rather than that of the introducing firm. In some instances, reports are not submitted at all.

**Why this is a problem:** Introducing broker/dealers often rely on their clearing firms to submit reports of their municipal securities transactions. Notwithstanding any contractual relationships addressing this function that might exist between the firms, ultimate responsibility for municipal securities trade reporting rests with the firm that effected the trade, the introducing firm.

**The solution:** Introducing firms can avoid MSRB Rule G-14 violations by regularly reviewing the trade reports submitted by their clearing firms. The best way to do this is by registering to use the MSRB's Dealer Feedback Service. This free service allows introducing firms to download municipal transaction data submitted for them by their clearing firms to verify that it was submitted to the MSRB in a complete, timely, and accurate manner. Information about the Dealer Feedback Service is available from the MSRB's Web Site at <http://www.msrb.org>.

### **Regulatory Element of Continuing Education (NASD Membership and Registration Rule 1120(a))**

**Violation:** Registered individuals are prohibited from functioning in their registered capacities if they do not satisfy the Regulatory Element requirement within their 120-day window. NASD examiners frequently find that member firms permit registered individuals to function in a registered capacity despite being CE inactive. In some instances the firm states that it was not aware that the CE requirement had not been fulfilled. In other instances, firms have become aware that registered individuals are CE inactive but have allowed those individuals to continue functioning in a registered capacity.

**Why this is a problem:** CE requirements are an important means of assuring that registered persons keep abreast of current regulatory obligations. Failure to prohibit CE inactive registered individuals from acting in registered capacities, whether inadvertent or with knowledge, is a violation of the rule. Violations of this rule have resulted in both formal and informal disciplinary actions, depending upon several factors, including length of time the CE inactive individual was permitted to function; the amount of income generated by the individual; the nature of the business conducted by the individual; the adequacy of the firm's WSPs; and how they were implemented. Knowingly allowing a registered individual designated

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as CE inactive to function is a serious matter that could result in formal disciplinary action against the firm and/or the appropriate supervisors.

**The solution:** Proper use of the resources available through CRD to track compliance with the continuing education requirements will assist in preventing inadvertent violations. Members can affirmatively request e-mail notifications from CRD regarding their associated persons and can also check various CRD records on a regular basis to determine the CE status of their registered persons. *NASD Notices to Members 01-07* and *01-17* ([http://www.nasdr.com/2610\\_2001.asp#01-07](http://www.nasdr.com/2610_2001.asp#01-07), [http://www.nasdr.com/2610\\_2001.asp#01-17](http://www.nasdr.com/2610_2001.asp#01-17)) provide information concerning Web CRD e-mail notifications regarding Regulatory Element Requirements and notifications of CE inactive registered individuals. *NASD Notice to Members 00-35* ([http://www.nasdr.com/2610\\_2000.asp#00-35](http://www.nasdr.com/2610_2000.asp#00-35)) also provides information concerning CRD CE requirement notification methods and provides information on Written Supervisory Procedures.

### **Books and Records (SEC Rules 17a-3 and 17a-4)**

**Violation:** The SEC has consistently held that broker/dealers must maintain their books and records pursuant to the accrual basis of accounting. Thus, broker/dealers must record revenue when it is "earned," typically as services are rendered or when a security transaction has been completed. In addition, the broker/dealer must match expenses to the generation of revenue. For example, if commissions are earned in January, and the firm will pay a percentage of the commissions to its registered representatives in February, the expense and the related liability must be recorded on the firm's January financial statements. Some firms record commissions (and other recurring expenses like rent, utilities, telephone bills) when paid. Recording transactions when paid, as opposed to when the income is earned or the obligation to pay arises, is not consistent with the accrual basis of accounting, and is inconsistent with the SEC's requirement.

**Why this is a problem:** When a broker/dealer fails to accrue liabilities or expenses properly, its books and records are inaccurate and not in compliance with the SEC's books and records rules. Additionally, the inaccurate calculations may raise serious questions as to whether the broker/dealer is in compliance with the SEC Net Capital Rule.

**The solution:** Firms should take extra care to ensure that all financial activity is recorded on the firm's financial records accurately and timely, that is, in the month in which revenue is earned and

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obligations arise, regardless of when invoices are received. Precise accruals are often possible for items with a fixed monthly charge, such as rent or equipment lease payments. In other cases, reasonable estimates may be used, for example, to estimate a monthly phone bill. Estimates should be consistent with historical expenses where possible and adjusted for changes in service, e.g., additional phone lines or quotation terminals.

In addition, in some cases, a firm will enter into an expense-sharing agreement with a parent/affiliate where the latter agrees to pay for or provide certain services. For example, the parent/affiliate agrees to pay rent and provide office space to the broker/dealer. If the broker/dealer is legally obligated to the service provider or creditor, either directly or indirectly, a broker/dealer must record these expenses and accrue the related liabilities until it has received proof that the obligation has been paid by the parent/affiliate.

### **Form U-4 Reporting (Article IV, Section 1(c) of the NASD By-Laws and IM-1000-1)**

**Violation:** The NASD By-Laws require every registered representative to keep their Form U-4 current at all times. NASD staff has noted an increase in the number of instances in which registered representatives fail to amend their Forms U-4 to reflect new information, including new home addresses, outside employment, and/or other material events, such as bankruptcies, regulatory actions, litigation, customer complaints, and convictions.

**Why this is a problem:** U-4 disclosures represent one of the most important sources of regulatory information for both firms, which should monitor this information for supervisory purposes, and NASD, in the discharge of its oversight responsibilities. Failure to update the Form U-4 in a timely way will result in disciplinary action.

**The solution:** Registered representatives typically state that their failure to make disclosures on, or submit amendments to, Form U-4 was the result of either misreading a question or simply being unaware of the disclosure requirement. Member firms should regularly seek to educate registered representatives concerning their obligations to ensure that the Form U-4 is current at all times. A member firm can also take the lead in facilitating Form U-4 amendments when it learns that a registered representative resides at a new address.

**Questions about this communication may be directed to NASD Member Regulation at (202) 728-8221.**

NASD member firms routinely file advertisements and sales literature that contain historical variable annuity performance data with NASD.<sup>1</sup> While the majority of these communications comply with NASD Conduct Rule 2210, Communications with the Public, NASD has noted some inconsistencies in the way members present variable annuity performance data.

Pursuant to NASD Conduct Rule 2210(d)(1), members' communications about variable annuity performance must provide the reader with a sound basis for evaluating the facts with respect to the annuity. Communications may not omit material information that would cause the presentation of performance data to be misleading. Misleading statements or claims are prohibited in all NASD members' communications with the public.

#### **Performance Pre-dating the Offering of a Fund in the Variable Annuity**

Members may advertise the performance of a fund earned at times prior to its offering in a variable annuity (pre-dated performance). Communications must clearly identify this pre-dated performance and explain that it pre-dates the offering of the fund as an investment option in the variable annuity. Communications must also disclose that this performance is hypothetical since the fund was not available in the variable annuity prior to a specified date.

In order to give the reader an accurate idea of the performance the variable annuity would have experienced had the fund been available in the variable annuity, pre-dated performance must be net of all recurring costs such as mortality and expense risk charges and annual administrative fees. Members must base such expenses on the charges at the time the fund became an investment option in the annuity.

In addition to recurring fees, the pre-dated performance must reflect the deduction of non-recurring charges such as sales loads and contingent deferred sales loads. NASD deems performance net of such costs to be material information that is necessary to make performance presentations fair and not misleading.

<sup>1</sup> NASD Conduct Rule 2210(c)(1) requires member firms to file all advertisements and sales literature regarding registered investment company securities, which include variable annuities, within 10 days of first use.

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Members may present additional pre-dated performance that does not reflect charges, provided they label such information clearly and explain which charges have not been reflected. Nevertheless, members must not overemphasize pre-dated performance that does not reflect all charges.

### **SEC Requirements**

In addition to compliance with NASD Conduct Rules, members' communications about variable annuity performance must adhere to the applicable SEC standards.<sup>2</sup> Communications that include performance information and that are used prior to delivery of the prospectus must comply with SEC Rule 482. Communications that include performance information and that are preceded or accompanied by a prospectus must adhere to SEC Rule 34b-1. Both SEC rules set standards for variable annuity performance data. The rules permit the use of variable annuity total return information provided that, among other things, it is accompanied by average annual total returns computed in accordance with formulas set forth in SEC Forms N-3 or N-4, as applicable ("standardized total returns"). This article describes NASD requirements with respect to members' communications about variable annuity performance. Members should consult applicable SEC rules and forms for the requirements relating to SEC standardized total returns and other SEC requirements relating to performance advertising.

**Any questions regarding the depiction of variable annuity performance in members' communications may be directed to the Advertising Regulation Department at (240) 386-4500.**

<sup>2</sup> NASD Conduct Rule 2210(e) states in part, "...members' public communications shall conform to all applicable rules of the Commission, as in effect at the time the material is used."

## Electronic Registration of Investment Adviser Representatives Implemented

The third phase of the IARD Program, the electronic registration of investment adviser representatives via the Web CRD<sup>SM</sup> System, was implemented by NASD on March 18, 2002. The additional registration functionality in Web CRD was launched in conjunction with the revised Uniform Forms U-4 and U-5, which added an "RA" registration position for investment adviser representatives. The Uniform Forms were revised not only to incorporate the new investment adviser representative registration position, "RA," but also to align them more with their electronic counterparts in Web CRD. The changes were intended to make the forms more user-friendly for firms and their associated individuals.

Investment adviser (IA) firms and joint broker/dealer-investment adviser (B/D-IA) firms are now able to register existing and new investment adviser representatives (RAs) electronically through Web CRD, either as directed/mandated by state(s) or on a voluntary basis. Some states provide an exemption from investment adviser representative (RA) registration if you are also a registered representative. The North American Securities Administrators Association (NASAA) has compiled a matrix of these states on its Web Site at <http://www.nasaa.org/nasaalinvadvisor/matrix.asp>, along with contact information for each of the states. Firms that are unsure as to the requirements of the state when it comes to investment adviser representative registration (RA) should contact the state for clarification before submitting the electronic filing.

Additionally, before an IA firm files its first electronic Form U-4 for an existing RA, the firm must update Web CRD to reflect the states with which the RA is currently registered. This process is called submitting a "Transition Filing." Transitioning only applies to existing RAs who are already registered or licensed in states. The Transition Filing identifies the states where the RA is currently registered, provides basic employment information about the RA, and creates a CRD Number if none exists for the individual. Furthermore, submitting a Transition Filing ensures that the firm is not charged state registration fees it has previously paid for the RA. A one-time, non-refundable Initial Set-Up Fee of \$45 is charged per individual when a firm either transitions a currently registered RA or submits an Initial Form U-4 Filing for a new applicant.

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There are two ways to transition RAs onto Web CRD, online or batch. Online Individual Transition Filing is available for either IA-Only firms or joint B/D-IA firms. Batch Transition Filing (Electronic File Transfer) is available only for joint B/D-IA firms. The Online Individual Transition Filing method allows a firm to complete and submit a Transition Filing through the Web CRD System for each existing RA associated with the firm. The Batch Transition Filing or Electronic File Transfer transitions groups of RAs and is available only for joint B/D-IA firms, because the individuals associated with a joint B/D-IA firm already have active CRD records with the firm as registered representatives. The joint B/D-IA firm need only indicate to the system the states with which these individuals are registered as RAs as well. Depending on the number of RAs that a joint B/D-IA is required to transition, Batch Transition Filing may be a better alternative to submitting Online Individual Transition Filings.

In order to address the workload that the states have as firms transition large numbers of investment adviser representatives onto the Web CRD System, a Batch Transition Filing Schedule was coordinated and managed between NASD, the states, and the participating firms. Firm-scheduled Batch Transition Filings were completed at the end of June. Firms that have not yet transitioned their RAs and wish to complete their transitioning obligations in this manner should contact the NASD Gateway Call Center at (240) 386-4848 in order to obtain the "Batch Transition Registrations" specifications.

**For additional information regarding the electronic registration of investment adviser representatives, visit the IARD Web Site at [www.iard.com](http://www.iard.com).**

## Upcoming Modifications to Registration Comment in Web CRD

NASD implemented the Registration Comment functionality in Web CRD<sup>SM</sup> in February 2000. The Registration Comment functionality was intended to provide users with a mechanism to explain unusual circumstances or irregularities in an individual's registration history that cannot be addressed otherwise through a form filing. Registration Comment was implemented as "transitional" functionality and was intended to provide NASD time to monitor the success of the function, and to decide whether to pursue a more permanent solution through a Uniform Forms change or other rulemaking.

Although a Registration Comment may be used for many reasons, the overwhelming majority of Registration Comments entered into Web CRD by firms since its inception relate to two particular questions on the Form U-5 (the Uniform Termination Notice for Securities Industry Registration): the date of termination and the reason for termination.<sup>1</sup> This is due in part to the fact that, pursuant to the terms of the Form U-5, firms cannot amend answers to these questions after the initial Form U-5 is submitted.

The North American Securities Administrators Association (NASAA)/NASD Steering Committee has been monitoring comments entered, and has found that a significant number of inappropriate comments, i.e., comments outside of the boundaries of general guidance to firms posted on the NASD Web Site regarding the appropriate use of the functionality, have been posted by firms in Registration Comment. Over the past several months, representatives of member firms, NASAA, and NASD agreed that, because firms' use of the Registration Comment functionality has not been consistent with the intended purpose, the process/approach to Registration Comment on Web CRD should be modified. In response, NASD developed the following three-phase implementation plan, which ultimately will result in termination of the Registration Comment function; may, if a form change is successfully implemented, allow firms to correct or amend the date and reason for termination on the Form U-5; and will give regulators a mechanism to enter a note on an individual's registration record that is viewable by both regulators and industry.

<sup>1</sup> For a given individual, the firm submitting Form U-5 must select one of five reasons for termination: Voluntary, Deceased, Permitted to Resign, Discharged or Other. If one of the latter three reasons is selected, the firm is obligated to provide an explanation as well.

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**Phase I:** During the first phase of the implementation plan, currently targeted for September 3, 2002, NASD will remove all firm entitlement to create Registration Comments. Firms will, however, retain entitlement to view Registration Comments. As an alternative to the ability to enter a comment, a firm with a legitimate reason for wanting to clarify information about the date or reason for termination on a registered individual's Form U-5 will be able to submit a request to Registration and Disclosure's Office of Policies and Guidelines, asking for NASD to enter explanatory information in the Registration Comment field on the individual's record, and providing an explanation for the request that will be viewable on the system. The Registration Comment Request Form and accompanying guidance to firms will be posted on NASD's Web Site in conjunction with the implementation of the revised program. The guidance will specify that Registration and Disclosure's Office of Policies and Guidelines reserves the right to deny inappropriate requests.

**Phase II:** Although it constitutes a significantly smaller percentage of the Registration Comments entered, regulators also use the function to clarify elements of an individual's record. In Phase II, currently scheduled for early 2003, NASD will remove all regulator entitlement to create Registration Comments. Instead, for example, regulators will be able to hyperlink a note about an individual's conditional or restricted registration status to the particular registration status on the individual's record. During Phase II, firms will continue to use the Registration Comment Request Form outlined above in Phase I as needed.

**Phase III:** In Phase III, which is currently slated for implementation in 2004, NASD plans to eliminate the Registration Comment field on the Web CRD System. NASD also is proposing a change to the Form U-5 that will enable firms to correct or amend the date and reason for termination under appropriate circumstances, and an accompanying change to the Web CRD System, which would notify relevant regulators upon an amendment correcting the date or reason for termination in a given record. In order to implement Phase III, a Form U-5 change would have to be approved and a determination will have to be made by the NASAA/NASD Steering Committee about existing Registration Comments. Both undertakings would require close coordination with industry and NASAA, in addition to SEC approval.

**For questions you may have regarding Registration Comment, please contact Victoria Pawelski, Senior Attorney, Registration & Disclosure, at (240) 386-4803.**

## NASD to “Push” Five Important Registration-Related E-Mail Notifications to Member Firms

### Background:

Since October 2000, Web CRD has provided firms the ability to request that when certain registration-related conditions occur, for either the firm or an individual registered with the firm, an e-mail notification be automatically generated directly to a firm-designated user’s e-mail, as the condition arises, in addition to appearing in the appropriate Firm Queue. To date many firms have availed themselves of this optional functionality and have elected to receive some or all of the notifications available. NASD recognizes the importance of member firms to ensure compliance with registration-related requirements; therefore, as an expanded service to all firms, beginning on September 30, NASD is implementing a proactive process and will “push” five important registration-related e-mail reminders to firm-designated contacts when any of the following conditions occurs:

- ▶ An individual registered with a broker/dealer firm has a registration that becomes “Inactive Prints.”
- ▶ An individual registered with the firm enters the Temporary Registration Cancellation Queue.
- ▶ An individual registered with a broker/dealer firm is within 30 days of the end of his/her CE Required window.
- ▶ An individual registered with a broker/dealer is within 90 days of the end of his/her CE Required window.
- ▶ An individual registered with a broker/dealer firm enters the Firm CE Inactive Queue.

NASD is implementing the e-mail “pushes” to further assist firms with managing these important registration-related updates.

### Process:

In order to ensure that these timely and important e-mails are directed appropriately, NASD is asking that each firm supply a contact(s) at the firm to receive the five e-mail notifications. Per member firms’ requests, beginning Monday, July 22, a new feature was added to the Firm E-Mail Notification functionality. As of that date, member firms have the ability to designate different e-mail contacts for every notification available, if they so choose.

To supply new and/or updated e-mail address information for the receipt of Firm Notifications, the broker/dealer firm should:

- 1 Logon to Web CRD.
- 2 Click on NFI ORGANIZATION SEARCH under ORGANIZATION-NON-FILING INFORMATION on the Site Map.
- 3 Click on FIRM NOTIFICATION on the Navigation Panel or on the footer at the bottom of the screen. NOTE: If you do not see Firm Notification on the Navigation Panel, you may not have authorization for this function. Please contact your firm's Web CRD Account Administrator.
- 4 Please note that as of July 20, there are 16 different Firm Notifications that firms may choose to receive. NASD is asking firms to select, **at minimum**, the following five notifications:

#### Registration

- ➔ Notify when an individual's registration is Inactive Prints with the Firm-BD Only
- ➔ Notify when a registered individual enters Firm Temporary Registration Cancellation Queue

#### CE

- ➔ Notify when a registered individual is within 30 days of the end of his or her CE Required window – BD Only
  - ➔ Notify when a registered individual is within 90 days of the end of his or her CE Required window – BD Only
  - ➔ Notify when a registered individual enters Firm CE Inactive Queue – BD Only
- 5 Enter the **Contact Name** (name of the individual to receive the e-mail).
  - 6 Enter the **Contact Phone Number** (phone number of the individual who will receive the e-mail).
  - 7 Enter the **E-mail Address** of the individual whom you want to receive each of the Firm Notifications selected.

## CRD/IARD

**Please Note:** Firms may now choose to have one individual at the firm receive all of the e-mails selected or the firm may input a different e-mail address for each Firm Notification it selects to receive. Additionally, the e-mails are systematically “bundled” together based on Notification type.

- 8 Place a check mark in the box before each Firm Notification that you wish to receive. (If you would like to receive e-mail notification of all Firm Notifications, you must check all 16 boxes.
- 9 Click on SAVE.

An instructional Firm Notifications Navigation Guide can be found on the NASD Web Site at [http://www.nasdr.com/pdf-text/webcrd\\_nav\\_firmnot.pdf](http://www.nasdr.com/pdf-text/webcrd_nav_firmnot.pdf).

In the event that there is a non-deliverable e-mail address listed on the Firm Notification Information screen, NASD will contact the firm. If the firm cannot be contacted or if a valid e-mail address cannot be obtained, NASD will disable the Firm Notification for that specific e-mail address. The firm will then need to contact the Registration and Disclosure Department to re-enable the Firm Notification.

### **Deadline:**

**Friday, September 27**, is the deadline for member firms to select and input the appropriate e-mail address(es) for the five registration-related Firm Notifications noted above before the E-mail “Push” Program is implemented later that month.

If a member firm has not proactively selected these five Firm Notifications and provided NASD with the appropriate e-mail address information for them, NASD will run a script to automatically set up receipt of the five notifications on behalf of the firm and designate the firm’s Primary Account Administrator as the recipient.

In the event that NASD does not have a Primary Account Administrator’s e-mail address on file, the e-mail address of the firm’s Executive Representative will be used. The Executive Representative will then automatically receive those five Firm Notifications as the conditions arise.

## Optional Firm Notifications Expanded:

With Web CRD Release 4.1, Firm Notifications that firms may choose to receive via e-mail have been expanded to include (the items bolded are the Firm Notifications that NASD will be “pushing” to all firms):

### Registration

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- ➔ **Notify when an individual’s registration is Inactive Prints with the Firm-BD Only**
- ➔ Notify when an individual’s registrations request is T\_NOU5
- ➔ Notify when an individual’s registration request has been Denied
- ➔ Notify when an individual’s registration has been Revoked.
- ➔ **Notify when a registered individual enters Firm Temporary Registration Cancellation Queue**

### Disclosure

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- ➔ Notify when a Bankruptcy has expired for a registered individual with the firm
- ➔ Notify when a Customer Complaint has expired for a registered individual with the firm
- ➔ Notify when a U-6 is filed against a registered firm
- ➔ Notify when a U-6 is filed against an individual registered with the firm
- ➔ Notify when a registered individual enters Firm Outstanding Disclosure Letters Notice Queue

### CE

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- ➔ **Notify when a registered individual is within 30 days of the end of his or her CE Required window – BD Only**
- ➔ **Notify when a registered individual is within 90 days of the end of his or her CE Required window – BD Only**
- ➔ **Notify when a registered individual enters Firm CE Inactive Queue- BD Only**

## CRD/IARD

### Other

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- ➔ Notify when a Firm account balance is 'Deficient'
- ➔ Notify when a filing has failed submission
- ➔ Notify when a registered individual enters the Other Firm U-4 Filing Notice Queue

The information forwarded via the Firm E-mail Notifications will also continue to be automatically sent to the appropriate Firm Queues.

### E-Mail Address Maintenance

Users at the firm who are entitled to the Maintain Firm Notification privilege still have the ability to access the function, at any time, and update their Firm Notification selections, the Contact Name, Contact Phone Number, and E-mail Address information.

### Reminder:

Remember keep your Primary Account Administrator's e-mail address current with us as this address is used to send important information related to Web CRD to firms throughout the year. To notify NASD of any changes to either your Primary Account Administrator or his/her e-mail address, please contact the Gateway Call Center at (301) 869-6699 and request that an Account Administrator's Entitlement Form (AAEF) be faxed to you. Upon completion, you can either fax or mail it to NASD Entitlement. Further Instructions for both are on the AAEF.

### Questions

If you have any questions regarding either E-mail Notifications themselves or Firm E-mail Notification functionality, please contact the Gateway Call Center at (301) 869-6699.

## Timely Posting of Reports under SEC Rules 11Ac1-5 and 11Ac1-6

Member firms are reminded that the SEC rules to improve public disclosure of order execution and routing practices have been fully effective since November 2001 and that the electronic reports required by these rules must be posted on a timely basis. Under Rule 11Ac1-5, "market centers," such as market makers and alternative trading systems that trade national market system securities, are required to make available to the public monthly electronic reports that include uniform statistical measures of execution quality. Such reports must be made publicly available within ONE MONTH after the end of the month addressed in the report. Under Rule 11Ac1-6, broker/dealers that route customer orders in equity and option securities are required to make publicly available quarterly reports that identify the venues to which customer orders are routed for execution as well as information concerning the relationship with such venues. In addition, broker/dealers are required to disclose to customers, upon request, the venues to which their individual orders were routed. Such reports must be made publicly available within ONE MONTH after the end of the quarter addressed in the report. In addition, broker/dealers are required to disclose to customers, upon request, the venues to which their individual orders were routed.

NASD's Market Regulation Department (Market Regulation) is conducting regular periodic reviews of firms' Web sites to determine whether firms are properly posting the required reports in a timely manner. While Market Regulation has found that most firms are electronically posting their reports in a timely manner, some firms are posting their reports late and, in a few cases, not at all. Member firms are reminded that the reports must be electronically posted within the time period provided by the SEC's rules as highlighted above. Member firms that fail to post required reports or fail to electronically post their reports in a timely manner are subject to possible disciplinary action. A member firm that is not posting a report because it is claiming one of the SEC's granted exemptions to either rule should be prepared to provide Market Regulation with written documentation demonstrating the applicability of the exemption to the member firm.

**Questions about this topic may be directed to the Market Regulation Department at (240) 386-5131.**

## Notice Regarding Limit Order Display Obligations Involving Cancelled/Replaced Orders and Quote Transmission Problems

It has come to the staff 's attention that some systems used by members to comply with the requirements of the Limit Order Display Rule process cancelled/replaced orders and quote rejections in a manner that often delays the display of the replacement limit order well beyond the 30th second. The purpose of this article is to provide members with guidance on their obligations when handling cancellation and replacement of limit orders.

### **Cancelled/Replaced Orders**

When an order is cancelled and replaced, there will likely be some lag between the time the cancellation and related replacement order is received from the customer and the time the firm confirms that the original order is no longer being displayed or is not in the process of being executed. The firm may want to confirm that the original order is not being displayed or has not been executed before displaying the replacement order. The firm, however, must ensure that any system relied on for the processing of cancellations and replacement of orders does not cause a delay between receipt of the replacement order from the customer and the display of such order as required by the Limit Order Display Rule. The firm should periodically assess the amount of time it takes for the system(s) to make the appropriate determinations to ensure that the process does not cause the display of the replacement order to be delayed. In the future, the staff may deem delays in the display of a replacement order due to system processes to be a violation of the Limit Order Display Rule.

### **Quote Transmission Problems**

At times, quotes may be rejected for a variety of reasons when a firm's system attempts to transmit a quote to Nasdaq for publication. Member firms should ensure that their systems are programmed in such a way, however, that upon rejection of the quote, the system will immediately attempt to retransmit the quote until the quote has been successfully accepted by Nasdaq. Failure to attempt an immediate retransmission of a quote that causes delays in the display of a limit order may be deemed a violation of the Limit Order Display Rule. Further, when designing a supervisory system, a firm should consider that quote transmission problems will occur from time to time and may want to consider other alternatives in the event of such problems to ensure that orders are displayed, executed or routed immediately.

Firms should review their supervisory procedures to ensure that they are reasonably designed to comply with the rules applicable to the display of customer limit orders.

**Questions about this article may be directed to the NASD Market Regulation Department, at (240) 386-5126, or the Office of General Counsel, at (202) 728-8071.**

## Section 529 College Savings Plans – SIPC Membership and Fidelity Bond Requirements

Section 529 College Savings Plans are higher education savings plan trusts established under Section 529(b) of the Internal Revenue Code as “qualified tuition programs.” Through these plans, individuals may make investments for the purpose of accumulating savings for qualifying higher education costs of beneficiaries. The plans include interests in pooled investment funds under trusts established by states or local governmental entities, as well as higher education savings plan trusts established by states.

Although these plans have investment features similar to mutual funds or variable annuities, they are municipal securities.<sup>1</sup> Accordingly, the purchase and sale of state-sponsored Section 529 Plans are governed by the rules of the Municipal Securities Rulemaking Board (MSRB), and MSRB rules apply to all firms selling these municipal products, also called Municipal Fund Securities.<sup>2</sup>

Many member firms selling Section 529 College Savings Plans are firms that exclusively sell mutual funds and variable annuities. For those firms in particular, selling municipal fund securities will give rise to new regulatory requirements.

Before selling and complying with MSRB rules regarding Section 529 Plans, firms must address a number of reporting and registration issues.<sup>3</sup>

- 1 The Securities and Exchange Commission (SEC) Division of Market Regulation has stated that certain Section 529 College Savings Plans established by states or local governmental entities are municipal fund securities. See letter, dated February 26, 1999, from Catherine McGuire, Chief Counsel, Division of Market Regulation, SEC, to Diane G. Klinke, General Counsel, MSRB.
- 2 MSRB Rule D-12 defines a Municipal Fund Security as a municipal security issued by an issuer that, but for the application of Section 2(b) of the Investment Company Act of 1940, would constitute an investment company within the meaning of Section 3 of the Investment Company Act. In other words, a Municipal Fund Security would qualify as a security of an investment company under the Investment Company Act if it had not been issued by a state or local governmental entity.
- 3 Some of those administrative requirements include, among other things, notifying the MSRB of their activities and paying the appropriate fees, which include an initial fee and annual fees (MSRB Rules A-12 and A-14), amending Form BD to indicate that they are a municipal securities dealer or broker, and reporting income from Municipal Fund Securities as income from municipal securities transactions in Schedule I of their FOCUS reports. Please refer to our Frequently Asked Questions at [http://www.nasdr.com/529\\_index.asp](http://www.nasdr.com/529_index.asp) for specific requirements concerning the purchase and sale of Section 529 Plans.

In particular, firms whose business is exclusively limited to mutual funds and variable annuities are exempt from SIPC membership. The exemption does not, however, apply to sales of Municipal Fund Securities.<sup>4</sup> Accordingly, these firms must become SIPC members before they start selling 529 Plans.

SIPC membership entails additional responsibilities to firms. First, to become a SIPC member, firms must pay SIPC an annual fee.<sup>5</sup> Second, SIPC membership means that firms must comply with NASD Rule 3020 and MSRB Rule G-6 and maintain a blanket fidelity bond to provide for coverage against loss.

For additional information on rules applicable to the sale of 529 College Savings Plans, please visit the NASD 529 Web Page for Frequently Asked Questions at [http://www.nasdr.com/529\\_index.asp](http://www.nasdr.com/529_index.asp). Also, look at the transcript of the Phone-In Workshop that was held on April 3, 2002 ([http://www.nasdr.com/pdf-text/phone\\_wkshp\\_0402.pdf](http://www.nasdr.com/pdf-text/phone_wkshp_0402.pdf)).

Questions regarding this article may be directed to Vicky Berberi-Doumar at (202) 728-8905, or Susan DeMando at (202) 728-8411, of the NASD Member Regulation Department staff.

4 Section 3(a)(2)(A) of the Securities Investor Protection Act of 1970.

5 SIPA Section 4(c)(1). Section 4(c)(1) contains the formula for determining the assessment. Currently, firms are being assessed a \$150 fee.

NASD reminds municipal brokers and dealers of their obligation to comply with MSRB Rules G-14 and G-12, which require timely and accurate reporting of municipal securities transactions and adherence to certain trade comparison procedures. Compliance with these rules is critical to a member firm's trade processing function, accurate public transaction dissemination and resulting price transparency, and regulatory oversight of municipal securities trading and sales practices.

In an effort to help firms self-monitor their compliance with these rules, the MSRB has made an additional report available via its Dealer Feedback System (DFS) to firms that are registered with the MSRB and effect transactions in municipal securities. The MSRB has already made a report about individual municipal transactions ("Transaction Report") available to dealers through the DFS. The new Performance Statistics Report includes various statistics that indicate a firm's level of compliance with MSRB transaction reporting Rules G-12 and G-14 and includes separate statistics for customer and inter-dealer trades. Like the Transaction Report, dealers will be able to download the Performance Statistics Report from a secure Web site into an Excel spreadsheet free of charge.

In order to access either the Transaction Report or the Performance Statistics Report, dealers must first contact the MSRB's Transaction Reporting Department to designate an individual who will be the authorized recipient. Once authorization is complete, dealers will send an official request for the reports to the MSRB via the DFS Home Page. Dealers that effect customer trades will receive performance statistics by effecting broker symbol (EBS); these statistics will include percentages of transactions that contained an invalid time of trade or were late, cancelled, amended, and/or ineligible for the MSRB's T+1 price transparency reports. Dealers that have an NSCC clearing number will receive additional performance statistics that include percentages of transactions that were late, contained an invalid time of trade, did not compare, or contained an incorrect EBS.

Firms that engage in municipal securities transactions are urged to use the DFS to monitor their compliance with MSRB transaction reporting rules. For more information about the DFS, please visit the DFS Home Page on the MSRB Web Site, [ww1.msrb.org](http://ww1.msrb.org), or call the MSRB Transaction Reporting Department at (703) 797-6600.

**Questions regarding this article may be directed to Cynthia Friedlander, NASD Member Regulation Department, at (202) 728-8133.**

## Protecting Customers in the Membership Application Process

NASD Rule 1017 requires that a member file an application and obtain approval for changes in ownership, control, or material changes in business operations. Recently, NASD has identified situations where member firms attempt to restructure through asset transfers or changes in ownership and operations, the effect of which may adversely impact payment of pending or unpaid arbitrations.

To ensure investor protection, NASD alerts members that it will closely scrutinize all membership applications to assess whether customer claims may be impaired by changes in ownership, control, or business operations. The membership application approval standards in NASD Rule 1014(a) require applicants to demonstrate that the application is in the public interest, consistent with principles of investor protection, and consistent with federal securities laws and the rules of NASD. Members should be prepared to demonstrate during the membership application process that appropriate provisions have been made to honor obligations arising from arbitrations. This will help to ensure the successful and expeditious completion of the membership application process.

**Questions about this article may be directed to the NASD Member Regulation Department at (202) 728-8221.**

## Charitable Gift Annuities

NASD has learned that registered representatives are being solicited to sell Charitable Gift Annuities (CGA) on commission. A CGA enables an individual to transfer cash or marketable securities to charitable organizations that then issue gift annuities in exchange for a current income tax deduction and the organization's promise to make fixed annual payments for life. At the death of the annuitant, the funds remaining are disbursed to the charity. The Philanthropy Protection Act of 1995 exempted Charitable Gift Annuities from securities registration provided that no commissions be paid to solicitors of these gifts. The underlying reason for the exemption is that the primary purpose for a CGA is to make a charitable donation and not an investment.

Representatives may be told that CGAs do not require federal or state securities registration or licensing. This is false, however, if representatives will receive a commission. These products may also pay a higher than normal commission and are promoted as having a higher income stream to the investors. They are generally not approved by member firms as they are unregistered securities and are not covered by E&O insurance. Representatives selling these products may violate Conduct Rules 3030 (conducting outside business activities) or 3040 (selling away). In this regard, it is critical that representatives inform their firms in writing of the intent to sell these products and to obtain written permission from the firm prior to entering into transactions. Similarly, firms should implement appropriate procedures regarding these products.

The SEC has taken action against one foundation that sold \$54 million worth of CGAs to elderly investors and alleged, among other things, that the funds raised were misappropriated for personal use. Firms can best protect themselves by educating their representatives and reviewing and approving all products sold by representatives.

**Questions about this article may be directed to the NASD Member Regulation Department at (202) 728-8221.**

## Amendments to SEC Books and Records Rules – Compliance Deadline Less than a Year Away: May 2, 2003

In October 2001, the SEC approved amendments to the broker/dealer books and records rules, Rule 17a-3 and Rule 17a-4 under the Securities Exchange Act of 1934 (Exchange Act). The amendments become effective on May 2, 2003. The amendments clarify and expand recordkeeping requirements in connection with purchase and sale documents, customer records, associated person records, customer complaint records, and certain other matters. The amendments also require broker/dealers to maintain or promptly produce certain records at each office to which those records relate.

Highlights of the amended rules include the following:

- ▶ **The definition of “office.”** The amended rules define “office” as locations where one or more associated persons regularly conduct a securities business. The final rules provide that instead of maintaining records at a particular office, a broker/dealer may choose to produce records promptly upon request at the office to which the records relate or at another place as agreed to by the regulator.
- ▶ **Customer Account Records.** New Rule 17a-3(a)(17) requires broker/dealers to create, for each account with a natural person as a customer or owner, an account record containing information prescribed by the rule. Broker/dealers have three years from May 2, 2003, to obtain and furnish customers with account record information for accounts in existence on May 2, 2003. This rule also states that the requirement does not apply in situations where: (1) accounts are not subject to SRO suitability requirements; or (2) accounts have been inactive for 36 months.
- ▶ **Order Tickets.** Rules 17a-3(a)(6) and 17a-3(a)(7) were amended to require that order tickets identify the time the order was received, even if subsequently executed; the identity of each associated person responsible for the account, if any; and any other person who entered or accepted the order on behalf of the customer, or, if applicable, a notation that a customer entered the order on an electronic system.

## REGULATORY SHORT TAKES

- ▶ **Associated Persons Records.** To help regulators identify associated persons and where they work, amendments to Rule 17a-3(a)(12) require broker/dealers to create records of all offices at which each associated person regularly conducts business as well as of all identification numbers assigned to the associated person.
- ▶ **Communications With the Public.** Under new Rule 17a-3(a)(20), broker/dealers are required to make records that demonstrate compliance with applicable federal regulations and SRO rules on communications with the public that require principal approval.
- ▶ **Record Maintenance.** Amendments to Rule 17a-4 clarify the periods of time that records described in Rule 17a-3 must be maintained. The amended rules also require that broker/dealers maintain other information, including the following:
  - ➔ for the life of the entity, copies of Forms BD and all amendments thereto;
  - ➔ for three years after the date of the report, each examination report and all reports that a securities regulatory authority has requested or required a firm to create;
  - ➔ for three years after the termination of use, all manuals describing the firm's policies and practices with respect to compliance and supervision; and
  - ➔ for 18 months after the date the report was generated, reports created to review unusual activity in customer accounts.

For more information, see *NASD Notice to Members 01-80* located on the NASD Web Site ([http://www.nasdr.com/2610\\_2001.asp#01-80](http://www.nasdr.com/2610_2001.asp#01-80)).

Questions about this article may be directed to **Kyra Armstrong, Office of Regulation Policy, Member Regulation Department**, at (202) 728-6962, and **Grace Yeh, Office of General Counsel**, at (202) 728-6939.

## Testing Update

### Excellence In Service Award For Testing Centers

NASD established an Excellence In Service Award Program for those centers that consistently achieve excellence in the areas of customer service and performance.

The awards are made in April, June, October, and January for the previous calendar quarter.

The Excellence In Service Award winners for first quarter of 2002 are:

NOTE: A number beside the city name represents the number of consecutive quarter awards.

2	Dothan AL	Redlands CA	Casselberry FL
	Jacksonville FL	Orlando FL	Tampa FL
	Augusta GA	Marietta GA	Lexington MA
	Salisbury MD	Grand Rapids MI	5 Livonia MI
	Utica MI	St. Joseph MO	Jackson MS
	Bismarck ND	Amherst NY	5 Melville NY
4	Wappingers Falls NY	5 Cuyahoga Falls OH	Mentor OH
5	Strongsville OH	8 Oklahoma City OK	2 Allentown PA
	North Wales PA	3 Pittsburgh PA	Pittsburgh
9	(N. Hills) PA	2 Charleston SC	3 Columbia SC
	Sioux Falls SD	13 Memphis TN	3 Puyallup WA
13	Fox Point WI	3 New Berlin WI	

### **Prometric Technology Center Opens In Camarillo, CA**

A new Prometric Testing Center opened in Camarillo, CA, in April 2002.  
The Center is located at:

**596 Mobile Avenue  
Suite D  
Camarillo, CA 93010  
(805) 388-5522**

### **Prometric Appointment Confirmation Web Site**

Candidates and firms can now confirm an existing appointment by  
accessing the Prometric Appointment Confirmation Web Site at:

*[http://www.nasdr.com/2630\\_confirm.asp](http://www.nasdr.com/2630_confirm.asp)*

The candidate or firm will need to input the Confirmation/Tracking  
Number of the previously scheduled appointment, and the first four  
letters of the candidate's last name.

**NOTE: This Web Site cannot be used to schedule an appointment.**

### **Test Center Locations – Domestic and International**

A current list of all test center locations, both domestic and international,  
is published on the NASD Web Site. Access our Web Page to get up-  
to-date location information.

**Questions about this article may be directed to Linda Christensen, Member  
Regulation, NASD, at 610-627-0377.**

CURRENT AS OF JULY 2002

## Certification Testing & Continuing Education Delivery Location List

### Alabama

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Birmingham	205-871-7444
Decatur	205-350-8324
Dothan	334-677-6334
Mobile	334-344-6284
Montgomery	334-262-0043

### Alaska

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Anchorage	907-276-6007
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### Arizona

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Goodyear	623-932-7800
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### Arkansas

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Fort Smith	501-484-0702
Little Rock	501-663-8280

### California

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Anaheim	714-637-7894
Atascadero	805-462-8308
Brea	714-255-1141
Camarillo	805-388-5522
Culver City	310-337-6696
Diamond Bar	909-861-1146
Gardena	310-329-1844
Glendale	818-545-7383
Irvine	949-552-0563
La Mesa	619-668-2121
Palm Desert	760-836-1510
Piedmont	510-428-4123
Rancho Cucamonga	909-944-9763
Redlands	909-792-2145
Riverside	909-353-8600
Sacramento	
(Fair Oaks)	916-961-7323
San Diego	858-526-0858
San Francisco	
-California St	415-362-1311
San Francisco	
-Oyster Point	650-244-9558
San Jose	408-257-7699
Santa Rosa	707-528-6000

### Canada

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Calgary AB	403-777-1365
Etobicoke ON	416-236-2629 Ext. 221
Halifax NS	902-422-7323
Montreal QU	514-876-8818
Richmond BC	604-231-1966
Saskatoon SK	306-978-7323
Whitby ON	905-404-1818
Windsor ON	519-974-8747
Winnipeg MB	204-988-5050

### Colorado

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Boulder	303-449-1700
Colorado Springs	719-593-1272
Denver	303-692-8745
Littleton	303-972-7276
Pueblo	719-545-0838

### Connecticut

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Glastonbury	860-633-7236
Hamden	203-287-9677
Norwalk	203-847-0031
Delaware	
Dover	302-741-0412
Wilmington	302-998-3817

### District of Columbia

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Washington	202-955-5887
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### Florida

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Davie	954-423-0782
Ft. Myers	941-275-1130
Gainesville	352-371-6891
Hollywood	954-967-0443
Jacksonville	904-739-3000
Maitland/Orlando	407-875-8118
Sarasota	941-923-9399
Tallahassee	850-386-8707
Tampa	813-289-1246
Temple Terrace (Tampa)	813-989-9988
Winter Park	407-671-2332

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## Georgia

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Atlanta (Tucker)	770-493-9813
Augusta	706-868-1888
Jonesboro	770-478-5356
Macon	912-474-5909
Marietta	770-980-1117
Savannah	912-354-2660
Valdosta	912-245-1069

## Idaho

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Boise	208-322-3555
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## Illinois

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Carbondale	618-529-4664
Carpentersville	847-836-2031
Chicago-S. Wabash	312-663-5632
Homewood	708-798-0238
Northbrook	847-559-2461
Peoria	309-682-0825
Springfield	217-546-0381
Westchester	708-947-2800

## Indiana

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Evansville	812-479-6855
Fort Wayne	260-481-4153
Indianapolis-E. 86th St.	317-257-7546
Indianapolis -Girl's School Rd	317-486-4541
Lafayette	765-447-0626
Merrillville	219-736-1113
Mishawaka	219-254-1055
Terre Haute	812-232-6348

## Iowa

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Bettendorf	319-359-1001
Des Moines	515-223-6650

## Kansas

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Topeka	785-272-7500
Wichita	316-651-5350

## Kentucky

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Lexington	859-268-3338
Louisville	502-423-0340

## Louisiana

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Baton Rouge	225-293-8489
Bossier City	318-742-7349
New Orleans	504-245-2600

## Maine

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Orono	207-581-1708
Portland	207-775-5812

## Maryland

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Baltimore	410-843-6401
Bethesda	301-718-9893
Columbia	410-740-8137
Lanham	301-552-3400
Pikesville	410-486-9045
Salisbury	410-341-4100

## Massachusetts

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Boston	617-345-8980
Brookline	617-264-4152
E. Longmeadow	413-525-4901
Lexington	781-861-0723
Waltham	781-890-0466
Worcester	508-853-7250

## Michigan

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Ann Arbor	734-477-6970
Grand Rapids	616-957-0368
Lansing	517-372-7413
Livonia	734-462-2750
Portage	616-321-8351
Troy	248-643-7323
Utica	810-739-0270

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## Minnesota

Duluth	218-723-1494
Edina	952-820-5010
Rochester	507-292-9270
St. Cloud	320-529-4830
Woodbury	651-702-6791

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## Mississippi

Jackson	601-366-6400
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## Missouri

Ballwin	314-394-7742
Jefferson City	573-761-7317
Lee's Summit	816-525-5445
Springfield	417-882-0740
St. Joseph	816-671-9900
St. Louis	314-993-9092

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## Montana

Billings	406-656-4646
Helena	406-443-9205

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## Nebraska

Columbus	402-564-2862
Lincoln	402-465-8800
Omaha	402-334-9449

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## Nevada

Las Vegas	702-795-7323
Reno	702-829-2700

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## New Hampshire

Portsmouth	603-433-6800
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## New Jersey

Deptford	856-384-4744
East Brunswick	732-390-4040
Fairlawn	201-475-1670
Hamilton Township	609-631-9794
Toms River	732-349-4609
Union	908-964-2862

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## New Mexico

Albuquerque	505-296-0609
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## New York

Albany	518-438-6762
Amherst/Buffalo	716-565-0570
East Syracuse	315-433-9038
Garden City	516-746-7367
Ithaca	607-277-4821
Manhasset	516-869-1238
Melville	516-845-9063
NYC Manhattan Area	212-760-1137
NYC Midtown Area	800-578-6273
NYC Penn Plaza-15th fl	800-578-6273
NYC Penn Plaza-17th fl	800-578-6273
NYC Wall Street Area (Liberty Plaza)	646-625-6050
Rego Park	718-997-6356
Rochester	716-385-4810
Staten Island	718-980-3079
Vestal	607-798-1715
Wappingers Falls	845-298-8378
Watertown	315-788-2588
White Plains	914-289-0437

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## North Carolina

Asheville	828-253-4224
Charlotte	704-364-7758
Greensboro	336-288-1311
Greenville	252-756-0342
Raleigh	919-846-1975
Wilmington	910-392-0891

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## North Dakota

Bismarck	701-224-1171
Fargo	701-293-1234

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## Ohio

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Cincinnati	513-671-7030
Columbus	614-451-4131
Cuyahoga Falls-Akron	330-922-5587
Dayton	937-435-8417
Hilliard	614-529-4232
Lima	419-331-7323
Mentor	440-255-0055
Niles	330-652-1886
Reynoldsburg	614-864-4090
Strongsville	440-238-0530

## Oklahoma

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Oklahoma City	405-843-8378
Tulsa	918-249-0820

## Oregon

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Eugene	541-485-4589
Milwaukie	503-659-9575
Portland	503-254-2009

## Pennsylvania

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Allentown	610-791-5320
Clark Summit	717-586-4362
Erie	814-864-6100
Harrisburg	717-652-0646
Lancaster	717-391-6519
North Wales	215-412-7822
Philadelphia	215-238-8380
Pittsburgh-North Hills	412-367-4620
Pittsburgh- -Braddock Ave.	412-247-4463
Plymouth Meeting	610-941-6284
York	717-755-7471

## Puerto Rico

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Guaynabo	787-706-7640
Hato Rey	787-753-6394
Warwick	401-738-9172

## South Carolina

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Charleston	843-766-5599
Columbia	803-354-9221
Greenville	864-676-1506
Irmo	803-749-0356

## South Dakota

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Sioux Falls	605-362-4875
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## Tennessee

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Chattanooga	423-894-6249
Clarksville	931-647-2003
Franklin	615-790-5018
Knoxville	423-690-0671
Madison-Nashville	615-860-0376
Memphis	901-266-4606

## Texas

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Abilene	915-698-7858
Amarillo	806-359-1037
Arlington	817-572-6690
Austin	512-441-1978
Beaumont	409-899-9798
Corpus Christi	512-993-3793
Dallas	972-385-1181
El Paso	915-587-7323
Mesquite	972-686-3310
Midland	915-520-9418
San Antonio	210-494-7263
Sugar Land	281-491-9200
Tyler	903-510-2842
Waco	254-772-2467
Webster	281-557-0358

## Utah

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Orem	801-226-5544
Salt Lake City	800-578-6273

## Vermont

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Williston	802-872-0845
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### **Virgin Islands**

St. Croix	340-773-5751
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### **Virginia**

Arlington/DC Area	703-807-5813
Glen Allen	804-346-8777
Lynchburg	804-832-0778
Newport News	757-873-0208
Roanoke	540-344-3688

### **Washington**

Lynnwood	425-774-3922
Puyallup	253-848-0771
Spokane	509-467-8715

### **West Virginia**

Morgantown	304-293-0699
South Charleston	304-345-1986

### **Wisconsin**

Fox Point	414-540-2223
Madison	608-231-6270
New Berlin	414-796-0836
Racine	414-554-9009

### **Wyoming**

Casper	307-472-4888
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APRIL, MAY, AND JUNE

## Disciplinary Actions

In April, May, and June 2002, NASD announced the following disciplinary actions against these firms and individuals. Publication of these sanctions alerts members and their associated persons to actionable behavior and the penalties that may result. This information is current as of June 2002.

**District 1** Northern California (the counties of Monterey, San Benito, Fresno, and Inyo, and the remainder of the state north or west of such counties), northern Nevada (the counties of Esmeralda and Nye, and the remainder of the state north or west of such counties), and Hawaii

### April Actions

**Gary David Winter (CRD #1533705, Registered Principal, Fresno, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was censured and fined \$10,000. Without admitting or denying the allegations, Winter consented to the described sanctions and to the entry of findings that he submitted to his member firm and filed with the NASD a Form U-4 relating to the proposed registration of an individual that failed to disclose material facts. **(NASD Case #C01020001)**

### May Actions

**Annabelle Garvey (CRD #3271562, Registered Representative, Merced, California)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Garvey consented to the described sanction and to the entry of findings that she misappropriated \$5,000 from the bank account of a public customer and converted the funds to her own use and benefit. **(NASD Case #C01020002)**

**Wesley C. Hendrickson (CRD #2989470, Registered Representative, Fresno, California)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity and required to disgorge \$191,625, plus interest, in commissions earned. Satisfactory proof of payment of disgorgement, plus interest, must be made before Hendrickson reassociates with any NASD member. Without admitting or denying the allegations, Hendrickson consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to, and receiving written approval from, his member firms. The findings also stated that Hendrickson, in connection with an NASD request for information, provided the NASD with a document that contained incomplete and inaccurate information. **(NASD Case #C01010008)**

**Belinda Enriquez Swiatlowski (CRD #2935813, Registered Representative, Dublin, California)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Swiatlowski consented to the described sanction and to the entry of findings that she failed to amend her Form U-4 to notify her member firm and the NASD of a material fact. The findings also stated that Swiatlowski failed to respond to NASD requests for information and documentation. **(NASD Case #C01020004)**

#### June Actions

**Americal Securities, Inc., (CRD #28096, San Francisco, California) and Michael Kit Yong Yap (CRD #2124707, Registered Principal, San Francisco, California)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$55,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Yap, permitted individuals to act as representatives of the firm without being registered as representatives with NASD. **(NASD Case #C01020007)**

District 2 Southern California (that part of the state south or east of the counties of Monterey, San Benito, Fresno, and Inyo), southern Nevada (that part of the state south or east of the counties of Esmeralda and Nye), and the former U.S. Trust Territories

#### April Actions

**Marc Craig Adereth (CRD #2113263, Registered Representative, Cliffside Park, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, Adereth consented to the described sanction and to the entry of findings that, without the prior knowledge, authorization, or consent from a public customer, he executed, or caused to be executed, unauthorized transactions in the account of a public customer. Adereth's suspension began March 18, 2002, and will conclude at the close of business May 16, 2002. **(NASD Case #C02020006)**

**William Allen Blackwell, III (CRD #4061567, Associated Person, Los Angeles, California)** was fined \$5,000 and

barred from association with any NASD member in any capacity. The fine must be paid before Blackwell reassociates with any NASD member firm. The sanctions were based on findings that Blackwell provided false responses on his Uniform Application for Securities Industry Registration or Transfer (Form U-4). Blackwell also failed to respond to NASD requests for information. **(NASD Case #C02010043)**

**Bobby Joe Garrison, Jr. (CRD #1449625, Registered Representative, Studio City, California)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Garrison made a material misrepresentation to a customer in connection with the purchase and sale of securities. **(NASD Case #C02010045)**

**Ira Mark Hermann (CRD #1485932, Registered Representative, Laguna Niguel, 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 30 days. Without admitting or denying the allegations, Hermann consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to his member firms. Hermann's suspension began March 18, 2002, and will conclude at the close of business April 16, 2002. **(NASD Case #C02020004)**

**J. Alexander Securities, Inc. (CRD #7809, Los Angeles, California) and James Alexander (CRD #2762, Registered Principal, Los Angeles, California)** submitted a Letter of Acceptance, Waiver, and Consent in which they were fined \$62,500, jointly and severally. In addition, the firm was censured and fined \$7,500, jointly and severally, with another individual, and Alexander was suspended from association with any NASD member in a principal capacity for 30 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they permitted an individual who was barred from associating with any NASD member in any capacity to function as an associated person. The findings also stated that the firm failed to establish, modify, or revise its written supervisory procedures to be in compliance with NASD Conduct Rule 3010. Furthermore, the NASD determined that the firm permitted individuals associated with the firm to perform the duties of registered persons while their registration status with the NASD was inactive due to their failure to timely complete the Regulatory

Element of the NASD's Continuing Education Requirement.

Alexander's suspension began March 18, 2002, and will conclude at the close of business April 16, 2002. **(NASD Case #C02020007)**

**Robert Joseph Waltos, Jr. (CRD #1627085, Registered Representative, Newport Beach, 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 10 business days. Without admitting or denying the allegations, Waltos consented to the described sanctions and to the entry of findings that he engaged in a private securities transaction without prior written notice to his member firm. The findings also stated that Waltos had knowledge that a registered person under his supervision and control was engaged in private securities transactions and, despite this knowledge, failed to take timely or adequate supervisory action, under the attendant circumstances known to him, that were reasonably designed to either ensure that the individual complied with the requirements of NASD Conduct Rule 3040 or ensure that the individual cease to be connected with the unsupervised sale of unapproved products away from his member firms.

Waltos' suspension will begin April 15, 2002, and will conclude at the close of business April 26, 2002. **(NASD Case #C02020005)**

#### May Actions

**Alan Michael Hovey (CRD #2758420, Registered Representative, Cathedral City, 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 allegations, Hovey consented to the described sanction and to the entry of findings that he executed, or caused to be executed, an unauthorized mutual fund transaction in a public customer's account, and that, in order to effect the unauthorized transaction, he forged the customer's signature on a Universal Switch Letter without the customer's knowledge, authorization, or consent. **(NASD Case #C02020011)**

**Ji Hoon Lee (CRD #4408774, Registered Representative, Costa Mesa, California)** 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 three months. 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 allegations, Lee consented to the described sanctions and to the entry of findings that he failed to disclose a material fact on a Form U-4.

Lee's suspension began May 6, 2002, and will conclude at the close of business August 5, 2002. **(NASD Case #C02020015)**

**Jae Young Lim (CRD #1003677, Registered Representative, Fullerton, 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 allegations, Lim consented to the described sanction and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firm. **(NASD Case #C02020012)**

**Timothy Melvin Murphy (CRD #1827456, Registered Representative, Orange, 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 allegations, Murphy consented to the described sanction and to the entry of findings that he received \$141,398.15 from public customers for investment purposes, failed to apply the funds as directed, and, instead, without the customers' knowledge, authorization, or consent, misused the funds until a later time at which time he returned the funds to the customers. **(NASD Case #C02020013)**

#### June Actions

**Robert Joseph Borson (CRD #2828890, Registered Representative, Walnut, California)** was named as a respondent in an NASD complaint alleging that he received a \$2,000 check from a public customer for the purpose of investing the proceeds; failed to apply the funds as instructed by the customer; and,

without the customer's authorization or consent, altered the payee line of the check to read "Robert Borson" instead of the firm name, and inserted the customer's initials to make it appear as though the customer had authorized the alteration. In addition, the complaint alleges that, without the customer's authorization or consent, Borson added the notation "given to Rob Borson" next to the customer's notation "2001 Roth IRA Contribution" to make it appear as though Borson was the authorized payee on the customer check. The complaint also alleges that, after altering the customer check, Borson endorsed the check and deposited it into his personal checking account and held the funds for a period of time, without the customer's authorization or consent. **(NASD Case #C02020022)**

**Joseph Gantcharevitch (CRD #858617, Registered Representative, Whittier, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was censured, fined \$3,614, suspended from association with any NASD member in any capacity for 10 days, and required to pay \$19,554 in restitution to a public customer. Without admitting or denying the allegations, Gantcharevitch consented to the described sanctions and to the entry of findings that he recommended unsuitable mutual fund transactions to a public customer without a reasonable basis to believe that the transactions were suitable for the customer in light of the nature of the transactions and the facts disclosed by the customer regarding her other securities holdings, financial situation, and needs.

Gantcharevitch's suspension began June 3, 2002, and concluded at the close of business June 12, 2002. **(NASD Case #C02020017)**

**Quick & Reilly, Inc., (CRD #11217, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$50,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to have and maintain adequate supervisory procedures with respect to the detection and prevention of mutual fund sales practice abuses despite the fact that the firm was issued a Letter of Caution by the NASD for failing to have such procedures. **(NASD Case #C02020018)**

**Schoff & Baxter, Inc., (CRD #3290, Burlington, Iowa) and Harry Wickham Baxter (CRD #1194108, Registered Principal, Los Angeles, California)** submitted a Letter of

Acceptance, Waiver, and Consent in which they were censured and fined \$150,505.90, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Baxter, failed to establish and maintain a system reasonably designed to supervise the activities of an individual to achieve his compliance with certain NASD rules. The findings also stated that the firm, acting through Baxter, failed to adopt and implement adequate written procedures reasonably designed to carry out the supervision of the firm's business; in particular, to detect and prevent private securities transactions and unsuitable transactions. **(NASD Case #C02020020)**

**Tamer Lutfi Youssef (CRD #2906790, Registered Representative, Placentia, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for 90 days. In light of the financial status of Youssef, no monetary sanction has been imposed. Without admitting or denying the allegations, Youssef consented to the described sanction and to the entry of findings that he recommended purchase and sale transactions in various securities for the securities account of a public customer without having a reasonable basis to believe that the transactions were suitable for the customer in view of the size, frequency, and nature of the recommended transactions, and the facts disclosed by the customer regarding his financial situation, objectives, circumstances, and needs.

Youssef's suspension began June 3, 2002, and will conclude on August 31, 2002. **(NASD Case #C02020021)**

**District 3** Alaska, Arizona, Colorado, Idaho, Montana, New Mexico, Oregon, Utah, Washington, and Wyoming

**District 3A** Denver

#### **April Actions**

**Cameron Michael Benton (CRD #2709062, Registered Representative, Poncha Spring, Colorado)** was fined \$10,000 and suspended from association with any NASD member for 30 business days for engaging in private securities transactions and barred from association with any NASD member in any capacity for failing to respond. The fine must be paid before Benton reassociates with any NASD member following the

suspension or before requesting relief from any statutory disqualification. The sanctions were based on findings that Benton engaged in private securities transactions without providing prior written notice to his member firm. Benton also failed to respond to NASD requests for information.

Benton's bar become effective February 14, 2002. **(NASD Case #C3A010029)**

**Carla Joy Halverson (CRD #859074, Registered Representative, Littleton, Colorado)** was named as a respondent in an NASD complaint alleging that she engaged in unauthorized trading in that she accepted mini tender offers for her customers without their prior authorization. **(NASD Case #C3A020007)**

**Daniel Steven Kippert (CRD #2327018, Registered Representative, Ogden, Utah)** was named as a respondent in an NASD complaint alleging that he instructed a sales assistant to transfer \$1,700 from a public customer's account maintained at his member firm to his personal bank account without the prior knowledge, authorization, or consent of the customer. **(NASD Case #C3A020011)**

**Peter Michael Landay (CRD #1209354, Registered Representative, Los Angeles, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$146,800, which will be reduced by amounts that he demonstrates he has paid to the trustee in the bankruptcy for a company, and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Landay reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Landay consented to the described sanctions and to the entry of findings that he participated in private securities transactions, for compensation, without prior written notice to, or approval from, his member firm.

Landay's suspension began April 1, 2002, and will conclude at the close of business March 31, 2003. **(NASD Case #C3A020012)**

**Aaron Simon Morris (CRD #2691021, Registered Representative, Hollywood, Florida)** was named as a respondent in an NASD complaint alleging that, by use of the means or instrumentalities of interstate commerce, or of the mails, or of any facility of any

national securities exchange, he employed a device, scheme, or artifice to defraud; omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or engaged in acts, practices, or a course of business which operated, or could operate, as a fraud or deceit upon persons in connection with the recommendations he made to public customers to purchase stock. **(NASD Case #C3A020006)**

#### **May Actions**

**Alpine Securities Corporation (CRD #14952, Salt Lake City, Utah) and Virgil Mark Peterson (CRD #1094640, Registered Principal, Alpine, Utah)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$10,000, jointly and severally, and Peterson was fined \$10,000, individually. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Peterson, failed to establish adequate written supervisory procedures reasonably designed to detect and prevent the sale of unregistered securities by associated persons. The NASD also found that Peterson failed to take the requisite supervisory steps to ensure that a former registered representative's sales of stock complied with Section 5 of the Securities Act of 1933, or that the registered representative was validly relying on an exemption from registration thereunder. **(NASD Case #C3A020017)**

**Frank James Gillen (CRD #2045276, Registered Representative, Salt Lake City, Utah)** submitted a Letter of Acceptance, Waiver, and Consent in which he was censured and fined \$25,000. Without admitting or denying the allegations, Gillen consented to the described sanctions and to the entry of findings that he sold shares of common stock that represented the founder shares he received when the stock was formed. The NASD found that Gillen relied upon Rule 144(k) as an exemption from registration under Section 5 of the Securities Act of 1933. However, since he was a control person at the time he sold the shares, Rule 144(k) was not available to him; therefore, he sold his shares in violation of Section 5 of the Securities Act of 1933. **(NASD Case #C3A020016)**

**Kunz & Cline Investment Management, Inc. (CRD #37196, Salt Lake City, Utah) and Kevin Dee Kunz (CED #1274540, Registered Representative, Fruit Heights, Utah)** were censured and fined \$20,000, jointly and

severally, and Kunz was fined \$5,000, individually. In addition, Kunz was suspended from association with any NASD member in any capacity for 30 days and in a principal capacity for one year, such suspensions to run concurrently. Moreover, Kunz must requalify in a representative capacity within 90 days of the conclusion of his suspension as a representative or cease to function in such capacity until he requalifies, and to requalify in a principal capacity before functioning in such capacity after the conclusion of his principal suspension. Furthermore, the firm was suspended from participation in any public or private offering of a security in the capacities of underwriter, primary placement, or sales agent until such time as it retains an independent consultant to review the adequacy and completeness of the firm's operational, compliance, and supervisory procedures pertaining to participation in such offerings in such capacities, and the firm demonstrates to the NASD that it has implemented any recommendations of the consultant. The Securities and Exchange Commission (SEC) imposed the sanction following appeal of a National Adjudicatory Council (NAC) decision. The sanctions were based on findings that the firm, acting through Kunz, sold securities pursuant to private placement memoranda containing material misrepresentations and omissions, and sold securities that were neither registered with the SEC nor exempt from registration, and Kunz compensated an unregistered person in connection with the sale of securities.

The firm and Kunz have appealed this decision to the Court of Appeals, and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C3A960029)**

**Peter Thomas Matus (CRD #2675757, Associated Person, Salt Lake City, Utah)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$12,500 and suspended from association with any NASD member in any capacity for 18 months. The fine must be paid before Matus reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Matus consented to the described sanctions and to the entry of findings that he maintained two accounts at another member firm and did not disclose, in writing, to his member firm the existence of the two accounts at the other firm, nor did he notify the other firm, in writing, that he was associated with his member firm.

Matus' suspension began May 6, 2002, and will conclude at the close of business November 5, 2003. **(NASD Case #C3A020019)**

**William Keith McCrea (CRD #2234553, Registered Representative, Sun City West, 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 allegations, McCrea consented to the described sanction and to the entry of findings that he participated in private securities transactions without providing prior written notice of his activities to his member firm. **(NASD Case #C3A020014)**

**Brian Scott Robison (CRD #2609403, Registered Representative, Aurora, Colorado)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Robison consented to the described sanction and to the entry of findings that he obtained funds from his member firm to which he was not entitled by submitting expense reports requesting reimbursement for expenses he did not incur, and by receiving and retaining the reimbursements, which he has since voluntarily repaid. **(NASD Case #C3A020015)**

**Steven William Taylor (CRD #867673, Registered Representative, Longmont, Colorado)** submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for one year. In light of the financial status of Taylor, no monetary sanction has been imposed. Without admitting or denying the allegations, Taylor consented to the described sanction and to the entry of findings that he failed to keep his Form U-4 current by filing, or causing to be filed, the required amendments.

Taylor's suspension began April 15, 2002, and will conclude at the close of business April 14, 2003. **(NASD Case #C3A010046)**

#### June Actions

**Jason Todd Ewing (CRD #4024596, Registered Representative, Scottsdale, 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 allegations, Ewing consented to the described sanction and to the entry of finding that he misappropriated public

customers' funds by depositing \$4,000 belonging to the customers into his personal securities account at his member firm to cover a debit balance in his account. **(NASD Case #C3A020018)**

**Carla Joy Halverson (CRD #859074, Registered Representative, Littleton, Colorado)** submitted an Offer of Settlement in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Halverson consented to the described sanction and to the entry of findings that she engaged in unauthorized transactions in the accounts of public customers without their prior authorization. **(NASD Case #C3A020007)**

**Stephen Michael Johnson (CRD #721408, Registered Representative, Mesa, Arizona)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for 18 months. In light of the financial status of Johnson, no monetary sanction has been imposed. Without admitting or denying the allegations, Johnson consented to the described sanction and to the entry of findings that he participated in private securities transactions without giving prior written notice to his member firm. NASD also found that Johnson engaged in outside business activities that were outside the scope of his employment relationship with his member firm without giving prompt written notice to his member firm.

Johnson's suspension began June 3, 2002, and will conclude at the close of business December 2, 2003. **(NASD Case #C3A020021)**

**Robert Joseph Martinez, Jr. (CRD #4150756, Registered Representative, Albuquerque, New Mexico)** submitted an Offer of Settlement in which he was fined \$7,000 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Martinez consented to the described sanctions and to the entry of findings that he willfully failed to disclose material information on his Form U-4.

Martinez's suspension began June 3, 2002, and will conclude at the close of business June 2, 2003. **(NASD Case #C3A020001)**

**Philip William Merrill (CRD #2436444, Registered Representative, Goodyear, Arizona)** submitted an Offer of Settlement in which he was fined \$5,363, including

disgorgement of commissions received of \$363, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Merrill consented to the described sanctions and to the entry of findings that he entered unauthorized transactions in a public customer's accounts.

Merrill's suspension began June 3, 2002, and concluded at the close of business June 14, 2002. **(NASD Case #C3A020002)**

District 3B Seattle

#### April Actions

**Arthur Kenny Bryant (CRD #1827620, Registered Representative, Edmonds, Washington)** was named as a respondent in an NASD complaint alleging that he obtained a \$4,000 check drawn on the account of a public customer, altered the check to show himself as the payee, cashed the check, and deposited \$3,900 in his personal credit union savings account. The complaint also alleges that Bryant subsequently withdrew the funds from the account, thereby converting \$4,000 to his own use and benefit without the customer's prior knowledge, authorization, or consent. **(NASD Case #C3B020002)**

**Robert Allen Eastham, II (CRD #2019403, Registered Representative, Beaverton, Oregon)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, Eastham consented to the described sanction and to the entry of findings that he recommended to a public customer that she sell variable annuity policies and apply the proceeds to purchase fixed annuity policies without having reasonable grounds for believing that his recommendation was suitable for the customer upon the basis of facts disclosed by the customer as to her other security holdings, financial situation, and needs.

Eastham's suspension began March 18, 2002, and will conclude at the close of business June 17, 2002. **(NASD Case #C3B020003)**

**Howard Michael Johnson (CRD #1353976, Registered Representative, Philomath, Oregon)** was named as a respondent in an NASD complaint alleging that he affixed the signature of a public customer to Letters of

Authorization purported to authorize his member firm to transfer funds from the customer's account to the account of another individual without the customer's knowledge or consent and submitted them to his member firm. The complaint also alleges that the firm transferred \$153,500 from one customer's account to the account of another who then wrote checks drawn on the account to third parties designated by Johnson in amounts totaling at least \$134,610.62, constituting conversion by Johnson of \$134,610.62 of the customer's funds for his own use and benefit. In addition, the complaint alleges that Johnson failed to respond to NASD requests for information. **(NASD Case #C3B020008)**

**Raymond Lee Morton (CRD #1611046, Registered Principal, Everett, Washington)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any principal or supervisory capacity for 15 business days. Without admitting or denying the allegations, Morton consented to the described sanctions and to the entry of findings that he failed to supervise the activities of a registered representative who made unsuitable recommendations to public customers and effected transactions in a manner that was reasonably designed to achieve compliance with applicable securities laws and regulations.

Morton's suspension began March 18, 2002, and concluded at the close of business April 5, 2002. **(NASD Case #C3B020005)**

**Arthur Michael Pagnotta (CRD #2431827, Registered Principal, Redmond, Washington)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Pagnotta consented to the described sanctions and to the entry of findings that he recommended the purchase of high-yield corporate bonds to public customers without reasonable grounds for believing the recommendations were suitable for the customers upon the basis of facts disclosed by the customers as to their other security holdings, financial situation, and needs.

Pagnotta's suspension will begin April 15, 2002, and will conclude at the close of business May 3, 2002. **(NASD Case #C3B020004)**

## May Actions

**Lee Douglas Tusberg (CRD #1208731, Registered Representative, Spokane, Washington)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Tusberg consented to the described sanction 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 also stated that Tusberg failed to respond to NASD requests for information. **(NASD Case #C3B010018)**

**Richard Zbigniew Zielony (CRD #721183, Registered Principal, Jacksonville, Oregon)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Zielony consented to the described sanction and to the entry of findings that he recommended transactions for the account of a public customer without having reasonable grounds for believing that such recommendations were suitable in light of the size and nature of the transactions, the margin interest costs, the holding periods, and the facts disclosed concerning the customer's other securities holdings, financial situation, investment objective, circumstances, and needs. The findings also stated that Zielony engaged in excessive trading in the account of a public customer in view of the customer's objectives, financial situation, and the nature of the customer's account. In addition, the NASD found that Zielony exercised discretionary power in a public customer's account without prior written authorization from the customer and acceptance in writing by his member firm of the account as discretionary. **(NASD Case #C3B020006)**

## June Actions

**Andrew Nicholas Hennen (CRD #2554862, Registered Representative, Portland, Oregon)** 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 40 days. The fine must be paid before Hennen reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Hennen consented to the described sanctions and to the entry of findings that he exercised discretionary power in the accounts of public customers without obtaining prior

written authorization from the customers and without the acceptance in writing by his member firm of the accounts as discretionary. The findings also stated that Hennen delivered a letter to public customers stating that the value of their account at his member firm would be equal to a certain amount, and that he would personally compensate them for any deficiency in that value.

Hennen's suspension began June 3, 2002, and will conclude at the close of business July 12, 2002. **(NASD Case #C3B020010)**

**Joseph Gerard Riley (CRD #714478, Registered Representative, Federal Way, 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 allegations, Riley consented to the described sanction and to the entry of findings that he engaged in private securities transactions by participating in the sale of promissory notes and failed to provide written notice to his member firms describing in detail the proposed transactions, his proposed role therein, and failed to state whether he had received, or might receive, selling compensation in connection with the transactions. **(NASD Case #C3B020007)**

**Dave Hung Trinh (CRD #2916910, Registered Representative, Renton, Washington)** was named as a respondent in an NASD complaint alleging that he affixed the signature of a public customer to an account application to open a securities account at a broker/dealer other than his member firm without the customer's knowledge or consent, and provided his telephone number and e-mail address, falsely representing that they were the customer's. The complaint also alleges that Trinh affixed the signature of a public customer to a margin agreement and a memorandum at a broker/dealer that changed the customer's address to his own, without the customer's knowledge or consent. In addition, the complaint alleges that Trinh received a \$24,916.50 check from a public customer to purchase shares of stock, deposited the funds in a money market account, failed to purchase the stock, affixed the customer's signature to a \$24,000 check drawn on the account without the customer's knowledge or consent, and converted the \$24,000 to his own use and benefit. The complaint further alleges that Trinh received a \$423 check payable to the employer of a public customer to refund an excess contribution to the customer's qualified variable

annuity contract, endorsed the check, and deposited the check in his own checking account thereby converting \$423 to his own use and benefit. Moreover, the complaint alleges that Trinh submitted false responses to an NASD request for information, and delivered a false document to the NASD to impede an NASD investigation and to conceal his conversion. **(NASD Case #C3B020009)**

**District 4** Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota

#### April Actions

**Verna Lynn Eller (CRD #2085566, Registered Representative, Chillicothe, Missouri)** submitted an Offer of Settlement in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Eller consented to the described sanction and to the entry of findings that, without the knowledge or consent of public customers, she forged the endorsement signatures of the customers on checks payable to the customers totaling \$40,000. The findings also stated that Eller forged signatures on applications to open accounts in her maiden name and in the names of public customers for accounts to be controlled by Eller. The NASD found that Eller caused checks totaling \$40,000 to be issued from the accounts of public customers and affixed the customers' signatures on the checks and on account applications without the customers' knowledge or consent, and deposited the funds into a joint account she controlled and subsequently transferred the funds to a separate account in her name. The findings also stated that Eller received \$340 from a public customer with instructions from the customer to purchase shares of stock, presented the customer a handwritten document as a putative receipt on firm letterhead, failed to open the account for the customer or purchase stock as intended, and instead, retained and converted the cash for her own use and benefit. In addition, Eller failed to respond to NASD requests for information. **(NASD Case #C04010043)**

**Edward John Fritz (CRD #1932151, Registered Representative, Waterloo, Iowa)** 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 Fritz reassociates with any NASD member following the suspension or before requesting

relief from any statutory disqualification. Without admitting or denying the allegations, Fritz consented to the described sanctions and to the entry of findings that he engaged in outside business activities and failed to properly disclose this activity to his member firm.

Fritz's suspension began April 1, 2002, and concluded at the close of business April 12, 2002. (NASD Case #C04020009)

**Roy Monroe Henry (CRD #243400, Registered Principal, Chesterfield, Missouri)** 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 90 days. In addition, Henry was fined \$5,000, jointly and severally, with another respondent. The fines must be paid before Henry reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Henry consented to the described sanctions and to the entry of findings that, as an inducement for customers to purchase an interest in a limited partnership, Henry executed a document that guaranteed the customers against loss. The findings also stated that Henry shared in losses sustained by customers and made misrepresentations or material omissions of fact to customers. The NASD found that a member firm, acting through Henry, failed to establish and maintain an adequate supervisory control system to ensure all transactions by the principals of its Offices of Supervisory Jurisdiction were being properly received by another supervisory principal.

Henry's suspension began March 4, 2002, and will conclude June 1, 2002. (NASD Case #C04020008)

**Kevin Rodney Kasselder (CRD #1807137, Registered Representative, Kansas City, Missouri)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, suspended from association with any NASD member in any capacity for two years, and required to disgorge \$38,536.68, plus interest, in commissions to investors. The disgorgement amounts must be paid before Kasselder reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kasselder consented to the described sanctions and to the entry of findings that he referred customers to a registered representative for the purpose of the

customers investing in private placement notes without providing prior written notice to, and receiving approval from, his member firm.

Kasselder's suspension began March 4, 2002, and will conclude at the close of business March 3, 2004. (NASD Case #C04020004)

**Allen Holman Lenzini (CRD #2779230, Registered Representative, Macon, Missouri)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lenzini consented to the described sanction and to the entry of finding that he deposited a personal money order from a public customer into a checking account in his name over which he had control. The findings also stated that Lenzini willfully failed to disclose a material fact on his Form U-4 and failed to respond completely to NASD requests for information. (NASD Case #C04020007)

**Matthew Alan Mikesch (CRD #2356741, Registered Representative, St. Joseph, Missouri)** 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 disgorge \$18,056.53, plus interest, to public customers. Satisfactory proof of payment of disgorgement shall be a prerequisite before reassociating with any NASD member or prior to any request for relief from any statutory disqualification. Without admitting or denying the allegations, Mikesch consented to the described sanctions and to the entry of findings that he engaged in the sale of private securities transactions in connection with the sale or renewal of notes to customers without providing prior written notice to, and receiving approval from, his member firms. (NASD Case #C04020005)

**Curtis William Triggs, Jr. (CRD #3184470, Registered Representative, St. Louis, Missouri)** was named as a respondent in an NASD complaint alleging that a document entitled "Customer Account Check Request" was completed bearing a public customer's name and signature requesting a check for the customer in the amount of \$68,252.09 without the customer's knowledge or consent. The complaint further alleges that Triggs attempted to misuse the customer's funds in that he obtained a cashier's check without the knowledge or consent of the customer in the amount of \$68,249.09 and directed that the funds be applied to his defaulted mortgage. The complaint also alleges that

Triggs failed to respond to NASD requests for information or to appear for an on-the-record interview. **(NASD Case #C04020006)**

#### May Actions

**Shannon Mae McDermott (CRD #4129251, Registered Representative, Granby, Missouri)** was barred from association with any NASD member in any capacity. The sanction was based on findings that McDermott, without the knowledge or consent of a public customer, withdrew \$4,500 from the customer's bank account, deposited the cash funds into an account under her control, and used the funds to her own benefit or for some purpose other than the benefit of the public customer. The findings also stated that McDermott failed to respond to NASD requests for information. **(NASD Case #C04010037)**

#### June Actions

**Edward A. Kaminski (CRD #3011212, Registered Representative, Blue Springs, Missouri)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Kaminski reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kaminski consented to the described sanctions and to the entry of findings that he affixed customers' signatures to letters of intent to expedite a prior request for transfer of variable annuity accounts, without their knowledge and consent.

Kaminski's suspension began May 20, 2002, and will conclude at the close of business November 19, 2002. **(NASD Case #C04020011)**

**Todd Allen Nye (CRD #1891536, Registered Principal, Chesterfield, Missouri)** submitted an Offer of Settlement in which he was fined \$5,000, suspended from association with any NASD member in any capacity for six months, and required to disgorge \$106,516 in commissions earned. Without admitting or denying the allegations, Nye consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to, and receiving approval and/or acknowledgement from, his member firm.

Nye's suspension began May 6, 2002, and will conclude at the close of business November 5, 2002. **(NASD Case #C04010031)**

**Peter Faris Peck Jr., (CRD #1019018, Registered Representative, Heyworth, Illinois)** was named as a respondent in an NASD complaint alleging that he engaged in outside business activities and participated in private securities transactions without providing prompt and prior written notice to, and obtaining written authorization from, his member firm. The complaint also alleges that Peck, by the use of instrumentalities of interstate commerce or the mails, intentionally or recklessly employed devices to defraud customers, engaged in a course of business that operated as a fraud or deceit upon customers, and converted \$68,100 of investors' funds for his own use and benefit. In addition, the complaint alleges that Peck agreed to purchase shares of stocks on behalf of public customers and, without prior notice to his member firm, accepted \$14,349 in funds from customers and used such funds to purchase shares of stock for his own personal securities account maintained at his member firm. The complaint alleges that Peck converted the securities for his own use and benefit by failing to deliver to the customers the shares that he purchased on their behalf, thereby depriving them of the use and benefit of their securities, funds, or assets. Furthermore, the complaint alleges that Peck failed to respond to NASD requests for information. **(NASD Case #C04020010)**

**Christopher George Romani (CRD #2590681, Registered Representative, Savage, Minnesota)** was named as a respondent in an NASD complaint alleging that he converted for his own use and benefit public customer funds totaling \$38,140.97, in that on several occasions, without the knowledge or consent of his customers, he obtained loans against the whole and variable appreciable life insurance policies held by customers, and used the funds obtained from these loans for his own personal use. The complaint alleges that Romani obtained loans from the insurance policies held by customers and applied the funds as a credit to another customer's policy. The complaint also alleges that Romani failed to respond to NASD requests for information. **(NASD Case #C04020013)**

**Peter Brian Voldness (CRD #872727, Registered Principal, Bloomington, Minnesota)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500, jointly and severally, and suspended from

association with any NASD member in any principal capacity for 10 business days. Without admitting or denying the allegations, Voldness consented to the described sanctions and to the entry of findings that, in connection with a private placement contingent offering, a member firm acting through Voldness failed to establish an independent escrow account into which customer funds would be deposited pending the achievement of the contingency.

Voldness' suspension began June 3, 2002, and concluded at the close of business June 14, 2002. **(NASD Case #C04020012)**

District 5 [Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Oklahoma, and Tennessee](#)

#### April Actions

**Keith Gay Lewis (CRD #1568459, Registered Principal, Baton Rouge, Louisiana)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for four months. In light of the financial status of Lewis, no fine has been imposed. Without admitting or denying the allegations, Lewis consented to the described sanction and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firm.

Lewis' suspension began March 18, 2002, and will conclude at the close of business July 17, 2002. **(NASD Case #C05020005)**

#### May Actions

**Paul O. Amosun (CRD #4390075, Associated Person, Lewisville, Texas)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Amosun reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Amosun consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on a Form U-4.

Amosun's suspension began April 15, 2002, and will conclude at the close of business October 14, 2002. **(NASD Case #C05020008)**

**Donald & Co. Securities Inc. (CRD #7776, Tinton Falls, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which it was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to properly include on Automated Confirmation Transaction Service<sup>SM</sup> (ACT<sup>SM</sup>) reports that the firm was acting in an agency capacity and failed to promptly execute customer limit orders. The findings stated that the firm reported proprietary and customer short sale transactions through ACT without a short sale modifier, and long sale transactions were reported as short. The NASD also found that the firm executed proprietary short sale transactions in Nasdaq National Market<sup>®</sup> (NNM<sup>®</sup>) securities, at or below the current inside bid, when the current inside bid was below the preceding inside bid in the security. In addition, the findings stated that the firm executed proprietary and customer short sale transactions and failed to maintain a written record of the affirmative determination made for such orders, and failed to prepare and maintain memoranda of securities transaction orders. Furthermore, the NASD determined that the firm failed to disclose to the customers certain required information in connection with transactions where the firm acted as principal. The NASD also found that the firm failed to establish, maintain, and enforce written procedures to supervise all aspects of the firm's activities, particularly its registration of representatives as Equity traders, locked and crossed markets procedures, and compliance with the NASD's Order Audit Trail System<sup>SM</sup> (OATS<sup>SM</sup>). **(NASD Case #C05020013)**

**Michael James Harmeyer (CRD #1985323, Registered Representative, Boynton Beach, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Harmeyer consented to the described sanction and to the entry of findings that he received \$9,500 in cash from a public customer for investment purposes, commingled the customer's funds with his own in his personal bank and securities accounts, and executed options transactions in his securities account on behalf of a public customer, thereby making improper use of the customer's funds. **(NASD Case #C05020012)**

**Janet Lynne Schroder (CRD #1849962, Registered Representative, Florence, Kentucky)** submitted a Letter of Acceptance, Waiver, and Consent in which she was

fined \$10,000, suspended from association with any NASD member in any capacity for six months, and required to pay \$15,500, plus interest, in restitution to public customers. Payment of the fine and satisfactory proof of payment of restitution is required before Schroder reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Schroder consented to the described sanctions and to the entry of findings that she participated in private securities transactions and engaged in business activity outside the scope of her relationship with her member firm without providing prior written notice to her firm.

Schroder's suspension began April 15, 2002, and will conclude at the close of business October 14, 2002. (NASD Case #C05020011)

**Stephanie Ann Scott (CRD #3121358, Registered Representative, Oklahoma City, Oklahoma)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Scott issued cashier checks to herself totaling \$520, and that in order to fund these checks, she advanced \$520 on the line of credit of a public customer without the customer's knowledge or consent. Scott negotiated one of the cashier checks for \$260 and destroyed remaining checks prior to negotiation, thereby wrongfully converting \$260. Scott also failed to respond to NASD requests for information. (NASD Case #C05010042)

**Jerome Remy Shore (CRD #2666255, Registered Representative, Baton Rouge, Louisiana)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Shore reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Shore consented to the described sanctions and to the entry of findings that he signed the names of public customers on a new account form without the knowledge or consent of the customers, and that he intentionally completed the form with an incorrect social security number and date of birth for one of the customers.

Shore's suspension began April 15, 2002, and will conclude at the close of business April 14, 2003. (NASD Case #C05020010)

**Randall John Veselik (CRD #2258833, Registered Representative, Naperville, Illinois)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity and required to pay \$1,395,000, plus interest, in restitution to a public customer. Satisfactory proof of payment of restitution must be made before Veselik reassociates with any NASD member. Without admitting or denying the allegations, Veselik consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firm. The findings also stated that Veselik failed to respond to an NASD request to appear for an on-the-record interview. (NASD Case #C05020002)

#### June Actions

**Anthony Philip Accardo (CRD #643, Registered Representative, Chalmette, Louisiana)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$80,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Accardo reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Accardo consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firm.

Accardo's suspension began May 20, 2002, and will conclude at the close of business May 19, 2004. (NASD Case #C05020016)

**James Stephen Davenport (CRD #1726592, Registered Representative, Glasgow, Kentucky)** was fined \$10,000 and suspended from association with any NASD member in any capacity for nine months. However, because he has not been working in the industry, the time away has been "credited" to him and thus his suspension has been served. Nonetheless, he is barred from opening a leveraged trading account with any firm with which he associates until he has paid the fine and repaid all of the customer loans in full. The fine must be paid before Davenport reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. The sanctions were based on findings that Davenport made false representations to his member firm.

Davenport has appealed this decision to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C05010017)

**Kevin Berry Dermody (CRD #2274661, Registered Representative, Naperville, Illinois)** 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, Dermody consented to the described sanction and to the entry of findings that he engaged in a scheme to defraud, made untrue statements of material fact, omitted to state material facts, and engaged in a course of business that operated as a fraud or deceit in connection with the purchase and sale of securities. The findings stated that Dermody participated in private securities transactions without prior written notice to, or approval from, his member firm, and made guarantees against losses to public customers. The findings also stated that Dermody failed to respond to an NASD request for information. (NASD Case #C05020001)

**Jack Rutledge (CRD #2783403, Registered Representative, West Monroe, Louisiana)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, suspended from association with any NASD member in any capacity for four months, and required to requalify as a general securities representative by taking and passing the Series 7 exam prior to acting again in that capacity. If Rutledge fails to complete and pass the appropriate examination, he shall be suspended from acting in the capacity of general securities representative until he completes and passes such exam. The fine must be paid before Rutledge reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Rutledge consented to the described sanctions and to the entry of findings that he settled a customer complaint without informing and obtaining authorization from his member firm. The findings also stated that Rutledge, without the knowledge or consent of a public customer, signed the customer's name to a letter of authorization to effect a transfer to Rutledge's account of funds previously advanced by him to the customer.

Rutledge's suspension began May 20, 2002, and will conclude at the close of business September 19, 2002. (NASD Case #C05020014)

**James Michael Spaulding (CRD #1277538, Registered Representative, Huntland, Tennessee) and Donald Carl Dickson (CRD #67486, Registered Principal, Huntsville, Alabama)** submitted a Letter of Acceptance, Waiver, and Consent in which Spaulding was fined \$15,000 and suspended from association with any NASD member in any capacity for 10 days. Dickson was fined \$5,000 and suspended from association with any NASD member in any principal capacity for 10 days. The fine must be paid before Dickson reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Spaulding recommended and effected sales of class B mutual fund shares in the aggregate amount of \$3,000,000 to a public customer without having reasonable grounds for believing that the recommendations and resultant transactions were suitable for the customer on the basis of his financial situation and needs. The findings also stated that Dickson, in connection with Spaulding's unsuitable transactions, failed and neglected to adequately supervise Spaulding in that he neglected to follow his member firm's written procedure requiring branch managers to obtain written approval from a customer when aggregate investments in mutual funds of more than \$1 million are not invested in class A shares.

Spaulding's suspension began May 20, 2002, and concluded at the close of business May 29, 2002. Dickson's suspension began May 20, 2002, and concluded at the close of business May 30, 2002. (NASD Case #C05020015)

District 6 Texas

#### April Actions

**Randolph Jerome Corbitt (CRD #4080159, Registered Representative, Houston, Texas)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Corbitt consented to the described sanction and to the entry of findings that he willfully failed to disclose a material fact on his Form U-4. The findings also stated that Corbitt failed to respond to NASD requests for information. (NASD Case #C06010046)

## May Actions

**Reagan Taylor Dugas (CRD #3077624, Registered Representative, Orange, Texas)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. The fine must be paid before Dugas reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Dugas consented to the described sanctions and to the entry of findings that he participated in a private securities transaction without providing prior notice, written or otherwise, to his member firm describing the proposed transaction, his role therein, and whether he had received, or might receive, selling compensation in connection with the transaction.

Dugas' suspension began May 6, 2002, and will conclude July 4, 2002. (NASD Case #C06010040)

**Richard Scott Gregory (CRD #2837455, Registered Representative, Dallas, Texas)** submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 business days. Without admitting or denying the allegations, Gregory consented to the described sanctions and to the entry of findings that he executed a purchase transaction in the account of a public customer without the customer's prior knowledge or authorization.

Gregory's suspension began June 3, 2002, and will conclude at the close of business July 15, 2002. (NASD Case #C06010045)

**Steven Mark Reed (CRD #2642807, Registered Representative, Suisun, 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 five business days. Without admitting or denying the allegations Reed consented to the described sanctions and to the entry of findings that he recommended and engaged in purchase and sale transactions in the accounts of a public customer which involved mutual fund switching without having reasonable grounds for believing that these recommendations and resultant transactions were suitable for the customer based on her security holdings, financial situation, and needs.

Reed's suspension began May 6, 2002, and concluded at the close of business May 10, 2002. (NASD Case #C06020002)

## June Actions

**Patterson Travis, Inc. (CRD #16540, Englewood, Colorado), David Thomas Travis (CRD #448950, Registered Principal, Aurora, Colorado), Eric Harold Dieffenbach (CRD #1833420, Registered Representative, Littleton, Colorado), and Michael Antoine Rooms (CRD #2187994, Registered Representative, Littleton, Colorado)** were named as respondents in an NASD complaint alleging that the firm, acting through Travis, Dieffenbach, and Rooms, contravened SEC Rules 15g-2, 15g-3, 15g-5, and 15g-9, in that prior to effecting transactions in a penny stock for the accounts of public customers, the firm did not furnish to customers a penny stock transactions risk disclosure statement, and did not obtain from the customers a manually signed and dated written acknowledgement of receipt of the document. The complaint also alleges that the firm, acting through Travis, Dieffenbach, and Rooms, prior to effecting transactions in a penny stock for customers' accounts or in writing at the time of confirmation, did not disclose to customers the inside bid quotation and the inside offer quotation for the penny stock, and did not disclose to customers the aggregate amount of cash compensation to its associated persons in connection with these transactions.

In addition, the complaint alleges that the firm did not obtain a written agreement setting forth the identity and quantity of a penny stock to be purchased and a signed and dated written statement from each purchaser relating to the purchaser's financial condition, investment experience, and investment objectives. The complaint alleges that the firm, acting by and through Travis, failed to supervise properly the sale of a penny stock by Dieffenbach and Rooms to achieve compliance with applicable securities laws, regulations, and NASD rules. The complaint also alleges that the respondents attempted to conceal their violation of the penny stock rules and attempted to obstruct an NASD investigation. The complaint further alleges that respondents failed to comply with the terms of an Order of Settlement that involved, among other things, violations of the Penny Stock Rules. (NASD Case #C06020003)

District 7 Florida, Georgia, North Carolina, South Carolina, Virginia, Puerto Rico, the Canal Zone, and the Virgin Islands

#### April Actions

**Bennie Eugene Braswell, Jr. (CRD #2916727, Registered Representative, Hephzibah, Georgia)** 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 five business days. The fine must be paid before Braswell reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Braswell consented to the described sanctions and to the entry of findings that he guaranteed a public customer against loss in her securities account.

Braswell's suspension began March 18, 2002, and concluded at the close of business March 22, 2002. (NASD Case #C07020009)

**John Montgomery Buckley (CRD #2351891, Registered Representative, Atlanta, Georgia)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Buckley consented to the described sanction and to the entry of findings that he effected unauthorized trades in the account of a public customer. (NASD Case #C07020005)

**Christopher McCafferty (CRD #4194611, Registered Representative, Hollywood, Florida)** submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before McCafferty reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, McCafferty consented to the described sanctions and to the entry of findings that he completed a Form U-4 and failed to disclose material information.

McCafferty's suspension began March 18, 2002, and will conclude at the close of business June 17, 2002. (NASD Case #C07010104)

**Basilio Mercado, Jr. (CRD #2864911, Associated Person, Miami Beach, Florida)** was fined \$5,000 and suspended

from association with any NASD member in any capacity for six months for failure to disclose information on a Form U-4 and barred from association with any NASD member in any capacity for failure to respond. The fine must be paid before Mercado's reentry into the securities industry. The sanctions are based on findings that Mercado willfully failed to disclose material information on his Form U-4 and failed to respond to NASD requests for information.

Mercado's bar became effective March 1, 2002. (NASD Case #C07010070)

#### May Actions

**Adrian Everardo Balboa (CRD #2941162, Registered Representative, Coral Springs, Florida)** was named as a respondent in an NASD complaint alleging that he engaged in unauthorized transactions in the accounts of public customers. (NASD Case #C07020026)

**James Lee Bassa, Jr. (CRD #2913362, Registered Representative, Pompano Beach, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bassa consented to the described sanction and to the entry of findings that he caused four checks to be issued against a client account without the client's authorization, forged the customer's endorsement on two of them, and deposited the checks into a bank account under his control, thereby converting \$43,300 from a client account to his own use and benefit. The findings also stated that Bassa provided the customer with altered account statements misrepresenting the activity in the account in an effort to conceal the conversion. (NASD Case #C07020017)

**John Austin Bennett (CRD #2283625, Registered Representative, Seffner, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bennett consented to the described sanction and to the entry of findings that he engaged in private securities transactions without providing prior written notice to, and receiving authorization from, his member firm. The findings also stated that Bennett utilized sales communications that violated various NASD advertising and communications standards. In addition, the NASD found that Bennett participated in an undisclosed outside business activity. (NASD Case #C07020016)

**William Bernard Cain (CRD #1393538, Registered Representative, Emporia, Virginia)** 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 Cain reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Cain consented to the described sanctions and to the entry of findings that he willfully failed to amend promptly his Form U-4 to disclose a material fact.

Cain's suspension began April 15, 2002, and will conclude on July 13, 2002. **(NASD Case #C07020020)**

**Sheila Marie Cali (CRD #3082147, Associated Person, Columbia, South Carolina)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Cali willfully converted \$1,698.15 received from public customers to pay insurance premiums. **(NASD Case #C07010075)**

**Jack Colombo (CRD #2098181, Registered Representative, Miami Lakes, Florida)** 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 30 days. The fine must be paid before Colombo reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Colombo consented to the described sanctions and to the entry of findings that he engaged in outside business activities and failed to provide prompt written notice of his employment with another firm to his member firm.

Colombo's suspension began April 1, 2002, and concluded at the close of business April 30, 2002. **(NASD Case #C07020014)**

**Robert Andrew DiCarlo, Jr. (CRD #2837475, Registered Representative, Boca Raton, Florida)** was named as a respondent in an NASD complaint alleging that he effected unauthorized transactions in the accounts of public customers and failed to respond to NASD requests for information. **(NASD Case #C07020012)**

**Steven Vincent Domenico (CRD #1643791, Registered Representative, Alpharetta, 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 30 business days. Without admitting or denying the allegations, Domenico consented to the described sanctions and to the entry of findings that he caused the telephone numbers of public customers in a member firm's computer system to be altered without authorization so that the numbers in the computer were incorrect.

Domenico's suspension began May 6, 2002, and will conclude at the close of business June 17, 2002. **(NASD Case #C07020019)**

**John Roger Giddens (CRD #2863912, Registered Representative, Macon, Georgia)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$3,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Giddens reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Giddens consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without providing prior written notice to, or receiving authorization from, his member firm.

Giddens' suspension began April 1, 2002, and will conclude at the close of business September 30, 2002. **(NASD Case #C07020013)**

**Maurizio Virginio Grammatica (CRD #1845020, 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. The fine must be paid before Grammatica reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Grammatica consented to the described sanctions and to the entry of findings that he falsified customer new account forms for the purpose of facilitating trading by an unregistered representative, thereby assisting the individual in committing registration violations.

Grammatica's suspension began April 1, 2002, and will conclude June 30, 2002. **(NASD Case #C07020007)**

**Kevin Edward Greene (CRD #1804494, Registered Representative, Orlando, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined

\$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Greene consented to the described sanctions and to the entry of findings that he exercised discretionary power in the account of a public customer without obtaining prior written authorization from the customer and without having the account accepted as discretionary by his member firm.

Greene's suspension began April 1, 2002, and concluded at the close of business April 12, 2002. (NASD Case #C07020011)

**Terry Edwin McCormic (CRD #1443203, Registered Representative, Lady Lake, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$47,982, which includes disgorgement of \$42,982 in commissions earned, and suspended from association with any NASD member in any capacity for two years. The fine must be paid before McCormic reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, McCormic consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without providing prior written notice to, or receiving authorization from, his member firm.

McCormic's suspension began April 1, 2002, and will conclude at the close of business March 31, 2004. (NASD Case #C07020015)

**Gaylon Wayne LaBoa (CRD #3134751, Registered Representative, Atlanta, Georgia)** was barred from association with any NASD member in any capacity. The sanction was based on findings that LaBoa converted checks totaling \$2,700 received from a public customer to begin an investment account and failed to deposit any money into the account. The findings also stated that LaBoa failed to respond to NASD requests for an on-the-record interview.

LaBoa has appealed this decision to the NAC, and the sanction is not in effect pending consideration of the appeal. (NASD Case #C07010007)

**Nelson Daniel Polite, Jr. (CRD #2698001, Registered Principal, Orlando, Florida)** was named as a respondent in an NASD complaint alleging that he entered into a written agreement with a public customer to trade his

account and share profits earned in that account without prior written authorization from his member firm. The complaint also alleges that Polite failed to respond to NASD requests for information and documents. (NASD Case #C07020021)

#### June Actions

**Raquel Brookins (CRD #4242793, Associated Person, Miami, Florida)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Brookins submitted a materially false Form U-4 to a member firm. (NASD Case #C07010085)

**William Pang Chien (CRD #2251029, Registered Principal, Plantation, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, jointly and severally, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Chien consented to the described sanctions and to the entry of findings that a member firm, acting through Chien, failed to respond timely to NASD requests for information.

Chien's suspension began June 3, 2002, and concluded at the close of business June 14, 2002. (NASD Case #C07020027)

**Franklin Ross, Inc. (CRD #43610, Coral Springs, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,500, and fined \$4,000, jointly and severally. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that representatives of the firm engaged in prohibited general solicitation in connection with private placement offerings. The findings also stated that the firm failed to establish, maintain, and enforce adequate written supervisory procedures reasonably designed to achieve compliance with Section 5 of the Securities Act of 1933. (NASD Case #C07020022)

**Kenneth Albert Friedman, Jr. (CRD #2123609, Registered Representative, Jacksonville, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Friedman consented to the described sanctions and to the entry of findings that he signed a client's name to an IRA brokerage account application

and custodial transfer forms for mutual fund positions without the authorization of the client.

Friedman's suspension began May 20, 2002, and concluded at the close of business June 3, 2002. (NASD Case #C07020024)

**Lewis Douglas Hanchell (CRD #3025649, Registered Representative, Miami, Florida)** was fined \$10,000 and suspended from association with any NASD member in any capacity for six months for unauthorized trading, and barred from association with any NASD member in any capacity for failure to appear. The fine shall be due and payable upon Hanchell's reentry into the securities business. The sanctions are based on findings that Hanchell effected unauthorized trades in the account of a public customer and failed to respond to NASD requests to appear for an on-the-record interview.

Hanchell's bar became effective April 23, 2002. (NASD Case #C07010078)

**Timothy Doyle Lucas (CRD #1476874, Registered Principal, Valrico, Florida)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Lucas failed to perform net capital calculations for his member firm, performed net capital computations that materially overstated his firm's net capital, and failed to timely file an annual audited financial report for the firm. The findings also stated that Lucas failed to give the SEC and NASD notice of his firm's net capital deficiency. (NASD Case #C07010080)

**Andrew Thomas McNamara (CRD #2768804, Registered Representative, Charlotte, North Carolina)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, McNamara consented to the described sanction and to the entry of findings that he converted funds to his own use from family members' accounts at his member firm without the authorization of the account holders. The findings also stated that McNamara obtained the funds by preparing fictitious letters of authorization to transfer funds from the target accounts to accounts under his ownership or control, and forged the account holder's signature on those false letters of authorization. (NASD Case #C07020023)

**Stonebriar Securities, Inc. (CRD #19193, North Palm Beach, Florida) and Matthew James Fitzgibbon (CRD #4112304, Registered Principal, Columbus, Indiana).**

The firm was expelled from NASD membership and Fitzgibbon was barred from association with any NASD member in any capacity. The sanctions were based on findings that the firm, acting through Fitzgibbon and other individuals, made material misrepresentations and omissions of fact when soliciting public customers to purchase a common stock including baseless price predictions, false statements, and inadequate risk disclosure. The findings also stated that the firm, acting through Fitzgibbon and others, recommended and sold shares of penny stocks to public customers without approving their accounts for trading in penny stocks. NASD also found that the firm executed transactions in the stock without obtaining information from the customers concerning their investment objectives and investment experience, without having the customers verify their investment objectives and investment experience, and without obtaining written agreements from the customers prior to the transactions setting forth the identity and quantity of the stock to be purchased. In addition, NASD found that Fitzgibbon guaranteed public customers against loss, made unsuitable recommendations to public customers, and failed to follow the instructions of public customers. (NASD Case #C07010072)

**District 8** Illinois, Indiana, Michigan, part of upstate New York (the counties of Monroe, Livingston, and Steuben, and the remainder of the state west of such counties) Ohio, and Wisconsin

**District 8A** Chicago

#### April Actions

**Joseph Ryan Carrico (CRD #3050586, Registered Representative, Indianapolis, Indiana)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500, ordered to pay \$1,443.57, plus interest, in restitution to a member firm, and suspended from association with any NASD member in any capacity for two years. The fine and restitution must be paid before Carrico reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Carrico consented to the described sanctions and to the entry of findings that he placed trades appearing on his member firm's daily uncomparing trades report in his personal account

rather than in the firm's error account. The NASD also found that, after the trade was placed in his account, he then sold the underlying equity at a profit.

Carrico's suspension began April 1, 2002, and will conclude at the close of business March 31, 2004.

**(NASD Case #C8A020011)**

**Jeffrey Charles Dunham (CRD #2087534, Registered Representative, Indianapolis, Indiana)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Dunham consented to the described sanction and to the entry of findings that he participated in private securities transactions without prior written notice to, or approval from, his member firm. **(NASD Case #C8A020008)**

#### May Actions

**Bradley Albert Garmhausen (CRD #2333003, Registered Representative, Traverse City, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$6,170, which includes the disgorgement of commissions received of \$1,170, and suspended from association with any NASD member in any capacity for one month. The fine must be paid before Garmhausen reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Garmhausen consented to the described sanctions and to the entry of findings that he engaged in private securities transactions, for compensation, and failed to give written notice to, and receive written approval from, his member firm prior to engaging in such activities.

Garmhausen's suspension began May 6, 2002, and will conclude at the close of business June 5, 2002.

**(NASD Case #C8A020016)**

**Keith Thomas Heinze (CRD #1342926, Registered Representative, Big Bend, Wisconsin)** submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 18 months. Heinze must provide satisfactory proof of payment that commissions in the amount of \$63,936 have been disgorged and returned to the issuer. Without admitting or denying the allegations, Heinze consented to the described sanctions and to the entry of findings that he failed

and neglected to provide prior written notice to, and obtain prior written authorization from, his member firm to engage in private securities transactions, in which he offered and sold securities for compensation in the form of promissory notes.

Heinze's suspension began May 6, 2002, and will conclude at the close of business November 5, 2003.

**(NASD Case #C8A010066)**

**Philip Millar Leech (CRD #2351020, Registered Representative, Spring Lake, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$6,395, which includes the disgorgement of \$395 in commissions, and suspended from association with any NASD member in any capacity for one month. The fine must be paid before Leech reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Leech consented to the described sanctions and to the entry of findings that he participated, for compensation, in a private securities transaction by participating in the sale of a security in the form of a viatical issued by a member of the public without giving written notice of his intention to engage in such activity to his member firm, and receiving written approval from his member firm, prior to engaging in such activities. The NASD also found that Leech maintained a Web site for the purpose of advertising without obtaining prior approval for use of the Web site from a principal of his member firms, and failed to file the advertising with NASD's Advertising/Investment Companies Regulation Department within 10 days of the first use or publication of the Web site.

Leech's suspension began April 15, 2002, and will conclude at the close of business May 14, 2002.

**(NASD Case #C8A020012)**

**Deborah Ellen Romary (CRD #1112258, Registered Representative, Fort Wayne, Indiana)** submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$2,500, required to pay \$12,479, plus interest, in restitution to a public customer, which includes disgorgement of commissions of \$7,400.05, and suspended from association with any NASD member in any capacity for 10 business days. Romary must provide proof of payment of the restitution prior to reassociation with a member firm following the suspension or prior to any request for relief from statutory disqualification. Without admitting or denying the allegations, Romary consented to the

described sanctions and to the entry of findings that she recommended to a public customer to transfer money from a variable annuity to a life variable annuity, resulting in a \$12,479 surrender charge to the customer. The NASD found that Romary made this recommendation without having a reasonable basis for the recommendation to exchange the variable annuity for the life variable annuity, when the products were similar in some ways and identical in others, and without a material benefit to the customer.

Romary's suspension began April 15, 2002, and concluded at the close of business April 26, 2002. **(NASD Case #C8A020013)**

**Barbara Lee Schuldt (CRD #4008311, Registered Representative, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Schuldt consented to the described sanction and to the entry of findings that she obtained credit cards in the name of a public customer of his member firm's bank affiliate by completing credit card applications with the customer's personal information, which she verified through a branch bank. The NASD found that Schuldt used the credit cards on several occasions and signed the customer's name to credit charge slips, thereby incurring charges, without the knowledge or consent of the customer. **(NASD Case #C8A020017)**

**Cara Marie Smith (CRD #2391959, Registered Representative, Mesa, Arizona)** submitted an Offer of Settlement in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Smith consented to the described sanction and to the entry of findings that she affixed the signatures of public customers on documents that relate to the purchase of a variable annuity without the customers' knowledge or consent. The findings also stated that Smith failed to respond to NASD requests to appear for an on-the-record testimony. **(NASD Case #C8A010093)**

#### **June Actions**

**Mario Michael Bilotti (CRD #2834416, Registered Representative, Kenosha, Wisconsin)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Bilotti forged public customers' signatures on documents and failed to respond to NASD requests for information. **(NASD Case #C8A010092)**

**David Richard Carey (CRD #2077949, Registered Principal, Oglesby, Illinois)** was named as a respondent in an NASD complaint alleging that he received \$5,700 from public customers to purchase shares of a fund for custodial securities accounts, failed to follow the customers' instructions, and used the funds for some purpose other than the benefit of the custodial customers. The complaint further alleges that Carey failed to fully respond to NASD requests for documents and information. **(NASD Case #C8A020024)**

**Joseph Edward Devlin (CRD #2889976, Registered Representative, Westfield, Indiana)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Devlin consented to the described sanction and to the entry of finding that he failed to respond to NASD requests for information. **(NASD Case #C8A020018)**

**Roger Allen Hanson (CRD #236512, Registered Representative, Milwaukee, Wisconsin)** was fined \$27,050 and suspended from association with any NASD member in any capacity for 180 days. The NAC imposed the sanctions following review of an OHO decision. The sanctions were based on findings that Hanson engaged in private securities transactions, for compensation, without providing prior written notice to, and receiving approval from, his member firm.

Hanson's suspension began May 20, 2002, and will conclude on November 16, 2002. **(NASD Case #C8A000059)**

**Jeffrey Lavert Montgomery (CRD #2701770, Registered Representative, Milwaukee, Wisconsin)** was named as a respondent in an NASD complaint alleging that he received \$9,310.22 from public customers as insurance premium payments, failed to apply the funds towards insurance premiums as the customers directed, and instead, without the customers' knowledge or authorization, used the funds for his own benefit or for some purpose other than the customers' benefit. The complaint also alleges that Montgomery failed to respond to NASD requests for information. **(NASD Case #C8A020023)**

**George William Perkins, II (CRD #360247, Registered Representative, Lynnfield, Massachusetts)** submitted a Letter of Acceptance, Waiver, and Consent in which he was censured and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Perkins consented

to the described sanctions and to the entry of finding that he participated in private securities transactions, for compensation, without providing prior written notice to, or obtaining approval from, his member firm.

Perkins' suspension began June 3, 2002, and will conclude at the close of business July 2, 2002. **(NASD Case #C8A020021)**

District 8B Cleveland

#### April Actions

**Fifth Third Securities, Inc. (CRD #628, Cincinnati, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it permitted individuals to function in capacities requiring registration when their registrations had been deemed inactive for failure to complete the Regulatory Element Continuing Education requirement. **(NASD Case #C8B020005)**

**John Edward Prokop (CRD #1472658, Registered Representative, Youngstown, 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 allegations, Prokop consented to the described sanction and to the entry of findings that he engaged in outside business activities, for compensation, and failed to provide his member firm with prompt written notice of his activities. **(NASD Case #C8B020004)**

#### May Actions

**Charles Howard Collins (CRD #51126, Registered Representative, Columbus, 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 allegations, Collins consented to the described sanction and to the entry of findings that he participated in outside business activity, for compensation, and failed to provide his member firm with prompt written notice of his activities. **(NASD Case #C8B020006)**

#### June Actions

**Ted Frederick Cook (CRD #852995, Registered Representative, Buffalo, New York)** was named as a respondent in an NASD complaint alleging that he

received a \$7,000 check from a public customer for the purchase of a long-term care insurance policy, instructed the customer to make the check payable to him, failed to purchase the policy or apply the funds for the benefit of the customer, and instead used the funds for his own benefit. The complaint also alleges that Cook failed to respond to NASD requests for information. **(NASD Case #C8B020010)**

**Edward Allan Fennell (CRD #3126627, Registered Representative, Dublin, Ohio)** was named as a respondent in an NASD complaint alleging that he received \$3,901.53 from a public customer representing proceeds from a 401(k) rollover intended for the purchase of a variable annuity, failed to apply the funds to the purchase of a variable annuity or in any other manner for the benefit of the customer, and instead used the funds for his own benefit. The complaint also alleges that Fennell received \$1,000 from a public customer for the purchase of a mutual fund, failed to apply the funds as directed, and instead used the funds for his own benefit. In addition, the complaint alleges that Fennell failed to respond to NASD requests for information and documents. **(NASD Case #C8B020009)**

**Tony Lee Fessler (CRD #2196008, Registered Representative, Pleasant Hill, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Fessler reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Fessler consented to the described sanctions and to the entry of findings that he engaged in private securities transactions away from his member firm for compensation, failed to provide his firm with detailed written notice of the transactions and his role therein, and failed to receive permission from the firm to engage in the transactions.

Fessler's suspension began June 3, 2002, and will conclude at the close of business December 2, 2002. **(NASD Case #C8B020007)**

**John Peter Guarnieri (CRD #1147886, Registered Representative, Warren, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, suspended from association with any NASD member in any capacity for 30 days, and ordered to disgorge \$2,300, plus interest, in commissions received

to public customers. Without admitting or denying the allegations, Guarnieri consented to the described sanctions and to the entry of findings that he engaged in private securities transactions away from his member firm and failed to provide his firm with detailed written notice of the transactions and his role therein, and failed to receive permission from the firm to engage in the transactions.

Guarnieri's suspension began May 20, 2002, and will conclude at the close of business June 18, 2002. (NASD Case #C8B020008)

**Carl Bernard Mahoney (CRD #2963667, Registered Representative, Northfield, Ohio)** was barred from association with any NASD member in any capacity and ordered to pay \$10,000, plus interest, in restitution to a public customer. The sanctions were based on findings that Mahoney received \$10,000 from a public customer to invest in an annuity, but failed to use the funds to purchase the annuity failed to notify the customer that the funds were invested in any manner, and failed to repay any of the funds he received for investment. The findings also stated that Mahoney failed to respond to NASD requests for information. (NASD Case #C8B010024)

District 9 Delaware, Pennsylvania, West Virginia, District of Columbia, Maryland, and New Jersey

District 9A Philadelphia

#### April Actions

**John Gentile (CRD #2298008, Registered Representative, Paulsboro, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, suspended from association with any NASD member in any capacity for 18 months, and ordered to disgorge commissions of \$41,600 in partial restitution to public customers. The fine and restitution amounts must be paid before Gentile reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Gentile consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, or approval from, his member firm.

Gentile's suspension began March 18, 2002, and will conclude at the close of business September 17, 2003. (NASD Case #C9A020009)

**Ben Jeffrey Lichtenberg (CRD #1367642, Registered Principal, Deerfield Beach, Florida)** 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 principal or supervisory capacity for two years. Without admitting or denying the allegations, Lichtenberg consented to the described sanctions and to the entry of findings that he engaged in activities requiring registration as a general securities principal for his member firm while he was not registered in that capacity or in any other principal capacity. The findings also stated that a member firm, acting through Lichtenberg, effected sales in contravention of the Free-Riding and Withholding Interpretation, including sales to an account owned by Lichtenberg and sales to restricted accounts for which he was the registered representative. In addition, the NASD found that the firm, acting through Lichtenberg, retained securities in one or more firm accounts. The NASD also found that Lichtenberg submitted materially false or inaccurate Free-Riding and Withholding Questionnaires to the NASD. Moreover, the findings stated that the firm, acting through Lichtenberg, failed to comply with SEC Rule 15c2-4 in connection with a contingent offering of units in which the firm acted as sole placement agent and failed to transmit funds received from investors to whom the firm sold units to a bank escrow account or to deposit funds received from investors into a separate bank account as agent or trustee.

Lichtenberg's suspension began March 18, 2002, and will conclude at the close of business March 17, 2004. (NASD Case #C9A020005)

**Louis Robert Mercaldo (CRD #2304338, Registered Representative, Magnolia, 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 two months. The fine must be paid before Mercaldo reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Mercaldo consented to the described sanctions and to the entry of findings that he was involved in offering securities to public customers for which he received compensation and failed to provide his member firm prior written notice describing the transactions, his proposed role therein, and stating whether he had received, or might receive, selling compensation.

Mercaldo's suspension began March 18, 2002, and will conclude at the close of business May 17, 2002. (NASD Case #C9A020010)

**William Raymond Schantz, III (CRD #1641847, Registered Representative, Cherry Hill, 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. The fine must be paid before Schantz reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Schantz consented to the described sanctions and to the entry of findings that he was involved in offering securities to public customers for which he received compensation, and failed to provide his member firm prior written notice describing the transactions, his proposed role therein, and stating whether he had received, or might receive, selling compensation.

Schantz' suspension began March 4, 2002, and will conclude at the close of business June 3, 2002. (NASD Case #C9A020006)

**Gerard Vincent Sherlock, Sr. (CRD #2629144, Registered Representative, Cherry Hill, 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. The fine must be paid before Sherlock reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Sherlock consented to the described sanctions and to the entry of findings that he was involved in offering securities to public customers for which he received compensation and failed to provide his member firm prior written notice describing the transactions, his proposed role therein, and stating whether he had received, or might receive, selling compensation.

Sherlock's suspension began March 18, 2002, and will conclude at the close of business June 17, 2002. (NASD Case #C9A020008)

**vFinance Investments (CRD #25121, Boca Raton, Florida) and Steven David Schwartz (CRD #832419, Registered Principal, Mt. Laurel, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$70,000, jointly and severally. The

firm was fined an additional \$5,000 and Schwartz was fined an additional \$10,000, barred from association with any NASD member in any principal or supervisory position, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Schwartz, issued transaction confirmations to public customers that were materially inaccurate in that they failed to disclose its capacity in the transactions as "dual agent" when acting as principal and failed to disclose the markup or markdown it derived in addition to the disclosed commission. The findings also stated that the firm failed to meet the requirements of NASD Conduct Rule 2320(g) in non-Nasdaq securities transactions.

In addition, the NASD found that the firm failed to properly report through the Automated Confirmation Transaction Service® (ACT®) transactions in National Market System securities, Nasdaq SmallCap<sup>SM</sup> securities, and over-the-counter (OTC) Equity securities; failed to timely report certain trades; improperly aggregated certain trades into a single report; reported an incorrect volume for certain trades; failed to accept or decline transactions in ACT in eligible securities within 20 minutes after execution; and failed to report to ACT the correct symbol indicating whether the firm executed transactions in eligible securities in a principal or agency capacity.

Moreover, the NASD found that the firm, acting through Schwartz, failed to disclose in writing to public customers information regarding payment for order flow in which the firm acted as agent and, in penny stock transactions, failed to provide public customers a penny stock risk disclosure document and obtain a manually signed and dated written acknowledgement of receipt of the document from the customers. Furthermore, the firm failed to cause its director of investment banking to become registered as a general securities principal or to preclude him from performing functions and activities requiring registration in that capacity. The NASD also found that the firm participated in public offerings of securities that traded in the immediate aftermarket and failed to comply with IM-2110-1 in that in each offering the firm effected sales and retained securities that were part of the offering in firm accounts. In addition, the NASD found that the firm submitted materially false and inaccurate Free-Riding and Withholding Questionnaires to the NASD and failed to transmit funds from investors

to whom it sold units to a bank escrow account or to deposit the funds into a separate bank account as agent or trustee. Finally, the NASD found that the firm and Schwartz failed to establish a supervisory system, and failed to establish and maintain written policies and procedures reasonably designed to prevent the above violations.

Schwartz' suspension began March 18, 2002, and will conclude at the close of business April 16, 2002. **(NASD Case #C9A020007)**

### May Actions

**Glen Thomas Adams, Jr. (CRD #2480113, Registered Representative, Collegeville, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Adams reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Adams consented to the described sanctions and to the entry of findings that he signed an insurance policy delivery receipt with the purported signature of a public customer and submitted such document to an insurance company without the authorization of the customer and without the policy being delivered to the customer. The findings also stated that Adams created a purported copy of a blank voided personal check of a public customer and submitted it to the insurance company for the purpose of establishing an automatic bank draft program to pay the premiums on the customer's insurance policy. Such document was false in that it was a copy of a check from Adams' own bank account that had been graphically altered to insert the customer's name and address.

Adams' suspension began April 15, 2002, and will conclude at the close of business October 14, 2002. **(NASD Case #C9A020012)**

**Stephen Lawrence Bialon (CRD #1212221, Registered Representative, Marlton, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, suspended from association with any NASD member in any capacity for 30 business days, and ordered to disgorge \$5,400 in commissions in partial restitution to public customers. Without admitting or denying the allegations, Bialon consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior

written notice to, or approval from, his member firm.

Bialon's suspension began May 6, 2002, and will conclude at the close of business June 17, 2002. **(NASD Case #C9A020014)**

**Stephen John Larkin (CRD #733109, Registered Representative, Trenton, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$25,000, suspended from association with any NASD member in any capacity for two years, and ordered to disgorge \$52,000 in commissions in partial restitution to public customers. Without admitting or denying the allegations, Larkin consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, or approval from, his member firm.

Larkin's suspension began May 6, 2002, and will conclude at the close of business May 5, 2004. **(NASD Case #C9A020015)**

**Wayne Wendell Ratliff, III (CRD #1757408, Registered Principal, Morgantown, West Virginia)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Ratliff consented to the described sanction and to the entry of findings that he willfully failed to disclose material facts on a Form U-4 and failed to respond to NASD requests for information. **(NASD Case #C9A020011)**

### June Actions

**Savas Zafer Alkoc (CRD #2019226, Registered Representative, Lakewood, New Jersey)** was fined \$15,000 and suspended from association with any NASD member in any capacity for six months for settling a customer complaint away from his member firm, and barred from association with any NASD member in any capacity for misusing customer funds. The fine shall be due and payable when and if Alkoc seeks to reenter the securities industry. The sanctions are based on findings that Alkoc settled the complaint of a public customer away from his member firm without the firm's knowledge. The findings also stated that Alkoc received \$65,261.98 from public customers to invest in stocks and bonds, deposited some of the funds in his personal securities account at his member firm, and used some of the funds to settle a customer complaint without the authorization of the customers.

Alkoc's bar became effective April 29, 2002. **(NASD Case #C9A010043)**

**Carl John Barone, Sr. (CRD #1078295, Registered Representative, Clementon, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for three months. In light of the financial status of Barone, no monetary sanctions have been imposed. Without admitting or denying the allegations, Barone consented to the described sanction and to the entry of findings that he engaged in private securities transactions outside the normal course or scope of his association with his member firm and failed to provide prior written notification of the transactions to his member firm.

Barone's suspension began May 6, 2002, and will conclude at the close of business August 7, 2002. **(NASD Case #C9A020016)**

**Marsha Lynn Brown (CRD #3029559, Registered Representative, Huntington, West Virginia)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Brown consented to the described sanction and to the entry of findings that she caused \$800 to be borrowed against a home equity line of credit that public customers maintained with the bank at which she was employed and used the funds for her own benefit. The findings also stated that Brown made withdrawals totaling approximately \$1,845 from a public customer's account at the bank, causing \$800 to be applied to repay the funds withdrawn from the home equity line of credit of other customers and using the balance for her own benefit. Brown also caused the customer's account address to be changed so she would not receive statements reflecting the unauthorized withdrawals. In addition, NASD found that Brown withdrew \$1,050 from lines of credit from the accounts of public customers and used the funds for her own benefit. **(NASD Case #C9A020020)**

**First Liberty Investment Group, Inc. (CRD #3536, Philadelphia, Pennsylvania)** and **James William O'Connor (CRD #1655937, Registered Principal, Aston, Pennsylvania)** were named as respondents in an NASD complaint alleging that they failed to establish, maintain, and enforce written supervisory procedures reasonably designed to detect and prevent violations involving sales practices, registration, penny stocks,

customer complaint reports, trading and market making rules, and annual inspections of Offices of Supervisory Jurisdiction and branch offices. The complaint also alleges that the firm, acting through O'Connor, contravened the penny stock transaction and disclosure rules by failing to obtain a signed and dated written statement from each purchaser relating to the purchaser's financial condition and investment experience, and failed to obtain a signed and dated written statement from each purchaser acknowledging receipt of the required penny stock transaction risk document. In addition, the complaint alleges that the firm and O'Connor failed to disclose to the purchasers the inside and bid quotations and the number of shares to which the bid and offer quotations applied, the aggregate amount of compensation received by the firm with each transaction, and the compensation received by the associated persons with each transaction. Furthermore, the complaint alleges the firm, acting through O'Connor, failed to report to NASD statistical and summary information relating to customer complaints received by the firm and failed to make, keep current, and/or maintain books and records. **(NASD Case #C9A020019)**

**Flexman Henry Johnson (CRD #2763639, Registered Representative, Philadelphia, Pennsylvania)** 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, Johnson consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. **(NASD Case #C9A010040)**

**John Joseph Katsock, Jr. (CRD #2497641, Registered Principal, New York, New York)** was named as a respondent in an NASD complaint alleging that, in connection with the purchase, sale, or offer of securities, Katsock, by the use of any means or instrumentalities of interstate commerce or of the mails, employed devices to defraud these customers by making untrue statements of material fact or omitting to state material facts necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading. The complaint alleges that Katsock failed to disclose to public customers that he had a self-interest with a securities issuer. In addition, the complaint alleges that Katsock exercised discretionary authority in the accounts of a public customer and purchased securities for the accounts without reasonable grounds for believing the recommendations and resulting transactions were

suitable for the customer based on her financial situation, investment objectives, and needs. Furthermore, the complaint alleges that Katsock failed to execute the instructions of public customers and made improper price predictions to public customers. Moreover, the complaint alleges that Katsock exercised discretion in the accounts of public customers without having obtained prior written authorization from the customers and prior written acceptance of the accounts as discretionary by his member firm. The complaint also alleges that Katsock failed to respond to NASD requests to appear for an on-the-record interview, and interfered with an NASD investigation of his sales practices by offering to pay a public customer for a convertible note that the customer had purchased if he did not cooperate with the NASD. **(NASD Case #C9A020018)**

District 9B [New Jersey](#)

#### April Actions

**Citistreet Equities LLC (CRD #7447, East Brunswick, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to submit filings required to be reported under NASD Conduct Rule 3070 with the NASD in a timely manner. The NASD also found that the firm failed to establish, maintain, and enforce procedures, including written supervisory procedures, reasonably designed to ensure compliance with NASD Conduct Rule 3070. **(NASD Case #C9B020012)**

**FAM Distributors, Inc. (CRD #4100, Plainsboro, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$12,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it permitted an individual to act as a general securities representative prior to properly qualifying and/or registering in the appropriate capacity. The NASD also found that the firm permitted registered representatives to perform duties as registered persons while their registration status with the NASD was inactive due to their failure to timely complete the Regulatory Element of the NASD's Continuing Education Rule. In addition, the findings stated that the firm failed to enforce written supervisory procedures reasonably designed to achieve

compliance in the areas of Continuing Education Regulatory Element and Registration. **(NASD Case #C9B020013)**

**J. B. Hanauer & Co. (CRD #6958, Parsippany, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it permitted individuals to act as equity traders while failing to have them registered in such capacities. The NASD also found that the firm failed to report Fixed Income Pricing System<sup>SM</sup> (FIPS<sup>SM</sup>) eligible securities to FIPS as required. **(NASD Case #C9B020011)**

**Yi Feng Reid (CRD #4073295, Registered Representative, Closter, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Reid consented to the described sanction and to the entry of findings that she applied for a credit card in the name of an insurance customer, using personal information the customer had provided on a life insurance application processed by Reid, without the customer's consent or authority. **(NASD Case #C9B020017)**

**James Anthony Sammartano (CRD #2687661, Registered Representative, Brooklyn, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Sammartano willfully failed to amend, and failed to disclose, a material fact on his Form U-4. Sammartano also failed to respond to NASD requests to appear for an on-the-record interview. **(NASD Case #C9B000040)**

#### May Actions

**Shika Emmanuel Ademu-John (CRD #4214226, Registered Representative, Franklin Park, 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 six months. The fine must be paid before Ademu-John reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Ademu-John consented to the described sanctions and to the entry of finding that he willfully failed to timely amend his Uniform Application

for Securities Industry Registration or Transfer (Form U-4) to disclose material facts.

Ademu-John's suspension began May 6, 2002, and will conclude at the close of business November 5, 2002. **(NASD Case #C9B020023)**

**Joseph Michael Angelone, Jr. (CRD #2313606, Registered Representative, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was censured and fined \$10,000. Without admitting or denying the allegations, Angelone consented to the described sanctions and to the entry of findings that he failed to amend his Form U-4 to disclose material facts. **(NASD Case #C9B020025)**

**Broadview International, LLC (CRD #27265, Fort Lee, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$7,000, jointly and severally, and fined \$5,000, individually. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, acting through a registered representative, it permitted individuals to perform duties as registered persons while their registration status with the NASD was inactive due to their failure to timely complete the regulatory element of the NASD's continuing education rule. **(NASD Case #C9B020026)**

**Joseph Michael Beninato, Sr. (CRD #2309007, Registered Representative, Edison, 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 two months. The fine must be paid before Beninato's reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Beninato consented to the described sanctions and to the entry of finding that he engaged in private securities transactions without prior written notice to, and approval from, his member firms in that he effected promissory note transactions.

Beninato's suspension began April 15, 2002, and will conclude at the close of business June 14, 2002. **(NASD Case #C9B020022)**

**Nicholas Joseph Cianciaruso (CRD #2574972, Registered Representative, Staten Island, New York)** submitted an Offer of Settlement in which he was fined \$5,600,

which includes disgorgement of commissions received of \$600, and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Cianciaruso reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Cianciaruso consented to the described sanctions and to the entry of findings that he falsely represented, or allowed to be represented, on a member firm's brokerage records, that he was the registered representative for two of the firm's customers when, in fact, the registered representative for both accounts was another firm's registered representative. The NASD also found that despite the fact that the other registered representative was the representative for the accounts, Cianciaruso signed his name to customer agreement forms and falsely identified himself as the "Account Executive" for the accounts. The findings also stated that there were several securities transactions effected in the accounts and the firm paid commissions to Cianciaruso based on these transactions. The findings also included that Cianciaruso never had any communications with the customers in connection with any of the transactions but, despite this, all of the trade confirmations falsely identified him as a registered representative for the transactions; he was aware that the trade confirmations falsely identified him as the registered representative who effected the trade, but he took no steps to ensure that the firm's records accurately identified the correct registered representative for the accounts.

Cianciaruso's suspension began May 6, 2002, and will conclude at the close of business November 5, 2002. **(NASD Case #C9B010103)**

**Dennis Michael Dinsmore (CRD #1956277, Registered Representative, Basking Ridge, 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 30 business days. The fine must be paid before Dinsmore reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Dinsmore consented to the described sanctions and to the entry of finding that he misrepresented his educational background on several documents that he submitted to an NASD member.

Dinsmore's suspension began April 1, 2002, and will conclude at the close of business May 10, 2002. **(NASD Case #C9B020021)**

**Alfred Vincent Ferraro, Jr. (CRD #1121059, Registered Representative, Wayne, New Jersey)** submitted an Offer of Settlement in which he was fined \$9,670, which includes disgorgement of commissions received of \$2,172, and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Ferraro reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Ferraro consented to the described sanctions and to the entry of findings that he signed the name of his branch manager on customers' new account applications for investments in variable contracts and a mutual fund without the manager's knowledge or consent.

Ferraro's suspension began May 6, 2002, and will conclude at the close of business May 5, 2003. **(NASD Case #C9B010073)**

**Roderick Alexander Harmon, II (CRD #1708990, Registered Representative, Scotch Plains, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was ordered to pay \$682, plus interest, in restitution to a public customer and barred from association with any NASD member in any capacity. The restitution must be paid before Harmon reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Harmon consented to the described sanctions and to the entry of findings that he accepted life insurance premium payments from a public customer and used those funds for his own use and benefit without the customer's knowledge, authorization, and consent. The NASD also found that Harmon engaged in outside business activities without prior written notice to, or approval from, his member firm. **(NASD Case #C9B020019)**

**Sean Kathenes (CRD #2278583, Registered Representative, Livingston, New Jersey)** submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Kathenes reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting

or denying the allegations, Kathenes consented to the described sanctions and to the entry of findings that he executed unauthorized transactions in a public customer's account without the customer's prior knowledge, authorization, or consent.

Kathenes' suspension began May 6, 2002, and will conclude at the close of business November 5, 2002. **(NASD Case #C9B010108)**

**Joseph Anthony Sanchez (CRD #2393619, Registered Representative, Tampa, Florida)** was named as a respondent in an NASD complaint alleging that he sold and purchased, or caused to be sold and purchased, shares of stock for the account of a public customer without the prior knowledge, authorization, or consent of the customer. The complaint also alleges that Sanchez failed to respond to NASD requests for documents and information. **(NASD Case #C9B020018)**

**Thomas Steinbach (CRD #1296164, Registered Representative, Mountain Lakes, New Jersey)** was barred from association with any NASD member in any capacity and ordered to pay \$20,000 in restitution to a public customer. The sanctions were based on findings that Steinbach, by use of the means or instrumentalities of interstate commerce, the mails, or any facility of any national securities exchange, employed a device, scheme, or artifice to defraud; made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices, or a course of business which operated, or could operate, as a fraud or deceit upon persons by making misrepresentations and omissions in connection with an agreement to purchase options. In addition, Steinbach failed to respond to NASD requests for information. **(NASD Case #C9B010061)**

#### **June Actions**

**E.A. Moos & Co., L.P. (CRD #7606, Summit, New Jersey) and Edward Arnold Moos (CRD #339448, Registered Principal, Short Hills, New Jersey)** 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 allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Moos, permitted individuals to maintain their securities

licenses with the firm although they were not actively involved in the firm's investment banking or securities business. (NASD Case #C9B020033)

**Rooney Arun Sahai (CRD #1551326, Registered Representative, Ridgewood, New Jersey)** was named as a respondent in an NASD complaint alleging that he forged, or caused to be forged, the signatures of public customers on mutual fund applications, a variable annuity application, an IRS Form W-9, and a handwritten memorandum authorizing an investment without the customers' knowledge or consent. The complaint also alleges that Sahai purchased a variable annuity on behalf of a public customer without the customer's prior knowledge, authorization, or consent. Additionally, the complaint alleges that Sahai engaged in outside business activities without prompt written notification to his member firm, and that he failed to respond to NASD requests for information. (NASD Case #C9B020032)

District 10 The five boroughs of New York City, and Long Island

#### April Actions

**Barington Capital Group, L.P. (CRD #29383, New York, New York), Jerome Snyder (CRD #602640, Registered Principal, Fair Haven, New Jersey), and John Davis Telfer (CRD #1099745, Registered Principal, Floral Park, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured. The firm was fined \$10,000, jointly and severally, with Snyder, and was fined \$10,000, jointly and severally, with Telfer. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that, in connection with the firm's purchase of active accounts from another member firm, Barington Capital did not have new account forms for any of the accounts and, in many instances, the brokers' books were missing other essential information from the accounts. The findings also stated that the firm failed to provide public customers with required penny stock risk disclosures and the required market and price information regarding each of their penny stock holdings on their monthly account statements. Snyder and Telfer were the principals responsible for the firm's new account review, recordkeeping, and oversight of the firm's penny stock transactions. (NASD Case #C10020024)

**James John Cavaliere, Jr. (CRD #1528967, Registered Principal, Staten Island, New York)** submitted an Offer of Settlement in which he was fined \$5,000, suspended from association with any NASD member in any principal capacity for six months, and required to requalify as a general securities principal prior to his reassociation with any NASD member in any principal capacity. The fine must be paid before Cavaliere reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Cavaliere consented to the described sanctions and to the entry of findings that he failed to establish, maintain, and enforce effective supervisory systems pertaining to his member firm's underwriting and retail brokerage activities that were reasonably designed to achieve compliance with federal securities laws, regulations, and NASD Rules. The findings also stated that Cavaliere knew, or should have known, of numerous "red flags" indicating that sales practice violations were occurring or had occurred at his member firm. The NASD found that Cavaliere knew, or should have known, of his firm's receipt of numerous written customer complaints against associated persons with the firm alleging sales practice abuses in connection with the purchase or sale of securities. In addition, the findings stated that Cavaliere failed to take sufficient supervisory steps in response to the "red flags" generated by the complaints.

Cavaliere's suspension began March 18, 2002, and will conclude at the close of business September 17, 2002. (NASD Case #C10010004)

**Fanglun Michael Chai (CRD #3093902, Registered Representative, Bronx, New York)** was named as a respondent in an NASD complaint alleging that he exercised discretion in the account of a public customer without the customer's prior written authorization or prior written acceptance of the account as discretionary by his member firm. The complaint also alleges that Chai recommended and executed transactions in the account of a public customer without reasonable grounds for believing that the level of activity represented by such transactions was suitable for the customer on the basis of her financial situation, investment objectives, and needs. (NASD Case #C10020010)

**Henry Howard DeCora (CRD #1193275, Registered Representative, Woodbury, 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 60 days. Without admitting or denying the allegations, DeCora consented to the described sanctions and to the entry of findings that he participated in a securities transaction away from his member firm and failed to provide written notification to his firm.

DeCora's suspension began March 18, 2002, and will conclude at the close of business May 6, 2002. **(NASD Case #C10020011)**

**Guy Anthony Fritts (CRD #1260129, Registered Representative, Huntington, 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 25 business days. The fine must be paid before Fritts reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Fritts consented to the described sanctions and to the entry of findings that, while registered with the NASD through a member firm, he settled a public customer's complaint by paying the customer \$4,750 without informing and obtaining authorization from his firm.

Fritts' suspension began March 18, 2002, and will conclude at the close of business April 22, 2002. **(NASD Case #C10020023)**

**Matthew James Gardiner (CRD #1777289, Registered Principal, Staten Island, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was censured and fined \$11,250. Without admitting or denying the allegations, Gardiner consented to the described sanctions and to the entry of findings that he inaccurately reported to ACT that his member firm had acted in a principal capacity when it had actually acted as an agent in transactions and failed to report short sale transactions to ACT with a short sale modifier. The NASD found that Gardiner failed to show the time, or correct time of execution on brokerage order memoranda, and failed to show the time, or correct time of execution, or entry, on brokerage order memoranda. The findings also stated that Gardiner executed short sale orders in securities and failed to make an affirmative determination prior to executing the transactions and failed to indicate whether a transaction was a market or limit order on brokerage order memoranda. **(NASD Case #C10020016)**

**Katarzyna Joanna Jeglinska (CRD #2475845, Registered Representative, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Jeglinska consented to the described sanction and to the entry of findings that she converted cash in excess of \$50,000 from the account of public customers maintained at her member firm for her own use and benefit without the customers' prior knowledge, authorization, or consent. **(NASD Case #C10020022)**

**Jason Everett Morey (CRD #2791128, Registered Representative, Trumbull, Connecticut)** 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 \$132,349.86, plus interest, in restitution to public customers. Proof of payment of the restitution amounts, plus interest, must be provided before Morey reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Morey consented to the described sanctions and to the entry of findings that he effected transactions in the accounts of public customers without their prior knowledge, authorization, or consent. **(NASD Case #C10020020)**

**Christopher Perry (CRD #3243580, Associated Person, New York, New York)** was barred from association with any NASD member in any capacity. The sanction is based on findings that Perry willfully failed to disclose material information on Forms U-4 submitted to the NASD through several firms. **(NASD Case #C10010094)**

**Edward Scott Peterson (CRD #2260436, Registered Representative, South Amboy, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500, suspended from association with any NASD member in a registered capacity for 12 months, and required to requalify as a general securities representative if he attempts to associate with any NASD member in a registered capacity following his suspension. Without admitting or denying the allegations, Peterson consented to the described sanctions and to the entry of findings that he failed to file an amendment to his Form U-4 to disclose material information.

Peterson's suspension began March 18, 2002, and will conclude at the close of business March 17, 2003. **(NASD Case #C10020012)**

**William Levio Vecchione (CRD #2837113, Registered Principal, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Vecchione consented to the described sanction and to the entry of findings that he failed to supervise a registered representative, under heightened supervision as a result of a prior customer complaint, who made misrepresentations of material facts or failed to state material facts in connection with sales to public customers while under heightened supervision. The findings also stated that Vecchione failed to take appropriate steps to implement the terms of the heightened supervision, including monitoring the sales practices of the representative and reviewing and approving certain transactions. In addition, the NASD found that Vecchione made a baseless price and performance prediction to a public customer in connection with the sale of a security. The NASD also found that Vecchione failed to respond to an NASD request to appear and give testimony. **(NASD Case #C10020019)**

**Richard John Warren (CRD #1813475, Registered Representative, East Islip, New York)** submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for nine months. In light of the financial status of Warren, no monetary sanction has been imposed. Without admitting or denying the allegations, Warren consented to the described sanction and to the entry of findings that he engaged in private securities transactions without providing prior written notice to, or receiving written permission from, his member firm. The findings also stated that Warren engaged in outside business activities without providing prior written notice to his member firm.

Warren's suspension began March 18, 2002, and will conclude at the close of business December 17, 2002. **(NASD Case #C10010115)**

#### May Actions

**Vladimir Jaime Carvallo (CRD #2184457, Registered Principal, Melville, 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 30 days. Without admitting or denying the allegations, Carvallo consented to the described sanctions and to the entry of findings that he

failed to respond timely to NASD requests for information and documents regarding customer complaints.

Carvallo's suspension began April 22, 2002, and will conclude at the close of business May 21, 2002. **(NASD Case #C10020032)**

**Stanley Henry Cohen (CRD #50189, Registered Representative, Jericho, New York)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cohen consented to the described sanction and to the entry of findings that he failed to respond truthfully, accurately, non-deceptively, and/or completely during an NASD on-the-record interview. The findings also stated that Cohen prepared a statement incorporated into an MC-400 application submitted by his member firm that contained false, inaccurate, misleading, and incomplete statements regarding his job functions and/or role during his association with his member firm. In addition, the findings stated that Cohen appeared before the NASD's Statutory Disqualification Committee and failed to provide truthful, accurate, non-deceptive, and/or complete information. Furthermore, the NASD found that Cohen, who was subject to statutory disqualification, continued to be associated with a member firm without the approval of the SEC and/or the NASD and in violation of an SEC order, and engaged in activities requiring registration as a registered representative even though he was not registered as such with the NASD. The NASD also determined that Cohen failed to update his Form U-4 to reflect the fact that he was the subject of an NASD investigation and/or that he might be named in an NASD disciplinary action. **(NASD Case #C10990158)**

**Adam David Gitstein (CRD #1884208, Registered Representative, New York, New York) and Ray Vahab (CRD #1041775, Registered Principal, New York, New York)** were barred from association with any NASD member in any capacity. The sanctions were based on findings that Gitstein engaged in excessive and unsuitable trading in the account of a public customer and failed to respond truthfully during an NASD on-the-record interview. The findings also stated that Vahab failed to properly supervise Gitstein and failed to prevent, discover, or correct Gitstein's excessive trading. The NASD also found that Vahab failed to respond to NASD requests for information. Furthermore, the NASD found that Gitstein fabricated order tickets and Vahab

provided the NASD with photocopies of the fabricated order tickets, representing that they were photocopies of the original order tickets completed by Gitstein at the time of the transactions. **(NASD Case #C10010105)**

**Karl Francis Jesaitis, Jr. (CRD #2067945, Registered Representative, New York, New York)** submitted an Offer of Settlement in which he was fined \$30,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Jesaitis reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Jesaitis consented to the described sanctions and to the entry of findings that he exercised discretionary authority in the account of a public customer without obtaining the customer's prior written authorization and his member firm's written acceptance of the account as discretionary. The findings also stated that Jesaitis settled a public customer's complaint without informing and obtaining authorization from his member firm. In addition, Jesaitis provided the NASD with false, deceptive, inaccurate, and/or incomplete testimony during an on-the-record interview.

Jesaitis' suspension began May 6, 2002, and will conclude at the close of business May 5, 2004. **(NASD Case #C10010137)**

**Barry Alan Kaufman (CRD #2774898, Registered Representative, Boca Raton, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. The fine must be paid before Kaufman reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kaufman consented to the described sanctions and to the entry of findings that he exercised discretionary authority in a public customer's account without obtaining the customer's prior written authorization and his member firm's acceptance of the account as discretionary.

Kaufman's suspension began April 15, 2002, and concluded at the close of business April 26, 2002. **(NASD Case #C10020036)**

**Lloyd Knipe (CRD #1710703, Registered Representative, Franklin Square, New York)** submitted an Offer of Settlement in which he was fined \$5,000 and

suspended from association with any NASD member in any capacity for 12 months. The fine must be paid before Knipe reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Knipe consented to the described sanctions and to the entry of findings that he failed to disclose material facts on his Form U-4.

Knipe's suspension began April 1, 2002, and will conclude at the close of business March 31, 2003. **(NASD Case #CLI010003)**

**Edward Joseph Larsen (CRD #4403877, Associated Person, Lyndhurst, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Larsen consented to the described sanction and to the entry of findings that he willfully misrepresented and failed to disclose material facts on his Form U-4. **(NASD Case #C10020025)**

**Joseph Anthony Marchisello (CRD #2322480, Registered Representative, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Marchisello consented to the described sanction and to the entry of findings that he failed to respond to an NASD request to appear for an on-the-record interview. **(NASD Case #C10020026)**

**Susan Georgette Penn (CRD #1104422, Registered Principal, Huntington Station, 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 a principal capacity for five business days. The fine must be paid before Penn reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Penn consented to the described sanctions and to the entry of findings that a former member firm, acting through Penn, conducted a securities business while failing to maintain the minimum required net capital.

Penn's suspension began April 15, 2002, and concluded at the close of business April 19, 2002. **(NASD Case #C10020034)**

**Philip Lawrence Salice (CRD #2928448, Registered Principal, Bayshore, New York)** 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 15 business days. Without admitting or denying the allegations, Salice consented to the described sanctions and to the entry of findings that he guaranteed a public customer, in writing, against loss.

Salice's suspension began May 6, 2002, and will conclude at the close of business May 24, 2002. (NASD Case #C10020033)

**Henry Shin a/k/a Yoo Ho (CRD #3210557, Registered Representative, Levittown, New York)** was named as a respondent in an NASD complaint alleging that he engaged in transactions in the account of a public customer without the customer's prior knowledge, authorization, or consent. The complaint also alleges that Shin engaged in a pattern of deceptive conduct intended to deter or delay a public customer from taking any action including complaining to his member firm about unauthorized transactions. In addition, the complaint alleges that Shin engaged in activities involving options transactions while he was not qualified, and registered in the category or categories of registration related to options securities. Furthermore, the complaint alleges that Shin failed to respond to NASD requests for information. (NASD Case #C10020027)

**Damion S. Shoemaker (CRD #2897948, Registered Representative, Astoria, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Shoemaker filed materially inaccurate Forms U-4 and failed to respond to NASD requests for information. (NASD Case #C10010108)

#### June Actions

**Ronald Alan Brodis (CRD #31232, Registered Principal, Merrick, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for two years. In light of the financial status of Brodis, no monetary sanctions have been imposed. Without admitting or denying the allegations, Brodis consented to the described sanction and to the entry of findings that he made material and false representations and

price predictions to public customers regarding the purchase of warrants without any reasonable basis. The findings also stated that Brodis settled, and attempted to settle, customer complaints without informing and obtaining authorization from his member firm. NASD also found that Brodis signed and provided a public customer with a document that he knew, or should have known, contained inaccurate information concerning the cash and securities positions in the customer's account. In addition, NASD found that Brodis effected purchases of warrants in the account of a public customer based upon orders from a third party—which were based on the customer's verbal authorization—without having received any written authorization from the customer for the third party to act on his behalf.

Brodis' suspension began May 20, 2002, and will conclude at the close of business May 19, 2004. (NASD Case #C10020040)

**William Gerard Brown (CRD #33153, Registered Representative, Staten Island, New York)** was named as a respondent in an NASD complaint alleging that, in connection with the purchase, sale, offer, and/or inducement to purchase securities in the accounts of public customers, Brown, directly or indirectly, by use of the means or instrumentalities of interstate commerce, the mails, or any facility of any national securities exchange, employed devices, schemes, or artifices to defraud; made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices, or courses of business which operated, or could operate, as a fraud or deceit, and induced the purchase or sale of securities by means of manipulative, deceptive, or other fraudulent devices or contrivances. The complaint also alleges that Brown purchased, or caused to be purchased, securities in the accounts of public customers without their prior knowledge, authorization, or consent. In addition, the complaint alleges that Brown failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #C10020041)

**Damien Robert Douglas (CRD #2255355, Registered Representative, Queens, New York)** was barred from association with any NASD member in any capacity and ordered to pay \$29,886 in restitution to public

customers. The National Adjudicatory Council (NAC) imposed the sanctions following appeal of an Office of Hearing Officers (OHO) decision. The sanctions were based on findings that Douglas engaged in unauthorized transactions in the accounts of public customers. The findings also stated that Douglas provided false, misleading, or inaccurate information to a public customer by failing to inform the customer that his purchase of initial public offering units was canceled without his authorization. **(NASD Case #C1000026)**

**Theodore Thomas Eastwick (CRD #1571559, Registered Principal, New York, New York)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Eastwick consented to the described sanction and the entry of findings that he prepared a letter purportedly from a public customer that directed the liquidation of all shares in the customer's account held at Eastwick's member firm, and effected, or caused to be effected, the forgery of the deceased customer's signature on the document. The findings also stated that Eastwick effected, or caused to be effected, the forgery of the customer's signature on a check-writing authorization form and specimen signature card for the account. In addition, the findings stated that Eastwick forged the customer's signature on checks totaling approximately \$7,000 drawn against the customer's account, and converted approximately \$7,000 to his own use and benefit without the knowledge, authorization, or consent of the customer. **(NASD Case #C10010090)**

**Jeffrey Booth Hodde (CRD #247308, Registered Principal, Cedar Grove, New Jersey)** was barred from association with any NASD member in any capacity. The NAC imposed the sanctions following appeal of an OHO decision. The sanction was based on findings that Hodde effected an unauthorized transaction in the account of a public customer and failed to respond to NASD requests for information. **(NASD Case #C10010005)**

**Alfred Arthur Napolitano (CRD #1125072, Registered Principal, St. James, New York)** submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Napolitano reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting

or denying the allegations, Napolitano consented to the described sanctions and to the entry of findings that he failed to respond timely to an NASD request to appear for an on-the-record interview.

Napolitano's suspension began May 20, 2002, and will conclude at the close of business May 19, 2003. **(NASD Case #C10010149)**

**Northridge Capital Corporation (CRD #16467, Melville, New York) and Michael Scott Weiner (CRD #2214982, Registered Principal, Centereach, New York)**. The firm was expelled from NASD membership and Weiner was barred from association with any NASD member in any capacity. The sanctions were based on findings that the respondents failed to respond to NASD requests for documents and Weiner failed to respond to NASD requests to appear for an on-the-record interview. **(NASD Case #CLI010002)**

**Timothy Joseph O'Hare (CRD #2350627, Registered Representative, Long Beach, New York)** submitted an Offer of Settlement in which he was fined \$7,500, including disgorgement of \$1,500 in commissions, and suspended from association with any NASD member in any capacity for 12 months. The fine must be paid before O'Hare reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, O'Hare consented to the described sanctions and to the entry of findings that he effected transactions in the accounts of public customers without the prior knowledge, authorization, or consent of the customers.

O'Hare's suspension began May 20, 2002, and will conclude at the close of business May 19, 2003. **(NASD Case #C10020004)**

**Michael Christopher Palmieri (CRD #2744741, Registered Representative, Staten Island, New York)** was named as a respondent in an NASD complaint alleging that, in connection with the purchase, sale, or offer of securities, Palmieri, directly or indirectly, by use of the means or instrumentalities of interstate commerce, the mails, or any facility of any national securities exchange, employed devices, schemes, or artifices to defraud; made untrue statements of material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices, or courses

of business which operated, or could operate, as a fraud or deceit, and induced the purchase of securities by means of manipulative, deceptive, or other fraudulent devices or contrivances. The complaint also alleges that Palmieri misrepresented and omitted facts that were designed to induce his customers to purchase highly speculative securities. In addition, the complaint alleges that Palmieri made baseless price predictions in connection with an offer to sell securities without having a reasonable basis. Furthermore, the complaint alleges that Palmieri engaged in transactions in the accounts of public customers without the knowledge, authorization, or consent of the customers. **(NASD Case #C10020045)**

**Anthony Joe Radicone (CRD #2461173, Registered Representative, Staten Island, New York)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity and ordered to pay \$8,210.52, plus interest, in restitution to public customers. Satisfactory proof of payment of restitution, with interest, is required before Radicone reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Radicone consented to the described sanctions and to the entry of findings that, acting intentionally or recklessly, he made material, misleading, and false representations to a public customer that were without a reasonable basis regarding an initial public offering (IPO), and failed to disclose to public customers any material information regarding the IPO issuer's financial condition, operating history, investment risks, or the speculative nature of an investment in the company. The findings also stated that, in regard to the IPO, Radicone made baseless price predictions, required a public customer to commit to purchase an equal amount of units in the secondary market in order to receive an allocation of units being offered in the IPO, and failed to execute customer transactions. NASD also found that Radicone effected transactions in the accounts of public customers without the customers' prior knowledge, authorization, or consent. In addition, the findings stated that Radicone performed duties as a registered person while his registration status was inactive due to his failure to timely complete the Regulatory Element of NASD's Continuing Education Rule. **(NASD Case #C10010004)**

**Thomas Marion Scotton (CRD #1160247, Registered Representative, Willingboro, New Jersey)** submitted an Offer of Settlement in which he was suspended from

association with any NASD member in any capacity for 18 months. In light of the financial status of Scotton, no monetary sanctions have been imposed. Without admitting or denying the allegations, Scotton consented to the described sanction and to the entry of findings that he effected the opening of an individual account at his member firm for a public customer and later opened a joint account at his member firm, with the customer and himself serving as joint account holders with rights of survivorship, without discussing the opening of the joint account with anyone other than the customer. The findings also stated that Scotton effected the transfer of holdings valued at \$49,086.77 from the individual account to the joint account, acquiring a direct financial interest in the holdings. The findings also stated that Scotton facilitated his designation as the beneficiary of an annuity contract, for which the public customer was the owner and annuitant, by completing a change of beneficiary form without discussing his designation as beneficiary with anyone other than the customer. In addition, the findings stated that Scotton shared directly or indirectly in the profits or losses of the joint account without contributing any money to the account or being liable for any losses in the account.

Scotton's suspension began May 20, 2002, and will conclude at the close of business November 19, 2003. **(NASD Case #C10010156)**

**Utendahl Capital Partners, L.P. (CRD #30115, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$12,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, prior to the execution of transactions with two hot issues, to obtain proper documentation as to the beneficial owners for corporate accounts or investment partnership accounts. The findings also stated that the firm failed to comply with the Firm Element of NASD's Continuing Education Requirements, in that the firm did not have any documentation evidencing that it implemented its training plan. NASD also found that the firm failed to accurately time-stamp order tickets, failed to indicate whether the order was "long" or "short" on order tickets, failed to record the contra party to transactions, and failed to record a time of order entry or of order execution with respect to "programmed" transactions. **(NASD Case #C10020039)**

District 11 Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, and New York (except for the counties of Livingston, Monroe, and Steuben; the five boroughs of New York City; and Long Island)

#### April Actions

**Frank Peter Fucilo (CRD #1300170, Registered Representative, Kingston, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Fucilo consented to the described sanction and to the entry of findings that he engaged in private securities transactions, in that he recommended and sold promissory notes to public customers, without prior written notice to, or approval from, his member firm. **(NASD Case #C11020009)**

**Timothy Michael Kelly (CRD #1105037, Registered Representative, North Providence, Rhode Island)** 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 \$75,000, plus interest, in restitution to public customers. The restitution must be paid before Kelly reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kelly consented to the described sanctions and to the entry of findings that he engaged in private securities transactions, for compensation, without prior written notice to, or approval from, his member firm. **(NASD Case #C11020012)**

**Phung M. Le (CRD #3274440, Registered Representative, Springfield, Massachusetts)** was named as a respondent in an NASD complaint alleging that he forged public customers' signatures on traditional life insurance death benefit checks and deposited the checks into a bank account for his own use and benefit. The complaint also alleges that Le failed to respond to NASD requests for information. **(NASD Case #C11020011)**

**Harry Walter Linindoll, III (CRD #1227307, Registered Representative, East Greenbush, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$18,000, of which \$13,000 represents disgorgement of commissions, and suspended from association with any NASD member in any capacity for two months. Without admitting or denying the

allegations, Linindoll consented to the described sanctions and to the entry of findings that he participated in private securities transactions, for compensation, without prior written notice to, or approval from, his member firm.

Linindoll's suspension began April 1, 2002, and will conclude at the close of business May 31, 2002. **(NASD Case #C11020010)**

**Winslow, Evans & Crocker, Inc. (CRD #29686, Boston, Massachusetts) and Peter Laverack Winslow (CRD #470119, Registered Principal, Essex, Massachusetts)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$12,000, jointly and severally. The firm was also fined an additional \$10,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm operated its business as an introducing firm and claimed an exemption which prohibits the receipt of customer funds and/or securities. The NASD found that the firm, acting through Winslow, failed to comply with their claimed exemption in that the firm received checks made payable to the firm rather than to their clearing firm. The NASD also found that the firm, acting through Winslow, used the instrumentalities of interstate commerce to conduct a securities business while failing to maintain its minimum required net capital. The findings also stated that the firm failed, within 90 seconds of execution, to transmit transactions in OTC equity securities through ACT, and failed to designate through ACT these transactions as late. The findings also stated that the firm failed to report to ACT the correct price of the transactions on Nasdaq National Market® (NNM®) securities and failed to identify through ACT in a last sale report of transactions on NNM securities that such report was an aggregated transaction report.

In addition, the NASD determined that the firm reported to ACT the incorrect capacity designation on transactions. Furthermore, the NASD found that the firm failed to show the correct execution time on order tickets and failed to have required order tickets. The NASD also determined that the firm failed to establish, maintain, and enforce written procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and the rules of the NASD regarding trading reporting, time stamping of sales memoranda, and the receipt of customer checks. **(NASD Case #C11020008)**

## May Actions

**Adolph Komorsky Hoffman & Associates, Ltd. (CRD #30838, Tarrytown, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it paid compensation to individuals who should have been registered as foreign associates. The findings also stated that the firm reallocated to customer accounts shares of a stock that the firm had bought in error and failed to provide the customers with the best execution. The NASD also found that the firm failed to disclose to customers on confirmations that it entered into consulting agreements with the issuer of four securities and received compensation from the issuer. **(NASD Case #C11020016)**

**John Vincent Bianchini (CRD #1581616, Registered Representative, Fayetteville, 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 allegations, Bianchini consented to the described sanctions and to the entry of findings that he purchased, or caused to be purchased, without the prior knowledge, consent, or authorization of a public customer, additional shares of stock in the customer's account.

Bianchini's suspension began April 15, 2002, and concluded at the close of business April 26, 2002. **(NASD Case #C11020014)**

**James Stanley Halligan (CRD #2284780, Registered Representative, Middlefield, Connecticut)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$6,000, required to disgorge commissions in the amount of \$3,000, and suspended from association with any NASD member in any capacity for six months. The fine and disgorgement amount must be paid before Halligan reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Halligan consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, or approval from, his member firm. The NASD also found that Halligan engaged in outside business activities without prior written notice to his member firm.

Halligan's suspension began April 15, 2002, and will conclude at the close of business October 14, 2002. **(NASD Case #C11020015)**

## June Actions

**Kevin Thomas Ferguson (CRD #4143905, Registered Representative, Boston, Massachusetts)** was named as a respondent in an NASD complaint alleging that he issued annuitant checks totaling \$26,040 without the consent or authorization of the customer and converted the funds to his own use and benefit. The complaint also alleges that Ferguson failed to respond to NASD requests for information. **(NASD Case #C11020017)**

**Dennis Michael Fye (CRD #1016532, Registered Representative, Oswego, New York)** submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, Fye consented to the described sanction and to the entry of findings that he participated in the sale of debenture notes to a public customer without providing prior written notice to his member firm detailing the transactions and his role therein.

Fye's suspension began June 3, 2002, and will conclude at the close of business September 2, 2002. **(NASD Case #C11980008)**

**Lucian Deforest Hodgman (CRD #1546902, Registered Representative, Kensington, New Hampshire)** 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 days. Without admitting or denying the allegations, Hodgman consented to the described sanctions and to the entry of findings that he effected transactions in a public customer's account without the customer's prior knowledge, authorization, or consent.

Hodgman's suspension began June 3, 2002, and concluded at the close of business June 12, 2002. **(NASD Case #C11020019)**

**Norman Michael Lindo (CRD #2287832, Registered Representative, Springfield, Massachusetts)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Lindo misused a credit card provided to him by a member firm, and that he failed to respond to NASD requests for information. **(NASD Case #C11010041)**

**Cameron D. Littmon (CRD #4242790, Registered Representative, Hartford, Connecticut)** was fined \$2,500 and suspended from association with any NASD member in any capacity for 30 business days for willfully failing to disclose a material fact, and barred from association with any NASD member in any capacity for failing to respond. The fine must be paid before Littmon reassociates with any NASD member or before requesting relief from any statutory disqualification. The sanctions were based on findings that Littmon willfully failed to disclose required information on his Form U-4 and failed to respond to NASD requests for information.

Littmon's bar became effective April 1, 2002. **(NASD Case #C11020003)**

**New England Securities Corporation (CRD #615, Boston, Massachusetts) and Stephen Francis McKinnon (CRD #2238383, Registered Principal, Hanson, Massachusetts)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$50,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through McKinnon, permitted registered individuals to continue to perform duties as registered individuals at a time their registration status with NASD was inactive due to their failure to complete the Regulatory Element of NASD's Continuing Education Rule. **(NASD Case #C11020020)**

**Walter John Taylor (CRD #1429146, Registered Representative, Syracuse, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Taylor consented to the described sanction and to the entry of findings that he withdrew \$14,591.94 from an account using a debit card, and converted those funds for his own use and benefit without proper authorization. **(NASD Case #C11020021)**

## **Enforcement Department**

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### **April Actions**

**Barron Chase Securities (CRD #18969, Boca Raton, Florida), Robert Thomas Kirk, Jr. (CRD #1204425, Registered Principal, Parkland, Florida), and Brian Dean**

**Fitzgerald (CRD #1259552, Registered Principal, Boca Raton, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was expelled from NASD membership and Kirk was barred from association with any NASD member in any capacity. Fitzgerald was fined \$7,500, suspended from association with any NASD member in any capacity for 30 days, and ordered to requalify by exam for the Series 24 license before acting again in a principal capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm acted as lead managing underwriter for many initial public offerings (IPOs), that the firm and Kirk failed to ensure that the prospectus for an IPO was not false and misleading, and that they failed to amend the prospectus to reflect material changes in the offering and the use of IPO proceeds.

The findings also stated that the firm, acting through Kirk, engaged in continuing distributions of other IPOs while maintaining a market, bidding for, and purchasing the stock and warrants prior to the completion of the distribution. The firm transferred the IPO balances from the firm's syndicate account to its trading account and continued the distribution of IPO securities while the firm maintained a market in the securities and sold the securities to the firm's public customers at prevailing higher aftermarket prices. The NASD found that Kirk failed to inform the firm's brokers or customers that the firm had withheld IPO shares and warrants, made the inventory transfers of the IPO securities, and sold the IPO shares and warrants to the customers at inflated aftermarket prices. In addition, the NASD found that Fitzgerald assisted in the firm's and Kirk's violations of Regulation M by opening aftermarket trading in securities before their distribution was completed and transferring the IPO securities from the firm's syndicate account to its trading account without verifying that these distributions were complete. Moreover, Fitzgerald assisted the firm's and Kirk's violation of the Free-Riding and Withholding Interpretation by failing to verify that the firm maintained inventory balances in the IPO securities. Furthermore, the NASD found that Kirk failed to respond to NASD requests to provide information and documents and to appear to give testimony.

Fitzgerald's suspension began April 1, 2002, and will conclude at the close of business April 30, 2002. **(NASD Case #CAF020008)**

**Continental Broker-Dealer Corp. (CRD #14048, Carle Place, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was fined \$25,000. Without admitting or denying the allegations, the firm consented to the entry of findings that it failed to establish and maintain supervisory procedures reasonably designed to ensure that orders placed in an IPO had been authorized by customers. The findings also stated that the firm made an exception to its usual practice of verifying 50 percent of all customer orders with respect to the IPO. **(NASD Case #CAF020005)**

**D.L. Cromwell Investments, Inc. (CRD #37730, Boca Raton, Florida), David Stewart Davidson (CRD #1212799, Registered Principal, Boca Raton, Florida), Lloyd Sylvester Martin Beirne (CRD #1982417, Registered Principal, Boca Raton, Florida), Eric Scott Thomes (CRD #2233456, Registered Principal, Boca Raton, Florida), and Matthew Greenwald (CRD #229262, Registered Principal, Boca Raton, Florida)** were named as respondents in an NASD complaint alleging that the firm, Beirne, Davidson, and Thomes, directly or indirectly employed devices, schemes, or artifices to defraud and/or engaged in acts, practices, or courses of business that operated as a fraud or deceit upon public investors in connection with the purchase and sale of warrants. The firm, acting through Beirne, Davidson, and Thomes, allegedly engaged in a series of activities designed to arbitrarily and artificially increase the price of the warrants, and Thomes set the firm's quotes and executed the firm's trades in the warrants while knowing that his role was part of an overall activity that was improper. The complaint also alleges that Beirne and Davidson intentionally or recklessly caused the firm to act as a market maker in, and enter bids for, warrants and stock on the OTC Bulletin Board (OTCBB) when they recklessly disregarded the fact that the firm was engaged in a distribution of the units and stocks. The complaint alleges that Beirne and Davidson caused the firm to bid for and reacquire warrants and shares of stock from public customers for the firm's proprietary account and directed the firm's sales force to solicit retail customers to purchase stock while the distribution was still in progress, and that Thomes rendered substantial assistance by setting the firm's quotes and executing the firm's trades in the stocks while knowing that his role was part of an overall activity that was improper. In addition, the complaint alleges that Beirne and Davidson failed to respond to NASD requests for documents and to appear for on-the-record interviews. Furthermore, the complaint alleges

that the firm and Greenwald failed to adequately set forth written supervisory procedures and systems reasonably designed to achieve compliance with federal securities laws and NASD rules relating to investment banking and trading. **(NASD Case #CAF020007)**

**Victor Kozirovsky (CRD #2841043, Registered Representative, Woodmere, New York) and Reynolds Michael Verdiner (CRD #2858516, Registered Representative, Brooklyn, New York)** were named as respondents in an NASD complaint alleging that they opened accounts and made unauthorized purchases of stock during an IPO for persons who had not agreed to purchase the stock or even to open accounts with their member firm. The complaint also alleges that Kozirovsky opened an account and made an unauthorized purchase of stock for another individual. **(NASD Case #CAF020004)**

**Michael Robert Marcus (CRD #2291751, Registered Principal, Brooklyn, New York) and Louis Michael Montaino (CRD #2570300, Registered Representative, Middle Village, New York)** were named as respondents in an NASD complaint alleging that they, directly or indirectly, by the use of any means or instrumentality of interstate commerce of the mails or of any facility of any national securities exchange, knowingly or recklessly employed manipulative or deceptive devices or contrivances in connection with the purchase or sale of securities; knowingly or recklessly effected transactions in, or induced the purchase or sale of securities by means of manipulative, deceptive, or other fraudulent devices or contrivances; or made untrue statements of material fact and omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading. The complaint alleges that Marcus and Montaino engaged in a "pump and dump" manipulative scheme using a thinly traded, low-priced stock listed on the OTCBB. The complaint further alleges that Montaino aggressively solicited retail customers to purchase the security through a campaign of omissions and misrepresentations and Marcus placed day limit purchase orders for shares of the security with a market maker nearly every day at increasingly higher prices to create the appearance of interest and activity even though he had no customer purchase orders. In addition, the complaint alleges that Marcus aided and abetted the manipulative trading of others. **(NASD Case #CAF010025)**

**Valerie Jean Miles (CRD #2457012, Registered Representative, Furlong, Pennsylvania)** submitted an Offer of Settlement in which she was fined \$30,000 and suspended from association with any NASD member in any capacity for two months. Without admitting or denying the allegations, Miles consented to the described sanctions and to the entry of findings that she failed to maintain a record of gifts given to a client, submitted a falsified employee travel and entertainment report to her member firm, and wrongfully diverted and misused funds from her firm to pay for a personal trip. The findings also stated that Miles failed to report gifts she gave to her client and provided false testimony during an NASD on-the-record interview.

Miles' suspension began March 18, 2002, and will conclude at the close of business May 17, 2002. (NASD Case #CAF010019)

**Jack Steven Randazzo (CRD #2606716, Registered Principal, Syosset, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for three months. In light of the financial status of Randazzo, no monetary sanctions have been imposed. Without admitting or denying the allegations, Randazzo consented to the described sanction and to the entry of findings that a member firm, acting through Randazzo, calculated markups on customer retail purchases of warrants based upon the inside ask price when the proper basis was the firm's contemporaneous cost. The findings also stated that the firm, acting through Randazzo, executed trades in warrants in which excessive markups were charged that exceeded 10 percent of the firm's contemporaneous cost and were, therefore, fraudulent. In addition, the NASD found that Randazzo failed to monitor the firm's market presence in the warrants and failed to take into consideration anything other than the inside quotes in determining the propriety of the firm's markups, nor did he consider using the firm's contemporaneous cost as a basis for the markups. Moreover, Randazzo failed to monitor the firm's holdings and activity for domination and control and should have ensured that the markups the firm charged were not excessive.

Randazzo's suspension began March 18, 2002, and will conclude at the close of business June 17, 2002. (NASD Case #CAF020006)

## May Actions

**Lloyd Wade Securities, Inc. (CRD #39653, Dallas, Texas), David Lloyd Rutkoske (CRD #1496393, Registered Principal, Allen, Texas), Michael Arthur Niebuhr (CRD #724449, Registered Principal, San Diego, California)** were named as respondents in an NASD complaint alleging that the respondents made use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell a security for which there was no registration statement in effect through the use of any prospectus or otherwise. The complaint also alleges that while the firm, acting through Rutkoske and Niebuhr, engaged in a distribution of securities, it was at the same time engaging in selling efforts with respect to the stock by purchasing shares on a principal basis and then selling the shares to public customers in solicited principal transactions in violation of Regulation M. In addition, the complaint alleges that the firm, acting through Rutkoske and Niebuhr, effected transactions in securities at prices that were not fair and reasonable, and charged retail customers undisclosed markups in excess of five percent of the firm's contemporaneous cost.

Furthermore, the complaint alleges that the respondents, by the use of the means or instrumentalities of interstate commerce, the mails, or of any facility of any national securities exchange, employed a device, scheme, or artifice to defraud; made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices, or a course of business that operated as a fraud or deceit upon person in connection with transactions it effected in securities as principal. The complaint alleges that the firm charged public customers fraudulently excessive markups that were over 10 percent and \$100, totaling approximately \$285,900. In addition, the complaint alleges that the firm, as a market maker in an over-the-counter bulletin board (OTCBB) security, dominated and controlled the market for the security, and should have computed customer markups based upon its contemporaneous cost from other broker/dealers but failed to do so. Furthermore, the complaint alleges that Rutkoske and Niebuhr made the decision to make a market in the security and determined the markups that were excessive and fraudulent. Moreover, the complaint alleges that the firm and Rutkoske failed to

respond to NASD requests for information. (NASD Case #CAF020012)

**Dean Petkanas (CRD #2001896, Registered Principal, Old Westbury, 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 a principal and supervisory capacity for 30 days. Without admitting or denying the allegations, Petkanas consented to the described sanctions and to the entry of findings that he failed to establish and maintain adequate written supervisory procedures to address the monitoring of his member firm's market presence in warrants and that proper procedures were implemented.

Petkanas' suspension began April 15, 2002, and concluded at the close of business May 15, 2002. (NASD Case #CAF020011)

#### June Actions

**Edward Don Angrisani (CRD #1463251, Registered Principal, Dayton, New Jersey)** submitted an Offer of Settlement in which he was fined \$15,000 and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Angrisani consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without giving prior written notification to, or receiving written acknowledgement and/or permission from, his member firm to participate in the transactions.

Angrisani's suspension began May 20, 2002, and will conclude at the close of business May 19, 2004. (NASD Case #CAF010026)

**Dennis Jay Sturm (CRD #1407180, Registered Principal, Coral Springs, Florida)** was barred from association with any NASD member in any capacity. The NAC imposed the sanction following appeal of an OHO decision. The sanction was based on findings that Sturm failed to respond to NASD requests for documents.

Sturm has appealed this action to the SEC. Sturm's bar became effective March 21, 2002. (NASD Case #CAF000033)

**Walsh Manning Securities, LLC (CRD #30826, New York, New York), Frank James Skelly, III (CRD #2160437, Registered Principal, Rockville Centre, New York), and Craig Howard Gross (CRD #2104270, Registered**

**Principal, Kings Park, New York).** The firm and Skelly were each fined \$75,000 and ordered to pay \$226,882.40, plus interest, jointly and severally, in restitution to public customers. The firm was suspended from NASD membership and Skelly was suspended from association with any NASD member in any capacity for two years. Skelly and Gross were barred from association with any NASD member in any capacity. The sanctions were based on findings that the firm and Skelly charged public customers excessive and fraudulent markdowns, and that they failed to fairly price securities in relation to the prevailing market price. The findings also stated that Skelly and Gross failed to respond to NASD requests for information.

The respondents have appealed this decision to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #CAF000013)

**WMA Securities, Inc. (CRD #32625, Duluth, Georgia)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$200,000, and required to pre-file with NASD's Advertising Regulation Department all advertisements and sales literature (ASL) 15 days prior to their use for six months from the date of acceptance of this AWC. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it engaged in widespread breaches of NASD's Advertising Regulations that included failures to evidence supervisory review and approval of ASL; failures to file ASL with the NASD; the use of ASL omitting material facts; and the use of ASL containing exaggerations, unwarranted, and misleading statements. The findings also stated that the firm's Web site was not reviewed or approved by a registered principal, and that the firm did not file timely, as required, portions of the Web site that pertained to investment company products with NASD. In addition, the Web site failed to make the relationship between a non-member entity and the firm clear, and created confusion as to which entity offered the securities products discussed in the Web site. Furthermore, NASD found that the firm failed to develop systems and procedures, including written supervisory procedures, reasonably designed to achieve compliance with NASD rules regarding review of ASL and electronic communications by a registered principal. Moreover, NASD found that the firm failed to establish procedures reasonably designed to prevent unlicensed persons from making recommendations or discussing products with potential customers. (NASD Case #CAF020014)

## Market Regulation Department

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### April Actions

**Baron Capital, Inc. (CRD #10538, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,000, and required to submit revised written supervisory procedures with respect to compliance with the Order Audit Trail System<sup>SM</sup> (OATS<sup>SM</sup>) rules. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to transmit to OATS any order data for its orders for equity securities traded on The Nasdaq Stock Market.<sup>®</sup> The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations concerning OATS; specifically, that the system did not include written supervisory procedures providing for a statement of the steps to be taken to achieve compliance with the OATS reporting rule, a statement as to how often such steps should be taken, and a statement as to how enforcement of such written supervisory procedures should be documented at the firm. **(NASD Case #CMS020020)**

**Dirks & Company, Inc. (CRD #42185, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$18,000, and required to revise its written supervisory procedures with respect to the firm quote rules. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a registered market maker in securities, it failed to execute orders presented at the firm's published bid or published offer in an amount up to its published quotation size, and upon presentment, failed to honor its published quotation. The findings also stated that it failed, within 90 seconds after execution, to transmit through ACT, last sale reports of transactions in Nasdaq National Market (NNM), Nasdaq, SmallCap,<sup>SM</sup> and OTC Equity securities, and failed to designate through ACT such last sale reports as late; failed to designate as ".T" through ACT last sale reports of transactions in NNM and OTC Equity securities executed outside normal market hours; and failed, within 90 seconds after execution, to transmit through ACT last sale reports. Furthermore, the NASD determined that the firm did not provide for supervision reasonably designed to achieve compliance

with respect to firm quote rules. Specifically, the firm's supervisory system did not include written supervisory procedures providing for the identification of the person responsible at the firm to ensure compliance with the firm quote rules; a statement of the steps that such person should take to ensure compliance; a statement as to how often such person should take such steps; and a statement as to how enforcement of such written supervisory procedures should be documented at the firm. **(NASD Case #CMS020019)**

**H & R Block Financial Advisors, Inc. (CRD #5979, Detroit, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$50,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a required market maker in securities, an order was presented to the firm at the firm's published bid or published offer in an amount up to its published quotation size. The firm failed to execute the orders upon presentment and thereby failed to honor its published quotation. In addition, the NASD found that the firm, a market maker in securities, without making reasonable efforts to avoid a locked or crossed market by executing transactions with all market makers whose quotations would be locked or crossed, entered bid or ask quotations in The Nasdaq Stock Market, which caused a locked or crossed market condition to occur in each instance.

Furthermore, the NASD found that the firm was a party to a locked or crossed market condition prior to the market opening and received a trade-or-move message in each instance through SelectNet<sup>®</sup> and, within 30 seconds of receiving such messages, failed to fill the incoming trade-or-move message for the full size of the message or move its bid down (offer up) by a quotation increment that would have unlocked/uncrossed the market; and caused a locked/crossed market condition prior to the market opening by entering a bid (ask) quotation that locked/crossed another market maker's quotations without immediately thereafter sending through SelectNet to the market maker whose quote it locked or crossed a trade-or-move message that was at the receiving market maker's quoted price and whose aggregate size was at least 5,000 shares. **(NASD Case #CMS020035)**

**Richard Arthur Hennig (CRD #243151, Registered Representative, Granite Bay, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500, suspended from association with any

NASD member in any capacity for 90 days, and barred from association with any NASD member as an equity trader, or in any similar capacity requiring the successful completion of the Series 55 equity trader examination. Without admitting or denying the allegations Hennig consented to the described sanctions and to the entry of findings that, while employed as a securities trader at a member firm and while acting as a market maker in securities, he effected principal transactions with retail customer accounts that resulted in excessive and unfair markups to customers of 37.56 and 42.86 percent based on the firm's contemporaneous cost of purchase.

Hennig's suspension began February 19, 2002, and will conclude May 19, 2002. **(NASD Case #CMS020027)**

**Jefferies & Company, Inc. (CRD #2347, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a market maker in securities, the firm was a party to a locked or crossed market condition prior to the market opening and received a trade-or-move message in each instance through SelectNet,<sup>®</sup> and within 30 seconds of receiving such messages, failed to fill the incoming trade-or-move message for the full size of the message or move its bid down (offer up) by a quotation increment that would have unlocked/uncrossed the market. **(NASD Case #CMS020023)**

**Pacific Growth Equities, Inc. (CRD #24835, San Francisco, California)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$15,000, and required to revise its written supervisory procedures with respect to applicable securities laws and regulations concerning firm quote compliance. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a registered market maker in securities, it failed to execute orders presented at the firm's published bid or published offer in an amount up to its published quotation size, and thereby failed to honor its published quotation. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations concerning firm quote compliance. Specifically, the firm's supervisory system did not include written supervisory

procedures providing for a statement of the steps that the persons responsible at the firm should take to ensure compliance; a statement of the steps that such person should take to ensure compliance with the NASD and Securities and Exchange Commission (SEC) firm quote rules; and a statement as to how enforcement of such written supervisory procedures should be documented at the firm. **(NASD Case #CMS020034)**

**Peters Securities Co., LP (CRD #15970, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$172,000, required to pay \$1,045.94, plus interest, in restitution to investors, and ordered to revise its written supervisory procedures. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to use reasonable diligence to ascertain the best prevailing 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; executed transactions and failed to record the time of execution on the memoranda reflecting these transactions; failed to maintain memoranda memorializing securities transactions; failed to reflect correctly the terms and conditions of limit orders received by the firm on the memoranda memorializing such orders; failed to register as a market maker and publicly disseminate its best bids, offers, and quotation sizes in exchange listed securities within 10 business days after the end of the quarter when aggregate trading volume in these securities exceeded one percent; and failed to display immediately customer limit orders in covered securities in its public quotation when each such order was at a price that would have improved the firm's bid or offer in each such security, or when each such order was priced equal to the firm's bid or offer and the national best bid or offer for each such security, and the size of the order represented more than a de minimis change in relation to the size associated with the firm's bid or offer in each such security.

The findings also stated that the firm failed to execute orders fully and promptly; executed short sale orders in certain securities and failed to maintain a written record of the affirmative determination made for such orders; executed four short sale transactions in certain securities, all of which were NNM securities at or below the current inside bid when the current inside bid was below the preceding inside bid in the security;

executed seven transactions in listed securities for its own account while holding unexecuted customer limit orders to buy or sell the same securities at equal or better prices; and executed short sale transactions and failed to report each of these transactions to ACT with a short sale modifier. In addition, the NASD determined that the firm failed to report to ACT the correct symbol indicating whether the transactions reported to ACT were a buy, sell short, sell short exempt or cross for transactions in eligible securities and failed to report the correct symbol indicating whether the firm executed transactions in eligible securities in a principal or agency capacity; failed to preserve for a period of not less than three years, the first two in an accessible place, memorandum of each order received reflecting open limit orders and cancellations of orders; failed to indicate on the memoranda reflecting the sale of certain listed securities whether such orders were long or short sales; failed, within 90 seconds after execution, to transmit through ACT last sale reports of transactions in ACT-eligible securities which constitutes a pattern or practice of late reporting without exceptional circumstances; and failed, within 90 seconds after execution, to transmit through ACT last sale reports of transactions in NNM and Nasdaq securities, a Nasdaq SmallCap security, and eligible securities, and failed to designate through ACT such last sale reports as late. The NASD also determined that the firm incorrectly designated as “.SLD” through ACT last sale reports of transactions in NNM securities reported to ACT within 90 seconds of execution; incorrectly designated as “.SLD” through ACT last sale reports of transactions in eligible securities reported to ACT within 90 seconds of execution; and incorrectly designated as “.T” through ACT two last sale reports of transactions in NNM securities executed during normal market hours and failed to designate through ACT such last sale reports as late; and entered priced broadcast orders into SelectNet that were priced better than the firm’s public quote reflecting each such order in the firm’s public quote as required by SEC Rule 11a1-1(c)(5).

Furthermore, the NASD found that the firm’s supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations concerning: ACT compliance, one percent rule, Small Order Execution System<sup>SM</sup> (SOES<sup>SM</sup>), trade reporting, locked and crossed markets, 21(a) report issues, best execution, books and records, limit order protection and display, short sales, short sale compliance, OATS compliance, and transaction reporting. Specifically,

the firm’s supervisory system did not include written supervisory procedures providing for the identification of the person responsible at the firm to ensure compliance with applicable rules; a statement of the steps that such person should take to ensure compliance therewith; a statement as to how often such person should take such steps; and a statement as to how enforcement of such written supervisory procedures should be documented at the firm. **(NASD Case #CMS020030)**

**Raymond James & Associates, Inc. (CRD #705, St. Petersburg, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm, a market maker in securities, without making reasonable efforts to avoid a locked or crossed market by executing transactions with all market makers whose quotations would be locked or crossed, entered bid or ask quotations in The Nasdaq Stock Market which caused a locked or crossed market condition to occur in each instance. **(NASD Case #CMS020021)**

**Stifel, Nicolaus & Company, Inc. (CRD #793, St. Louis, Missouri)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$15,000, and required to revise its written supervisory procedures with respect to applicable securities laws and regulations concerning firm quote compliance. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that an order was presented to the firm at the firm’s published bid or published offer in an amount up to its published quotation size. The firm failed to execute the orders upon presentment and thereby, failed to honor its published quotation. The findings also stated that the firm’s supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning firm quote compliance. Specifically, the firm’s supervisory system did not include written supervisory procedures providing for the identification of the person responsible at the firm to ensure compliance with the applicable rules; a statement of the steps that such person should take to ensure compliance; a statement as to how often such person should take such steps; and a statement as to how enforcement of such written supervisory procedures should be documented at the firm. **(NASD Case #CMS020031)**

**Terra Nova Trading, LLC (CRD #37761, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$12,500, and required to revise its written supervisory procedures with respect to compliance with OATS reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to transmit to OATS in a timely manner any order data for its orders for equity securities traded on The Nasdaq Stock Market, and transmitted reports to OATS containing inaccurate data as to the limit order display indicator and the routing method code with respect to orders for equity securities traded on The Nasdaq Stock Market. The NASD found that the firm transmitted to OATS reports containing inaccurate data as to the firm order received date and firm order received timestamp with respect to orders for equity securities traded on The Nasdaq Stock Market. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning OATS reporting, in that it did not include written supervisory procedures providing for the identification of the person responsible at the firm to ensure compliance with applicable rules; a statement of the steps that such person should take to ensure compliance; a statement as to how often such person should take such steps; and a statement as to how enforcement of such written supervisory procedures should be documented at the firm. **(NASD Case #CMS020029)**

#### May Actions

**CapBay Financial Services (CRD #32395, Roseville, California) and Stephen Charles Kircher (CRD #823868, Registered Principal, Loomis, California)** submitted a Letter of Acceptance, Waiver, and Consent in which they were fined \$100,000, jointly and severally. The firm was expelled from NASD membership and Kircher was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that, in connection with the purchase and sale of securities, the firm, acting through Kircher, charged excessive markups based on its contemporaneous cost in principal transactions with its retail customers resulting in gross dollar proceeds to the firm. The NASD also found that the firm, acting through Kircher, effected transactions for customer accounts in the securities of a penny stock without

providing customers with the disclosures required under section 15g of the Securities Exchange Act of 1934. The findings also stated that the firm and Kircher failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules relating to penny stock transaction disclosure requirements and markup requirements in a dominated and controlled market. **(NASD Case #CMS020043)**

**Charles Farrell Cubellis (CRD #58254, Registered Representative, Citrus Heights, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for 10 business days and suspended from recommending the purchase of any penny stock to public customers for one year. In light of the financial status of Cubellis, no monetary sanctions have been imposed. Without admitting or denying the allegations, Cubellis consented to the described sanctions and to the entry of findings that he effected transactions for public customer accounts in a common stock, and received an undisclosed sales credit or commission of 33 percent of the customer purchase price. The NASD determined that the prices charged to the customers were excessive and unfair. The findings also stated that Cubellis effected penny stock transactions for public customers without providing the customers with the required disclosures.

Cubellis' suspension in any capacity began April 15, 2002, and concluded at the close of business April 26, 2002, and his suspension for recommending penny stocks began April 15, 2002, and will conclude at the close of business April 14, 2003. **(NASD Case #CMS020045)**

**Stephen Alexander Hunter, II (CRD #2642890, Registered Representative, Roseville, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$25,000, suspended from association with any NASD member in any capacity for 12 business days, suspended from recommending the purchase of any penny stock to public customers for one year, and required to take and pass the series 24 general securities principal exam within six months. Failure to take and pass the Series 24 exam shall result in Hunter's suspension from association with any NASD member in any capacity until he passes the exam. Without admitting or denying the allegations, Hunter consented to the described sanctions and to the entry of findings that he effected transactions for customer

accounts and received an undisclosed sales credit or commission of 33 percent of the customer purchase price, therefore charging the customers prices that were excessive and unfair. The findings also stated that Hunter effected transactions for customer accounts in a penny stock security without providing customers with the disclosures required under Section 15g of the Exchange Act.

Hunter's suspension in any capacity began April 1, 2002, and concluded at the close of business April 16, 2002. His suspension for recommending penny stocks began April 1, 2002, and will conclude at the close of business March 31, 2003. (NASD Case #CMS020044)

**Elizabeth Ann McCargar (CRD #2347346, Registered Representative, Folsom, California)** submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$2,500 and suspended from association with any NASD member in any capacity for 90 days. Without admitting or denying the allegations, McCargar consented to the described sanctions and to the entry of findings that she executed promissory notes for the purpose of recreating what she understood were previously executed promissory notes. The findings also stated that McCargar, in response to an NASD request for testimony, incorrectly testified that the promissory notes had been executed on or about the dates reflected on the notes.

McCargar's suspension began April 1, 2002, and will conclude June 29, 2002. (NASD Case #CMS020036)

**Morgan Stanley & Company, Inc. (CRD #8209, 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 allegations, the firm consented to the described sanctions and to the entry of findings that it failed to display customer limit orders in Nasdaq securities in its public quotation when each such order was at a price that would have improved the firm's bid or offer in each such security, or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each such security and the size of the order represented more than a de minimis change in relation to the size associated with the firm's bid or offer in each such security. The NASD also found that the firm executed short sale transactions and failed to report each of these transactions to ACT with a short sale modifier. (NASD Case #CMS020053)

**Morgan Stanley DW, Inc. (CRD #7556, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$25,500, and required to revise its written supervisory procedures concerning the reporting of short interest and options positions. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to file reports with the NASD of positions of standardized option contracts and failed to report its short interest positions to the NASD for securities. The findings stated that the firm submitted short interest position reports that included inaccurate short interest date. The NASD also determined that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning the reporting of short interest and options positions to the NASD. (NASD Case #CMS020050)

**Salomon Smith Barney, Inc. (CRD #7059, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$62,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a market maker in securities, without making reasonable efforts to avoid a locked or crossed market by executing transactions with all market makers whose quotations would be locked or crossed, it entered a bid or ask quotation in the Nasdaq Stock Market that caused a locked and crossed market condition to occur in each instance. The NASD also found that the firm caused a locked or crossed market condition prior to the market opening by entering a bid (ask) quotation that locked or crossed another market maker's quotations without immediately thereafter sending through SelectNet® to the market maker whose quote it locked or crossed a Trade-or-Move Message that was at the receiving market maker's quoted price and whose aggregate size was at least 5,000 shares. The findings stated that the firm was a party to a locked or crossed market condition prior to the market opening and received a trade-or-move message in each instance through SelectNet and failed to fill the incoming message for the full size of the message or move its bid down (offer up) by a quotation increment that would have unlocked/uncrossed the market. In addition, the NASD determined that the firm executed short sale transactions and failed to report these transactions to ACT with the correct short sale modifier, and executed

long sale transactions and incorrectly reported each of these transactions to ACT with a short sale modifier. **(NASD Case #CMS020040)**

### June Actions

**ABN Amro Securities, LLC (CRD #6540, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$23,500, and ordered to pay \$183.75, plus interest, in restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to timely report its short interest positions to NASD and submitted to NASD its short interest position report, which included an inaccurate short position. The findings also stated that the firm was a registered market maker in securities and failed to execute orders upon presentment at the firm's published bid or published offer in an amount up to its published quotation size and thereby failed to honor its published quotation. In addition, NASD found that the firm failed to use reasonable diligence to ascertain the best inter-dealer market, 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, and failed to execute orders fully and promptly. Furthermore, the findings stated that the firm executed customer transactions in Over-The-Counter Bulletin Board (OTCBB) and/or Over-The-Counter (OTC) equity securities and failed to document quotations from broker/dealers, executed short sale orders in Nasdaq securities, and failed to maintain a written record of the affirmative determination made for such orders.

NASD also found that the firm incorrectly designated as "PRP" through the Automated Confirmation Transaction Service<sup>SM</sup> (ACTS<sup>SM</sup>) last sale reports of transactions in Nasdaq National Market<sup>®</sup> (NNM<sup>®</sup>) securities; failed to report to ACT the correct symbol indicating whether the transaction was a buy, sell, sell short, sell short exempt, or cross for transactions in eligible securities; and failed to report to ACT the correct symbol indicating whether the firm executed transactions in eligible securities in a principal or agency capacity. The findings also determined that the firm failed to display immediately customer limit orders in Nasdaq securities in its public quotation when each such order was at a price that would have improved the firm's bid or offer for each such security, or when the order was priced equal to the firm's bid or offer and

the national best bid or offer for each such security, and the size of the order represented more than a de minimis change in relation to the size associated with the firm's bid or offer in each such security. **(NASD Case #CMS020062)**

**ABN Amro Incorporated (CRD #15776, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$76,000, and required to pay \$784.38, plus interest, in restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, in transactions for or with a customer, it failed to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy or sell in such a market so that the resultant price to its customers was as favorable as possible under prevailing market conditions and failed to execute orders fully and promptly. NASD also found that the firm executed short sale orders in certain securities, failed to maintain a written record of the affirmative determination made for such orders, and executed short sale transactions and failed to report these transactions to ACT with a short sale modifier. The findings stated that the firm failed to contact and obtain quotations from dealers to determine the best inter-dealer market in non-Nasdaq securities transactions. The firm also failed to display immediately customer limit orders in its public quotation, when each such order was at a price that would have improved the firm's bid or offer in each such security, or when the order was priced equal to the firm's bid or offer and the national best bid or offer in such security and the size of the order represented more than a de minimis change in relation to the size associated with its bid or offer in each such security.

Furthermore, NASD found that the firm, as a market maker in securities, without making reasonable efforts to avoid a locked or crossed market by executing transactions with all market makers whose quotations would be locked or crossed, entered bid or ask quotations in The Nasdaq Stock Market, Inc., which caused a locked or crossed market condition to occur in each instance. In addition, the findings stated that the firm failed to preserve for a period of not less than three years, the first two in a readily accessible place, the memorandum of brokerage orders and failed to show the time of entry, time of execution, and correct price of execution on the memorandum of brokerage orders. Moreover, NASD found that the firm failed to execute orders upon presentment and thereby failed to

honor its published quotation. The findings also stated that the firm, as a market maker in the securities, caused a locked/crossed market condition prior to the market opening by entering a bid (ask) quotation that locked/crossed another market maker's quotations without immediately thereafter sending through SelectNet,<sup>®</sup> to the market maker(s) whose quote(s) it locked or crossed, a Trade-or-Move Message(s) that was at the receiving market maker's quoted price and whose aggregate size was at least 5,000 shares. NASD also determined that the firm was a party to a locked or crossed market condition prior to the market opening and received a Trade-or-Move Message through SelectNet, and within 30 seconds of the receiving message, failed to fill the incoming Trade-or-Move Message for the full size of the message or move its bid down (offer up) by a quotation increment that would have unlocked/uncrossed the market.

In addition, NASD determined that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations concerning best execution, the Order Audit Trail System<sup>SM</sup> (OATS<sup>SM</sup>), the One Percent Rule, SEC Rule 10A-1, and firm quote compliance. Specifically, the firm's supervisory system did not include written supervisory procedures providing for the identification of the person responsible at the firm to ensure compliance with the applicable rules; a statement of the steps that such person should take to ensure compliance; a statement as to how often such person should take such steps; and a statement as to how enforcement of such written supervisory procedures should be documented at the firm. **(NASD Case #CMS020058)**

**Aegis Capital Corporation (CRD #15007, Valley Stream, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$35,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a market maker in securities, without making reasonable efforts to avoid a locked or crossed market by executing transactions with all market participants whose quotations would be locked or crossed, it entered a bid or ask quotation in The Nasdaq Stock Market, Inc., which caused a locked or crossed market condition to occur in each instance. NASD also found that the firm, as a market maker in securities, was a party to a locked or crossed market condition prior to the market opening; received a

Trade-or-Move message in each instance through SelectNet; and within 30 seconds of receiving such messages, failed to fill the incoming trade-or-move message for the full size of the message or move its bid down (offer up) by a quotation increment that would have unlocked/uncrossed the market. **(NASD Case #CMS020085)**

**Bear, Stearns & Company, Inc. (CRD #79, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a market maker in securities, it caused a locked/crossed market condition prior to the market opening by entering a bid (ask) quotation that locked/crossed another market maker's quotations without immediately thereafter sending through SelectNet, in each instance to the market maker(s) whose quote(s) it locked or crossed, a Trade-or-Move message that was at the receiving market maker's quoted price and whose aggregate size was at least 5,000 shares. **(NASD Case #CMS020068)**

**Broadway Trading, LLC (CRD #42429, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed short sale transactions in a security at or below the current inside bid when the current inside bid was below the preceding inside bid in the security. NASD also found that the firm executed short sale transactions and failed to report each of these transactions to ACT with a short sale modifier. In addition, 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 and regulations concerning short sales. **(NASD Case #CMS020054)**

**Credit Suisse First Boston Corporation (CRD #816, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that as a registered market maker in securities, it failed to execute orders presented to the firm at its published bid or published offer in an amount up to its published quotation size and thereby failed to honor its published quotation. **(NASD Case #CMS020083)**

**Crowell, Weedon & Co. (CRD #193, Los Angeles, California)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to display immediately public customer limit orders in Nasdaq securities in its public quotation when each such order was at a price that would have improved the firm's bid or offer in each such security, or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each such security and the size of the order represented more than a de minimis change in relation to the size associated with the firm's bid or offer in each such security. **(NASD Case #CMS020071)**

**Deutsche Banc Alex. Brown, Inc. (CRD #2525, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a market maker in securities, it caused a locked/crossed market condition prior to the market opening by entering a bid (ask) quotation that locked/crossed another market maker's quotations without immediately thereafter sending through SelectNet, to the market maker(s) whose quote(s) it locked or crossed, a Trade-or-Move message that was at the receiving market maker's quoted price and whose aggregate size was at least 5,000 shares. **(NASD Case #CMS020072)**

**Fahnestock & Co., Inc. (CRD #249, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was fined \$5,000 and required to pay \$5,906.25, plus interest, in restitution to public customers. Without admitting or denying the allegations, 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 customer was as favorable as possible under prevailing market conditions. **(NASD Case #CMS020059)**

**Josephthal & Co., Inc. (CRD #3227, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$21,500, and required to pay \$62.50, plus interest, in restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a

registered market maker in securities, an order was presented to the firm at its published bid or published offer in an amount up to its published quotation size, and failed to execute the orders upon presentment and thereby failed to honor its published quotation. NASD found that the firm failed to execute orders fully and promptly. NASD also found that the firm 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 also stated that the firm incorrectly designated as "PRP" through ACT last sale reports of transactions in Nasdaq National Market securities, and failed to show the correct time of entry on the memorandum of brokerage orders. In addition, 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 and regulations concerning short sales and Securities and Exchange Commission (SEC) and NASD firm quote rules. **(NASD Case #CMS020084)**

**Major League Securities, LLC (CRD #32211, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$225,000, and required to revise its written supervisory procedures concerning Small Order Execution System (SOES). Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, through an executive officer of the firm, it personally loaned \$19.35 million to persons and entities for the express purpose of opening securities accounts at the firm. NASD found that the executive officer funded these loans with officer loans from an affiliated member firm, of which he was also an executive officer. NASD also found that each loan recipient was required to use the complete proceeds of the loan to open a firm securities account, to execute a promissory note promising to repay the loan from the officer, to pledge the assets in its securities account as collateral for the loan, and to agree to pay monthly interest for the loan through monthly withdrawals from such account. The officer's designee monitored the equity in such accounts to ensure that the loan recipients properly handled the funds therein. While the loan recipients made their own trading decisions as to which stocks to buy and sell, they were expected to adhere to the firm's proprietary trading strategies. The findings also included that, after the loan recipients received the loan proceeds, they immediately opened securities accounts at the firm.

The loan recipients executed transactions in their firm securities account through, among other systems, the Nasdaq Stock Market's SOES. During the review period, SOES was only available to member firms to execute agency or riskless principal orders on behalf of public customers. By virtue of the loan arrangements and controls, none of the loan recipients was a public customer for the purpose of SOES and, therefore, the use of SOES by the loan recipients during the review period violated the SOES rules. In addition, the NASD determined that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning the use of SOES. **(NASD Case #CMS020086)**

**National Financial Services LLC (CRD #13041, Boston, Massachusetts)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$70,000, and instructed to revise its written supervisory procedures with respect to the applicable securities laws and regulations concerning OATS reporting rules. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it transmitted new order reports to OATS on behalf of other member firms that omitted Account Type Codes. NASD also found that the firm transmitted cancelled order reports to OATS on its own behalf and on behalf of other member firms that contained inaccurate times. In addition, the findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning the OATS reporting rules. **(NASD Case #CMS020075)**

**Spear, Leeds & Kellogg, L.P. (CRD #3466, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$70,000, and instructed to revise its written supervisory procedures concerning OATS. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to transmit to OATS reports containing each applicable item of order information identified in NASD Marketplace Rule 6954. NASD also found that the firm transmitted to OATS New Order Reports containing inaccurate data as to method or receipt and account type. In addition, the findings stated that the firm failed to transmit to OATS Route Reports for orders routed to other members. Furthermore, NASD found that the firm's supervisory system did not provide for

supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning OATS. **(NASD Case #CMS020074)**

**Sutro & Co., Incorporated (CRD #801, San Francisco, California)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$25,000, and required to pay \$857.75, plus interest, in restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to display immediately customer limit orders in Nasdaq securities in its public quotation, when each such order was at a price that would have improved the firm's bid or offer in each such security; or when the order was priced equal to the firm's bid or offer and the national best bid or offer in such security, and the size of the order represented more than a de minimis change in relation to the size associated with its bid or offer in each such security. NASD also found that the firm 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. **(NASD Case #CMS020064)**

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If you have further questions or comments, please contact either the individual listed at the conclusion of an item or Rosa A. Maymi, Editor, *Regulatory & Compliance Alert (RCA)*, 1735 K Street, NW, Washington, DC 20006-1500, (202) 728-8981.

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