

MAY 2004

# Notices to Members

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# Notice to Members

MAY 2004

## SUGGESTED ROUTING

Legal & Compliance

## KEY TOPICS

Expedited Proceedings  
Rule 9550 Series

## GUIDANCE

### Expedited Proceedings

SEC Approves NASD Proposed Rule 9550 Series on Expedited Proceedings

#### Executive Summary

On March 9, 2004, the Securities and Exchange Commission (SEC) approved an NASD proposed rule change that creates the Rule 9550 Series to consolidate, clarify, and streamline most procedural rules that have an expedited proceeding component.<sup>1</sup> The new rule text is contained in Attachment A and is effective on June 28, 2004.

#### Questions/Further Information

Questions regarding this *Notice* may be directed to James S. Wrona, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8270.

#### Background

The approved rule change modifies certain NASD rules that have an expedited proceeding component to make them more understandable and uniform and to make the overall process for actions covered by such rules more efficient. In the past, numerous NASD rules recognized that expedited treatment was needed for certain types of actions. These actions fell into two general categories: those that involved misconduct capable of causing further harm to the investing public, other members, or the integrity of the markets, and those that could be appropriately expedited for administrative ease. The expedited actions that are affected by the rule change generally involve straightforward issues unrelated to complicated securities transactions (e.g., whether the respondent paid an arbitration award or NASD fee or provided information requested by NASD staff).<sup>2</sup>

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However, the NASD rules with provisions for fast-track procedures varied considerably in some respects and overlapped in others. The rule change, discussed in detail below, streamlines and clarifies most expedited rules and makes them more uniform. At the same time, the modifications, which do not abrogate any substantive rights held by members or associated persons, continue to ensure that expedited actions are fair to all parties. The primary rules that have been renumbered and otherwise affected by the rule change are as follows:

- ◆ Rule 8220 Series (Suspension for Obstructing Investigations);<sup>3</sup>
- ◆ Rule 9410 Series (Procedures for Regulating Activities of a Member Experiencing Financial or Operational Difficulties);<sup>4</sup>
- ◆ Rule 9510 Series (Summary and Non-Summary Proceedings);<sup>5</sup>
- ◆ Rule 9530 Series (Suspension or Cancellation for Failure to Pay Dues, Fees and Other Charges);<sup>6</sup> and
- ◆ Rule 9540 Series (Failure to Provide Information or Meet the Eligibility and Qualification Standards).<sup>7</sup>

The first major improvement to the expedited proceedings provisions is that they are reorganized into a single rule series, the Rule 9550 Series, and each type of action is clearly labeled. The various types of expedited proceedings previously had been located in different sections of NASD's rules, at times without clear headings, increasing the likelihood of confusion for interested parties and adjudicators. Going forward, interested parties simply will need to review the Rule 9550 Series, with its clearly marked subheadings, to ascertain their rights and obligations with regard to most expedited actions.

The rule change also consolidates some expedited rules that had similar or overlapping provisions. For instance, previous Rules 8221(a) and (b) and 9541(a) and (b) had identical provisions that allowed NASD staff to issue a notice of suspension if a member or associated person "fail[ed] to provide any information, report, material, data, or testimony." Those provisions are now consolidated into a single rule, Rule 9552, under the rule change. Similarly, previous Rules 9511(a)(2)(B) and 9541(c) both covered situations where a member or associated person failed to meet eligibility or qualification standards. Those provisions are currently consolidated and clarified under the rule change as Rule 9555. The consolidation of these various rules will alleviate confusion over which rule to use in a particular situation.

The rule change, moreover, separates into individual rules some provisions whose grouping together had caused confusion. The rule change, for example, separates the four "non-summary" actions previously located in Rule 9511(a)(2) for failure to pay an arbitration award, failure to meet eligibility or qualification standards, failure to comply with certain public communication standards, and failure to comply with a cease and desist order. Those provisions were not logically connected to one another and are separated into individual rules under the rule change. The substance of the

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four provisions remains intact, however. NASD separated the four provisions into individual rules so that their headings clearly denote the substance of the actions. The previous heading of “non-summary” proceedings was confusing because there are a number of rules that have an expedited component that could be viewed as “non-summary” in nature.

The rule change also reorganizes the hearing provisions of these various rules into a single rule within the new Rule 9550 Series. The new hearing rule, Rule 9559, creates procedural uniformity for expedited actions. Under the rule change, a respondent normally may request a hearing at any time prior to the effective date of the action contained in the notice issued pursuant to the new Rule 9550 Series.<sup>8</sup> Under the previous scheme, some rules had five-day periods while others had seven-day periods to request hearings, even though the notices often did not become effective for longer periods of time. This new provision ties the periods together for most of the proceedings, giving respondents more time to request a hearing without altering the expedited nature of the proceedings.

In addition, the Rule 9550 Series simplifies the actual hearing process in a number of ways. First, the rule series channels all requests for hearings to the Office of Hearing Officers (OHO). Under the previous system, various expedited proceedings were held before different adjudicative bodies—e.g., NASD Board hearing panels, National Adjudicatory Council (NAC) hearing panels, OHO hearing panels, hearing officers—with little justification. That practice proved cumbersome. Under the rule change, respondents file a written request for a hearing with OHO. For actions involving a failure to pay an arbitration award or NASD fees, a hearing officer from OHO will act as the sole adjudicator, as was the previous practice. For all other matters involving expedited proceedings, an OHO-appointed hearing panel, consisting of a hearing officer and two hearing panelists, will act as the adjudicative body.<sup>9</sup> Second, the rule change allows adjudicators to conduct hearings by telephone. Third, the new rule series will allow various expedited actions to be consolidated, eliminating the need for parties to litigate related matters in separate venues.<sup>10</sup> In brief, the fairness of the process will not be impaired—and the efficiency will be improved—by these changes.

The Rule 9550 Series also streamlines the procedures for final NASD action. In general, hearings should be conducted and matters resolved within a specified, shortened timeframe once a respondent requests a hearing.<sup>11</sup> The use of such timelines is consistent with the SEC’s recent adoption of amendments to its Rules of Practice that impose completion dates in certain SEC administrative proceedings.<sup>12</sup> The timelines also are consistent with both the SEC’s and NASD’s emphasis on “real-time enforcement.”

Once the hearing panel or Hearing Officer issues the initial decision, the Review Subcommittee of the NAC has the ability to call the matter for review in a condensed timeframe. As was previously the case with most expedited rules, respondents will not have the right to appeal the matter to the NAC,<sup>13</sup> and the NASD Board will not have the ability to call the matter for review. Thus, the hearing panel or hearing officer decision, if not called for review by the NAC, is NASD’s final action. However, the respondent will have the ability to appeal a hearing panel or hearing officer decision

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to the SEC.<sup>14</sup> These provisions ensure that respondents have a right to a full and fair hearing before OHO and that the NAC has the ability to call matters for review when appropriate, while eliminating time-consuming review that can significantly delay the effectiveness of the subject action without necessarily adding benefit to the decision-making process in these uncomplicated matters.

## Endnotes

- 1 See SEC Order Approving NASD Proposed Rule Change Relating to Uniform Hearing Procedures for and Consolidation of Rules Applicable to Expedited Proceedings, Exchange Act Rel. No. 49380 (Mar. 9, 2004) (File No. SR-NASD-2003-110), 69 Fed. Reg. 12386 (Mar. 16, 2004). Although the rule change modifies most of the rules that have an expedited proceeding component, the rule change did not modify all such rules. See, e.g., Rule 1010 Series (Review of Membership Application); Rule 8320 (Payment of Fines); Rule 9800 Series (Temporary Cease and Desist Orders).  
  
Similarly, in an action for failure to provide information, the issue presented is whether the respondent provided information requested by NASD. It is well settled that respondents must fully and promptly cooperate with NASD (see *Mark Allen Elliott*, 51 S.E.C. 1148, 1150-51, 1994 SEC LEXIS 1765, at \*5-6 (1994)), and respondents cannot second guess NASD information requests or impose conditions on responding. See *Joseph Patrick Hannan*, 53 S.E.C. 854, 859, 1998 SEC LEXIS 1955, at \*11 (1998) (“[A]n NASD member may not ‘second guess’ or ‘impose conditions on’ the NASD’s request for information.”); *Michael David Borth*, 51 S.E.C. 178, 181, 1992 SEC LEXIS 3248, at \*7 (1992) (“The Rules do not permit second guessing the NASD’s requests” or permit a respondent “to shift his responsibility to others....”).
- 2 In most instances, the issues raised by these types of proceedings are uncomplicated and the defenses are limited. For example, in a case involving a respondent’s failure to pay an arbitration award, the issue presented is whether the member or person has paid the award. A respondent cannot collaterally attack the actual arbitration award. See *John G. Pearce*, 52 S.E.C. 796, 798, 1996 SEC LEXIS 1329, at \*5 (1996) (“To permit a party dissatisfied with an arbitral award to attack it collaterally for legal flaws in a subsequent disciplinary proceeding would subvert the salutary objective that the NASD’s [arbitration] resolution seeks to promote.”). In addition, there is “no requirement under NASD’s rules that an arbitration award be confirmed by a court before NASD can commence proceedings to suspend a member.” *Perpetual Secs., Inc.*, Exchange Act Rel. No. 48433, 2003 SEC LEXIS 2096, at \*8 (Sept. 3, 2003).
- 3 The previous Rule 8220 Series (Suspension for Obstructing Investigations) is now located at Rule 9552 (Failure to Provide Information or Keep Information Current).
- 4 The previous Rule 9410 Series (Procedures for Regulating Activities of a Member Experiencing Financial or Operational Difficulties) is now located at Rule 9557 (Procedures for Regulating Activities Under Rules 3130 and 3131 Regarding a Member Experiencing Financial or Operational Difficulties).
- 5 The previous Rule 9510 Series (Summary and Non-Summary Proceedings) has been separated into a number of individual rules. Summary proceedings under previous Rule 9511(a)(1) for actions authorized under Section 15A(h)(3) of the Securities Exchange Act of 1934 (Act) are now located at Rule 9558 (Summary Proceedings for Actions Authorized by Section 15A(h)(3) of the Act). Non-summary proceedings under previous Rule 9511(a)(2)(A) for failure to comply with an arbitration award or related settlement agreement are now located at Rule 9554 (Failure to Comply with an Arbitration Award or Related Settlement). Non-summary proceedings under previous Rule 9511(a)(2)(B) for failure to meet

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the qualification requirements or other prerequisites for access to NASD or member services are now located at Rule 9555 (Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services). Non-summary proceedings under previous Rule 9511(a)(2)(C) for failure to adhere to certain public communication standards are now located at Rule 9551 (Failure to Comply with Public Communication Standards). Finally, non-summary proceedings under previous Rule 9511(a)(2)(D) for failure to comply with a temporary or permanent cease and desist order are now located at Rule 9556 (Failure to Comply with a Temporary or Permanent Cease and Desist Order).

- 6 The previous Rule 9530 Series (Suspension or Cancellation for Failure to Pay Dues, Fees and Other Charges) is now located at Rule 9553 (Failure to Pay NASD Dues, Fees and Other Charges).
- 7 The previous Rule 9540 Series (Failure to Provide Information or Meet the Eligibility and Qualification Standards) has been combined with two rules in the Rule 9550 Series. Previous Rules 9541(a) and (b) regarding failure to provide information are now located at Rule 9552 (Failure to Provide Information or Keep Information Current). Previous Rule 9541(c) regarding failure to meet the eligibility and qualification standards is now located at Rule 9555 (Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services).
- 8 The one exception is a notice issued under Rule 9558, which is effective immediately.
- 9 The Chief Hearing Officer will select as panelists persons who meet the qualifications delineated in Rule 9231(b).
- 10 It is not uncommon for a firm to experience multiple, related problems (for example, a financial crisis, issues about the qualifications of the FINOP, and a failure to provide information in response to NASD staff's queries about the problems). Under the previous rules, NASD staff was required to initiate multiple proceedings to address the issues.
- 11 For instance, Rule 9559(f) states that hearings for failure to comply with cease and desist orders, summary proceedings, and members experiencing financial or operational difficulties should be held within 14 days and hearings for all other actions should be held within 60 days of a request for a hearing. In addition, under Rule 9559(o), OHO should issue a decision in cases involving a failure to comply with cease and desist orders, a summary proceeding, or a member experiencing financial or operational difficulty within 21 days and in all other cases within 60 days of the date of the close of the hearing. However, the hearing officer or, if applicable, hearing panel is given flexibility to manage the progress of the case. In some instances, parties legitimately may need more time to explore the issues in the case, gather and provide detailed documentation, make preparations for witnesses, draft and file motions, etc. For good cause shown, or with the consent of all of the parties to a proceeding, the hearing officer or, if applicable, the hearing panel may extend or shorten any time limits prescribed by the rule. The rule changes thus give adjudicators the discretion to adapt to the circumstances of each case.
- 12 See SEC Adoption of Amendments to Rules of Practice, Release Nos. 33-8240, 34-48018, 35-27686, 39-2408 (June 11, 2003) (File No. 57-04-03), 68 Fed. Reg. 35787 (June 17, 2003). In the release, the SEC stated, "Based upon [our] experience with non-binding completion dates, the Commission has determined that timely completion of proceedings can be achieved more successfully through the adoption of mandatory deadlines and procedures designed to meet these deadlines." *Id.* The SEC also stated, "Any and all deadlines and timelines established by these amendments to the Commission's Rules of Practice confer no substantive rights on respondents." *Id.* at 35788. As with the SEC's amendments, the timelines established by NASD's amendments for hearing panels and the NAC to hold hearings and issue decisions under Rule 9559 confer no substantive rights on the parties.

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13 Under many of the previous rules with expedited components, respondents could not appeal the matter to an NASD appellate body, such as the NAC. For example, the NAC appointed the original, "trial level" hearing panel in actions under the previous Rule 8220 Series (Failure to Provide Information). The NASD Board appointed the hearing panel in actions under the previous Rule 9510 Series (Summary and Non-Summary Proceedings). Under neither previous rule series did a respondent have any right of appeal to an internal, NASD appellate body. Similarly, an OHO-appointed hearing panel's decision in actions under the previous Rule 9410 Series (Member Experiencing Financial or Operational Difficulties) and previous Rule 9530 (Failure to Pay Fees) were not appealable to the NAC or any other internal, NASD appellate body.

14 Neither the rule change nor this *Notice* expands the scope of matters appealable to the SEC, however. *See, e.g., Warren B. Minton, Jr., Exchange Act Rel. No. 46709, 2002 SEC LEXIS 2712, at \*9-10 (Oct. 23, 2002)* ("[W]e do not have jurisdiction to review the NASD's denial of Minton's motion to vacate the default.... [T]he NASD merely rejected Minton's collateral attack on the NASD's [previous] action.... [E]ven if an applicant is adversely affected by the NASD's denial of a motion to set aside a default, that fact 'does not transform the denial into a reviewable NASD order.'"); *Gary A. Fox, Exchange Act Rel. No. 46511, 2002 SEC LEXIS 2381, at \*3-5 (Sept. 18, 2002)* ("[W]e are precluded from considering an applicant's application for review if that applicant failed to follow the NASD's procedures.... Fox failed to respond to NASD requests for information, failed to respond to the...notice of his suspension, and failed to apply for reinstatement within the time required.... [W]e are [thus] precluded from considering Fox's application for review.").

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## ATTACHMENT A

### Text of Rule Change

New language is underlined and deletions are in brackets.

\* \* \* \* \*

#### **0116. Application of Rules of the Association to Exempted Securities**

(a) No Change.

(b) Unless otherwise indicated within a particular provision, the following Rules of the Association and Interpretative Materials thereunder are applicable to transactions and business activities relating to exempted securities, except municipal securities, conducted by members and associated persons: 2110, 2120, 2210, IM-2210-1, IM-2210-2, IM-2210-3, 2250, 2270, 2310, IM-2310-2, IM-2310-3, 2320, 2330, IM-2330, 2340, 2430, 2450, 2510, 2520, 2521, 2522, IM-2522, 2770, 2780, 2820(g), 2910, 3010, 3020, 3030, 3040, 3050, 3060, 3070, 3110, IM-3110, 3120, 3130, IM-3130, 3131, 3140, 3230, 3310, IM-3310, 3320, IM-3320, 3330, 8110, 8120, 8210, [8221, 8222, 8223, 8224, 8225, 8226, 8227], 8310, IM-8310-1, IM-8310-2, 8320<sub>a</sub> [and] 8330, and 9552.

\* \* \* \* \*

#### **2210. Communications with the Public**

(a) through (b) No Change.

##### **(c) Filing Requirements and Review Procedures**

(1) through (4) No Change.

##### **(5) Requirement for Certain Members to File Material Prior to Use**

(A) No Change

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(B) Notwithstanding the foregoing provisions, the Department, upon review of a member's advertising and/or sales literature, and after determining that the member has departed from the standards of this Rule, may require that such member file all advertising and/or sales literature, or the portion of such member's material which is related to any specific types or classes of securities or services, with the Department, at least 10 business days prior to use. The Department will notify the member in writing of the types of material to be filed and the length of time such requirement is to be in effect. Any filing requirement imposed under this paragraph will take effect 21 [30] calendar days after service of [the member receives] the written notice, during which time the member may request a [appeal pursuant to the] hearing [and appeal] under Rules 9551 and 9559 [procedures of the Code of Procedure contained in the Rule 9510 Series].

(6) through (10) No Change.

(d) through (e) No Change.

\* \* \* \* \*

## **2220. Options Communications with the Public**

(a) through (b) No Change.

### **(c) Association Approval Requirements and Review Procedures**

(1) No Change.

(2) (A) No Change.

(B) The Department shall notify the member in writing of the types of material to be filed and the length of time such requirement is to be in effect. The requirement shall not exceed one year, however, and shall not take effect until

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21[30] calendar days after service of [the member receives] the written notice, during which time the member may request a hearing under Rules [9514] 9551 and 9559[, and any such hearing shall be held in reasonable conformity with the hearing and appeal procedures of the Rule 9510 Series].

(3) through (5) No Change.

(d) No Change.

\* \* \* \* \*

### **3110. Books and Records**

(a) through (h) No Change.

*Cross References - Rule 2860(b)(17), Options, Maintenance of Records*

*- Rule 8210, Reports and Inspection of Books for Purpose of Investigating Complaints*

*- [Rule 8220, Suspension of Members for Failure to Furnish Information Duly Requested]*

*Rule 9552. Failure to Provide Information or Keep Information Current*

*- IM-2310-2, Fair Dealing with Customers*

\* \* \* \* \*

### **3130. Regulation of Activities of Members Experiencing Financial and/or Operational Difficulties**

(a) through (d) No Change.

(e) A member shall suspend all business operations during any period of time when the member is not in compliance with applicable net capital requirements as set forth in SEC Rule 15c3-1. [The Department of Member Regulation] NASD staff may issue a notice to such member directing it to suspend all business operations; however, the member's obligation to suspend all business operations arises from its obligations under SEC Rule 15c3-1 and is not

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dependent on any notice that may be issued by [the Department of Member Regulation] NASD staff.

(f) Any notice directing a member to limit or suspend its business operations shall be issued by [the Department of Member Regulation] NASD staff pursuant to Rule [9412] 9557.

\* \* \* \* \*

**3131. Regulation of Activities of Section 15C Members Experiencing Financial and/or Operational Difficulties**

(a) through (d) No Change.

(e) A member shall suspend all business operations during any period of time when the member is not in compliance with applicable net capital requirements as set forth in Section 402.2 of the rules of the Treasury Department. [The Department of Member Regulation] NASD Staff may issue a notice to such member directing it to suspend all business operations; however, the member's obligation to suspend all business operations arises from its obligations under Section 402.2 of the rules of the Treasury Department and is not dependent on any notice that may be issued by [the Department of Member Regulation] NASD staff.

(f) Any notice directing a member to limit or suspend its business operations shall be issued by [the Department of Member Regulation] NASD staff pursuant to Rule [9412] 9557.

\* \* \* \* \*

**8220. [Suspension for Obstructing Investigations] Reserved**

*(This rule series was amended and incorporated into new NASD Rule 9552 by SR-NASD-2003-110.)*

**[8221. Notice]**

**[(a) Notice to Member]**

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[If a member fails to provide any information, report, material, data, or testimony requested pursuant to the NASD By-Laws or the Rules of the Association the Department of Enforcement or the Department of Market Regulation may provide written notice to such member specifying the nature of the failure and stating that the failure to take such action within 20 days after service of the notice constitutes grounds for suspension of membership.]

**[(b) Notice to Person Associated with Member]**

[If a person associated with a member fails to provide any information, report, material, data, or testimony requested pursuant to the NASD By-Laws or the Rules of the Association, the Department of Enforcement or the Department of Market Regulation may provide written notice to such person specifying the nature of the failure and stating that the failure to take such action within 20 days after service of the notice constitutes grounds for suspending the association of the person with the member.]

**[(c) Service of Notice]**

[The Department of Enforcement or the Department of Market Regulation shall serve the member or person associated with a member with such notice via personal service or overnight courier or by facsimile at the location described in Rule 9134(b). Service by overnight courier shall be accomplished by sending the papers through an overnight courier service that generates a written confirmation of receipt or of attempts at delivery.]

**[8222. Hearing]**

**[(a) Request for Hearing]**

[Within five days after the date of service of a notice issued under Rule 8221, a member or person associated with a member served with a notice under Rule 8221(c) may file with the NASD Regulation Office of General Counsel a written request for an expedited hearing before a

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subcommittee of the National Adjudicatory Council. The request shall state with specificity why the member or associated person believes that there are insufficient grounds for suspension or any other reason for setting aside the notice issued by the under Rule 8221.]

**[(b) Hearing Procedures]**

**[(1) Appointment of Subcommittee]**

[If a hearing is requested, the National Adjudicatory Council or the Review Subcommittee described in Rule 9120 shall appoint a subcommittee to conduct the hearing and decide whether the member or person associated with a member should be suspended. The subcommittee shall be composed of a current member of the National Adjudicatory Council and one or more current or former members of the National Adjudicatory Council or former Governor or Director.]

**[(2) Time of Hearing]**

[The hearing shall be held within 30 days after the date of service of the notice issued under Rule 8221. Not later than seven days before the hearing, the subcommittee shall serve the member or person associated with a member with written notice of the date and time of the hearing via overnight courier or facsimile and notify the Department of Enforcement or the Department of Market Regulation of the date and time of the hearing.]

**[(3) Transmission of Documents]**

[Not later than seven days before the hearing, the Department of Enforcement or the Department of Market Regulation shall serve the member or person associated with a member via overnight courier with all documents that were considered in connection with the decision to issue a notice under Rule 8221, unless a document meets the criteria of

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Rule 9251(b) (1)(A), (B), or (C). A document that meets such criteria shall not constitute part of the record, but shall be retained by the Association until the date upon which the Association serves a final decision or, if applicable, upon the conclusion of any review by the Commission or the federal courts. The Department of Enforcement or the Department of Market Regulation shall provide a copy of the documents transmitted to the member or person associated with a member to the subcommittee.]

**[(4) Counsel]**

[The member or person associated with a member and the Department of Enforcement or the Department of Market Regulation may be represented by counsel at a hearing conducted under this Rule.]

**[(5) Evidence]**

[Formal rules of evidence shall not apply to a hearing under this Rule. Not later than four days before the hearing, the member or person associated with a member and the Department of Enforcement or the Department of Market Regulation shall exchange copies of proposed hearing exhibits and witness lists and provide copies of the same to the subcommittee.]

**[(6) Witnesses]**

[A person who is subject to the jurisdiction of the Association shall testify under oath or affirmation. The oath or affirmation shall be administered by a court reporter or a notary public.]

**[(7) Additional Information]**

[At any time during its consideration, the subcommittee may direct the member or person associated with a member or the Department of Enforcement or the Department of

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Market Regulation to submit additional information. Any additional information submitted shall be provided promptly to all parties at least one business day before the subcommittee renders its decision.]

**[(8) Transcript]**

[The hearing shall be recorded and a transcript prepared by a court reporter. The member or person associated with a member may purchase a copy of the transcript from the court reporter at prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the subcommittee within a reasonable time determined by the subcommittee. Upon notice to the participants in the hearing, the subcommittee may order corrections to the transcript as requested or sua sponte.]

**[(9) Record]**

[The record shall consist of all documents that were considered in connection with the decision to issue a notice under Rule 8221, the notice issued under Rule 8221, the request for hearing filed under Rule 8222, the transcript of the hearing, and each document or other item of evidence presented to or considered by the Subcommittee. The Office of the General Counsel of NASD Regulation shall be the custodian of the record.]

**[(10) Failure to Appear at Hearing]**

[If a member or person associated with a member fails to appear at a hearing for which it has notice, the subcommittee may dismiss the request for a hearing as abandoned, and the notice issued under Rule 8221 shall become the final action of the

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Association. Upon a showing of good cause, the subcommittee may withdraw a dismissal entered pursuant to this subparagraph. ]

**[8223. Decision]**

**[(a) Subcommittee]**

**[(1) Proposed Written Decision]**

[The subcommittee may suspend or cancel the membership of a member or suspend the association of a person with a member for failure to take the action required by the notice issued under Rule 8221. The subcommittee shall prepare a proposed written decision, and if the subcommittee determines that a suspension should be imposed, the proposed written decision shall state the grounds for the suspension or cancellation and the conditions for terminating the suspension. The subcommittee shall provide its proposed written decision to the NASD Board of Governors.]

**[(2) Issuance of Decision After Expiration of Call for Review Period]**

[If no Governor calls the proceeding for review within the time prescribed in paragraph (b)(1), the subcommittee's proposed written decision shall become final, and the subcommittee shall serve the final written decision on the member or associated person via overnight courier or facsimile.]

**[(b) NASD Board of Governors]**

**[(1) Call For Review by Governor]**

[A Governor may call the suspension or proceeding for review if the call for review is made not later than ten days after the Governor receives the subcommittee's proposed written decision. By a unanimous vote of the NASD Board of Governors, the NASD Board of Governors may shorten the call for review period to less than ten days.]

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By an affirmative vote of the majority of the NASD Board of Governors then in office, the NASD Board of Governors may, during the ten day period, vote to extend the period to more than ten days.]

**[(2) Review and Decision]**

[If a Governor calls the suspension proceeding for review within the time prescribed in subparagraph (1), a review panel shall meet and conduct a review not later than 14 days after the call for review. The review panel shall be composed of the NASD Board Executive Committee, except that the Governor who calls the proceeding for review shall serve on the review panel in lieu of a member of the Executive Committee who has the same classification (Industry, Non-Industry, or Public) as such Governor. The review panel may affirm, modify, or reverse the decision of the subcommittee. Not later than seven days after the review panel meeting, the review panel shall serve a final written decision on the member or person associated with a member via overnight courier or facsimile. The decision shall state the disposition of the suspension proceeding, and if a suspension is imposed, state the grounds for the suspension and the conditions for terminating the suspension.]

**[(c) Effective Date]**

[A final written decision served under this Rule shall become effective upon service and shall constitute final action of the Association.]

**[8224. Notice to Membership]**

[The Association shall provide notice of a suspension or cancellation under the Rule 8220 Series and the grounds therefor in the next membership supplement.]

**[8225. Termination of Suspension]**

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**[(a) Filing of Request]**

[A suspended member or person associated with a member may file a written request for termination of the suspension on the ground of full compliance with the notice issued under Rule 8221 or, if applicable, the conditions of a decision under Rule 8223, with the head of the department or office of the Association that filed the notices under Rule 8221.]

**[(b) Response by Association Staff]**

[The head of the department of the Association that filed the notice under Rule 8221 shall respond to the request in writing within five days after receipt of the request.]

**[(1) Request Granted]**

[If the head of the department or office grants the request, he or she shall serve the member or person associated with a member with written notice of the termination of the suspension via overnight courier or facsimile.]

**[(2) Request Denied]**

[If the head of the department or office denies the request, the suspended member or person associated with a member may file a written request for relief with the NASD Regulation Office of General Counsel. If the member or person associated with a member files the written request for relief within 30 days after service of the decision under Rule 8223, the review panel constituted under Rule 8223 shall respond to the request for relief in writing within ten days after receipt of the request. If the member or person associated with a member files the written request for relief more than 30 days after service of the decision under Rule 8223, the National Adjudicatory Council shall respond to the request for relief in writing within ten days after receipt of the request. The review panel's or

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National Adjudicatory Council's response shall be served on the member or person associated with a member via overnight courier or facsimile.]

**[8226. Copies of Notices and Decisions to Member]**

[A copy of a notice or decision under the Rule 8220 Series that is served on a person associated with a member shall be served on such member.]

**[8227. Other Action Not Foreclosed]**

[Action by the Association under the Rule 8220 Series shall not foreclose action by the Association under any other Rule.]

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**IM-8310-2. Release of Disciplinary and Other Information Through the Public Disclosure Program**

(a) through (c) No Change.

(d) (1) NASD shall release to the public information with respect to any disciplinary decision issued pursuant to the Rule 9000 Series imposing a suspension, cancellation or expulsion of a member; or suspension or revocation of the registration of a person associated with a member; or suspension or barring of a member or person associated with a member from association with all members; or imposition of monetary sanctions of \$10,000 or more upon a member or person associated with a member; or containing an allegation of a violation of a Designated Rule; and may also release such information with respect to any disciplinary decision or group of decisions that involve a significant policy or enforcement determination where the release of information is deemed by the President of NASD Regulatory Policy and Oversight to be in the public interest. NASD also may release to the public information with respect to any [disciplinary] decision

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issued pursuant to the Rule [8220] 9550 Series imposing a suspension or cancellation of the member or a suspension or bar of the association of a person with a member, unless NASD [the National Adjudicatory Council] determines otherwise. NASD [The National Adjudicatory Council] may, in its discretion, determine to waive the requirement to release information with respect to a disciplinary or other decision under those extraordinary circumstances where the release of such information would violate fundamental notions of fairness or work an injustice. NASD [The Association] also shall release to the public information with respect to any temporary cease and desist order issued pursuant to the Rule 9800 Series. NASD may release to the public information on any disciplinary or other decision issued pursuant to the Rule [8220 or Rule] 9000 Series, not specifically enumerated in this paragraph, regardless of sanctions imposed, so long as the names of the parties and other identifying information is redacted.

(A) through (B) No Change.

(2) No Change.

(e) through (l) No Change.

\* \* \* \* \*

## **9120. Definitions**

(a) through (o) No Change.

### **(p) "Hearing Officer"**

The term "Hearing Officer" means an employee of NASD [Regulation] who is an attorney and who is appointed by the Chief Hearing Officer to act in an adjudicative role and fulfill various adjudicative responsibilities and duties described in the Rule 9200 Series regarding disciplinary proceedings, the Rule 9550 Series regarding expedited proceedings, and the Rule

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9800 Series regarding temporary cease and desist proceedings brought against members and associated persons.

**(q) "Hearing Panel"**

The term "Hearing Panel" means an Adjudicator that is constituted under Rule 9231 to conduct a disciplinary proceeding governed by the Rule 9200 Series or that is constituted under the Rule 95[00]20 Series or the Rule 9550 Series to conduct a proceeding.

**(r) "Interested Association Staff"**

The term "Interested Association Staff" means, in the context of:

(1) No Change.

[(2) a proceeding under the Rule 9410 Series:]

[(A) the head of the Department of Member Regulation;]

[(B) a Department of Member Regulation employee who reports, directly or indirectly, to the head of the Department of Member Regulation;]

[(C) an Association employee who directly participated in the authorization of or the initial decision in the proceeding; or]

[(D) an Association employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific proceeding, and a district director or department head to whom such employee reports; or]

[2[3]) a proceeding under the Rule [9510 or] 9520 Series or Rule 9550 Series:

(A) through (B) No Change.

(C) an Association employee who directly participated in the authorization or initiation of the proceeding; or

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(D) No Change.

(3[4]) a proceeding under the Rule 9600 Series:

(A) through (D) No Change.

(s) through (w) No Change.

**(x) "Party"**

With respect to a particular proceeding, the term "Party" means:

(1) No Change.

(2) in the Rule [9410 Series and the Rule] 9520 Series, the Department of Member Regulation or

[(A) a member that is the subject of a notice under Rule 9412;]

[(B)] a member that is the subject of a notice or files an application under Rule 9522;

(3) in the Rule [9510] 9550 Series, the NASD department or office that issued the notice or, if another NASD department or office is named as the party handling the matter on behalf of the issuing department or office, the NASD department or office that is so designated [department or office designated under Rule 9514(b)] or a member or person that is the subject of a notice under the Rule [9512 or Rule 9513]9550 Series; or

(4) No Change.

(y) through (bb) No Change.

**(cc) "Subcommittee"**

The term "Subcommittee" means an Adjudicator that is:

(1) No Change.

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(2) constituted under [the] Rule 9559(q) [9410 Series] or Rule 9630 to conduct a review proceeding.

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#### **9144. Separation of Functions**

##### **(a) Interested Association Staff**

Except as counsel or a witness in a proceeding or as provided in the Rule [9400]9550 Series, Interested Association Staff is prohibited from advising an Adjudicator regarding a decision or otherwise participating in a decision of an Adjudicator. An Adjudicator is prohibited from advising Interested Association Staff regarding a decision or otherwise participating in a decision of Interested Association Staff, including the decision to issue a complaint and a decision whether to appeal or cross-appeal a disciplinary proceeding to the National Adjudicatory Council.

(b) through (c) No Change.

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#### **9146. Motions**

(a) through (i) No Change.

##### **(j) Disposition of Procedural Motions; Disposition of Motions for Summary**

##### **Disposition**

(1) through (2) No Change.

(3) In the Rule [9400 Series and the Rule] 9500 Series, a motion shall be decided by an Adjudicator.

(k) through (l) No Change.

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## **9160. Recusal or Disqualification**

No person shall participate as an Adjudicator in a matter governed by the Code as to which he or she has a conflict of interest or bias, or circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case the person shall recuse himself or herself, or shall be disqualified as follows:

(a) No Change.

### **(b) National Adjudicatory Council, Review Subcommittee, or Certain Subcommittees**

The Chair of the National Adjudicatory Council shall have authority to order the disqualification of a member of the National Adjudicatory Council or the Review Subcommittee, a member of a Subcommittee appointed pursuant to [the] Rule 9559(q) [9410 Series] or the Rule 9600 Series, a Hearing Panel appointed pursuant to the Rule 9520 Series, and the Statutory Disqualification Committee; and the Vice Chair of the National Adjudicatory Council shall have authority to order the disqualification of the Chair of the National Adjudicatory Council;

(c) No Change.

### **(d) [Rule 9514 Hearing Panel] Reserved**

[The NASD Regulation Board or Nasdaq Board shall have authority to order the disqualification of a member of a Hearing Panel appointed by such Board under Rule 9514(b);]

(e) through (f) No Change.

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## **9400. [PROCEDURES FOR ACTIONS TAKEN UNDER RULES 3130 AND 3131]**

### **Reserved**

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*(This rule series was amended and incorporated into new NASD Rule 9557 by SR-NASD-2003-110.)*

**[9410. Procedures for Regulating Activities of a Member Experiencing Financial or Operational Difficulties]**

**[9411. Purpose]**

[The Rule 9410 Series sets forth procedures for regulating the activities of a member that is experiencing the financial or operational difficulties specified in Rule 3130 or 3131.]

**[9412. Notice]**

[The Department of Member Regulation may issue a notice directing a member to restrict its business activities, either by limiting or ceasing to conduct those activities, if the Department of Member Regulation has reason to believe that a condition specified in Rule 3130 or Rule 3131 exists. The notice shall specify the grounds on which such restrictions are being imposed, the nature of the restrictions to be imposed, the effective date of the restrictions, a fitting sanction that will be imposed if the member fails to comply with any restrictions set forth in the notice, and the conditions for terminating such restrictions. The effective date of the restrictions shall be at least seven days after the date of service of the notice. The notice also shall inform the member that it may request a hearing before the Office of Hearing Officers under Rule 9413.

The Department of Member Regulation shall serve the notice by facsimile or overnight courier.]

**[9413. Hearing Panel Review]**

**[(a) Request for a Hearing]**

[A member subject to a notice issued under Rule 9412 may file a written request for hearing before a Hearing Panel with the Office of Hearing Officers. The request shall state the specific grounds for withdrawing or modifying any of the restrictions specified in the notice. The

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request shall be filed pursuant to Rules 9135, 9136, and 9137 within five days after service of the notice under Rule 9412. The member may withdraw its request at any time by filing a written notice with the Office of Hearing Officers pursuant to Rules 9135, 9136, and 9137. The time limits set forth herein are to be strictly construed and cannot be modified except for good cause shown.]

**[(b) Appointment of Hearing Panel]**

[The Chief Hearing Officer shall assign a Hearing Officer to preside over the matter, and appoint Panelists pursuant to Rule 9231 and 9232 to the Hearing Panel. As soon as practicable after assignment, the Chief Hearing Officer shall serve the Parties with notice of the Hearing Panel.]

**[(c) Stay]**

[Unless otherwise ordered by the NASD Board Executive Committee, the request for a hearing shall stay the effective date of the notice.]

**[(d) Transmission of Documents]**

[(1) Not less than five business days before the hearing, the Department of Member Regulation shall file with the Office of Hearing Officers four copies of the record which shall consist of the notice issued under Rule 9412 and all correspondence between the Department of Member Regulation and the Member. The Department of Member Regulation shall simultaneously serve a copy of the record on the member by facsimile or overnight courier.]

[(2) Not less than five business days before the hearing, the Department of Member Regulation and the member shall exchange proposed exhibits and also exchange lists of all potential witnesses, including a brief description of the proposed testimony.]

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The exhibits and the list of potential witnesses shall be served by facsimile or by overnight courier.]

**[(e) Time of Hearing]**

[If a member requests a hearing under paragraph (a), the Hearing Panel shall conduct a hearing within 14 days after service of the notice under Rule 9412. Not less than five business days before the hearing, the Office of Hearing Officers shall provide written notice to the member of the location, date, and time of the hearing by facsimile or overnight courier.]

**[(f) Hearing and Rights of Member]**

[The member shall be entitled to be heard in person, to be represented by an attorney, and to submit any relevant evidence. The hearing shall be recorded and a transcript prepared by a court reporter. The member may purchase a copy of the transcript from the court reporter at prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the Office of Hearing Officers within a reasonable time determined by the Office of Hearing Officers. Upon notice to the participants in the hearing, the Department of Member Regulation may order corrections to the transcript as requested or sua sponte.]

**[(g) Record of the Proceeding]**

[The record shall consist of:]

[(1) the notice issued pursuant to Rule 9412;]

[(2) the request for hearing filed pursuant to Rule 9413;]

[(3) any other submissions by the member and the Department of Member Regulation at the hearing;]

[(4) any evidence considered at the hearing;]

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[(5) the transcript of the hearing and any corrections thereto; and]

[(6) all documents transmitted to the member under Rule 9413(d).]

**[(h) Custodian of the Record]**

[The custodian of the record shall be the Office of Hearing Officers.]

**[(i) Evidence Not Admitted]**

[Evidence that is proffered but not admitted during the hearing shall not be part of the record, but shall be retained by the custodian of the record until the date when NASD's decision becomes final or, if applicable, upon the conclusion of any review by the Commission or the federal courts.]

**[(j) Failure to Request Hearing]**

[If a member does not request a hearing under paragraph (a), the restrictions specified in the notice shall become effective on the date specified in the notice. Unless the Executive Committee calls the notice for review under Rule 9415, the restrictions specified in the notice shall remain in effect until the Department of Member Regulation reduces or removes the restrictions pursuant to Rule 9417(b).]

**[(k) Decision]**

[(1) Within seven days after the hearing, the Hearing Panel shall issue a written decision approving, modifying, or withdrawing the restrictions specified in the notice. If the decision imposes restrictions, the decision shall state the grounds for the restrictions, the conditions for terminating such restrictions, and provide for a fitting sanction to be imposed under Rule 9416 if the member fails to comply with the restrictions. The Office of Hearing Officers shall promptly serve the decision by facsimile or overnight courier

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pursuant to Rules 9132 and 9134. The restrictions imposed shall become effective upon service of the decision.]

[(2) Contents of Decision]

[The decision shall include:]

[(A) a description of the Department of Member Regulation's notice, including its rationale;]

[(B) a description of the principal issues regarding the imposition of restrictions raised in the review and a statement supporting the disposition of such issues;]

[(C) a summary of the evidence on each issue;]

[(D) a statement of whether the Department of Member Regulation's notice is affirmed, modified, or reversed, and a rationale therefor; and]

[(E) if any restrictions are imposed:]

[(i) a description of the restrictions and a statement describing a fitting sanction that will be imposed under Rule 9416 if the member fails to comply with any of the restrictions; and]

[(ii) the conditions for terminating the restrictions.]

**[(I) Issuance of Decision After Expiration of Call for Review Period]**

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[The Hearing Panel shall provide its proposed written decision to the NASD Board Executive Committee. The NASD Board Executive Committee may call the proceeding for review pursuant to Rule 9415. If the NASD Board Executive Committee does not call the proceeding for review, the proposed written decision of the Hearing Panel shall constitute the final action of NASD.]

**[(m) Ex Parte Communications]**

[The prohibitions against ex parte communications in Rule 9143 shall become effective under the Rule 9410 Series when NASD staff has knowledge the NASD Board Executive Committee intends to review a decision on its own motion under this Rule.]

**[9414. Reserved.]**

**[9415. Discretionary Review by the NASD Board Executive Committee]**

**[(a) Call for Review by NASD Board Executive Committee]**

[A member of the NASD Board Executive Committee may call a proceeding for review by the NASD Board Executive Committee if the call for review is made within the period prescribed in paragraph (b).]

**[(b) 15 Day Period; Waiver]**

[A member of the NASD Board Executive Committee shall make his or her call for review not later than the next meeting of the NASD Board Executive Committee that is at least 15 days after the date on which the NASD Board Executive Committee receives the proposed written decision of the Hearing Panel. By a unanimous vote of the NASD Board Executive Committee, the NASD Board Executive Committee may shorten the period to less than 15 days. By an affirmative vote of the majority of the NASD Board Executive Committee then in office,

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the NASD Board Executive Committee may, during the 15 day period, vote to extend the period to more than 15 days.]

**[(c) Review at Next Meeting]**

[If an NASD Board Executive Committee member calls a proceeding for review within the period prescribed in paragraph (b), the NASD Board Executive Committee shall review the proceeding not later than the next meeting of the NASD Board Executive Committee. The NASD Board Executive Committee may order the filing of briefs in connection with its review proceedings pursuant to this Rule.]

**[(d) Decision of NASD Board Executive Committee, Including Remand]**

[After review, the NASD Board Executive Committee may affirm, modify, or reverse the proposed written decision of the Hearing Panel. Alternatively, the NASD Board Executive Committee may remand the proceeding with instructions. The NASD Board Executive Committee shall prepare a written decision that includes all of the elements described in Rule 9413(k)(2).]

**[(e) Issuance of Decision]**

[The NASD Board Executive Committee shall issue and serve its written decision on the member and the Department of Member Regulation pursuant to Rules 9132 and 9134. The decision shall be effective upon service. The decision shall constitute the final action of NASD, unless the NASD Board Executive Committee remands the proceeding.]

**[9416. Enforcement of Sanctions]**

**[(a) Order]**

[If the Department of Member Regulation determines that a member has failed to comply with any restrictions imposed by a decision or an effective notice under the Rule 9410 Series that

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has not been stayed, the Department of Member Regulation shall issue an order imposing the sanctions set forth in the decision or notice and specifying the effective date and time of such sanctions. The Department of Member Regulation shall serve the order on the member by facsimile or overnight courier.]

**[(b) Hearing]**

[(1) A member subject to an order issued under paragraph (a) may file a written request for a hearing before a Hearing Panel with the Office of Hearing Officers. The request shall be filed pursuant to Rules 9135, 9136, and 9137 within seven days (including intermediate Saturdays, Sundays, and Federal holidays) after service of the order. The Chief Hearing Officer shall assign a Hearing Officer to preside over the matter, and appoint Panelists pursuant to Rule 9231 and 9232 to the Hearing Panel. As soon as practicable after assignment, the Office of Hearing Officers shall serve the Parties with notice of the Hearing Panel. The hearing shall be held within ten days after service of the order under paragraph (a).]

[(2) The member shall be entitled to be heard in person, to be represented by an attorney, and to submit any relevant evidence.]

[(3) The hearing shall be recorded and a transcript prepared by a court reporter. The member may purchase a copy of the transcript from the court reporter at prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the Office of Hearing Officers within a reasonable time determined by the Office of Hearing Officers. Upon notice to the participants in the

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hearing, the Office of Hearing Officers may order corrections to the transcript as requested or sua sponte.]

**[(c) No Stay of Sanctions]**

[Unless otherwise ordered by the NASD Board Executive Committee, a request for a hearing pursuant to this Rule shall not stay the effectiveness of the order issued under paragraph (a).]

**[(d) Decision]**

[Within four days after the hearing, the Hearing Panel shall affirm, modify, or reverse the order issued under paragraph (a). The Office of Hearing Officers shall serve the decision on the member pursuant to Rules 9132 and 9134. The decision shall become effective upon service and shall constitute final action of NASD.]

**[9417. Additional Restrictions; Reduction or Removal of Restrictions]**

**[(a) Additional Restrictions]**

[If a member continues to experience financial or operational difficulty specified in Rule 3130 or 3131, notwithstanding an effective notice or decision under the Rule 9410 Series, the Department of Member Regulation may impose additional restrictions by issuing a notice under Rule 9412. The notice shall state that the member may apply for relief from the additional restrictions by filing a written application for a hearing under Rule 9413 and that the procedures in Rules 9413 through 9416 shall be applicable. An application for a hearing also shall include a detailed statement of the member's objections to the additional restrictions.]

**[(b) Reduction or Removal of Restrictions]**

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[If the Department of Member Regulation determines that any restrictions previously imposed under the Rule 9410 Series should be reduced or removed, the Department of Member Regulation shall serve a written notice on the member pursuant to Rules 9132 and 9134.]

**[9418. Application to Commission for Review]**

[The right to have any action taken by NASD pursuant to this Rule Series reviewed by the Commission is governed by Section 19 of the Act. The filing of an application for review shall not stay the effectiveness of the action taken by NASD, unless the Commission otherwise orders.]

**[9419. Other Action Not Foreclosed]**

[Action by NASD under the Rule 9410 Series shall not foreclose action by NASD under any other Rule.]

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**9500. OTHER PROCEEDINGS**

**9510. [Summary and Non-Summary Proceedings] Reserved**

*This rule series was amended and incorporated into new NASD Rule 9550 Series by SR-NASD-2003-110. Summary Proceedings under Rule 9511(a)(1) for actions authorized under Section 15A(h)(3) of the Act are now located at Rule 9558 (Summary Proceedings for Actions Authorized by Section 15A(h)(3) of the Act). Non-summary proceedings under Rule 9511(a)(2)(A) for failure to comply with an arbitration award or related settlement agreement are now located at Rule 9554 (Failure to Comply with an Arbitration Award or Related Settlement). Non-summary proceedings under Rule 9511(a)(2)(B) for failure to meet the qualification requirements or other prerequisites for access to NASD or member services is now located at Rule 9555 (Failure to Meet the Eligibility or Qualification Standards or Prerequisites*

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*for Access to Services). Non-summary proceedings under Rule 9511(a)(2)(C) for failure to comply with public communication standards are now located at Rule 9551 (Failure to Comply with Public Communication Standards). Non-summary proceedings under Rule 9511(a)(2)(D) for failure to comply with a temporary or permanent cease and desist order are now located at Rule 9556 (Failure to Comply with a Temporary or Permanent Cease and Desist Order).*

## **[9511. Purpose and Computation of Time]**

### **[(a) Purpose]**

[The Rule 9510 Series sets forth procedures for: (1) summary proceedings authorized by Section 15A(h)(3) of the Act; and (2) non-summary proceedings to impose (A) a suspension or cancellation for failure to comply with an arbitration award or a settlement agreement related to an arbitration or mediation pursuant to Article VI, Section 3 of the NASD By-Laws; (B) a suspension or cancellation of a member, or a limitation or prohibition on any member, associated person, or other person with respect to access to services offered by the Association or a member thereof, if the Association determines that such member or person does not meet the qualification requirements or other prerequisites for such access or such member or person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the Association; (C) an advertising pre-use filing requirement; or (D) a suspension or cancellation of the membership of a member or the registration of a person for failure to comply with a permanent cease and desist order entered pursuant to a decision issued under the Rule 9200 Series or Rule 9300 Series or a temporary cease and desist order entered pursuant to a decision issued under the Rule 9800 Series.]

### **[(b) Computation of Time]**

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[For purposes of the Rule 9510 Series, time shall be computed as set forth in Rule 9138, except that intermediate Saturdays, Sundays, and holidays shall be included in the computation.]

**[9512. Initiation of Summary Proceeding]**

**[(a) Authorization]**

[(1) The NASD Board may authorize the President of NASD Regulation to issue on a case-by-case basis a written notice that:]

[(A) summarily suspends a member or associated person who has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization; or]

[(B) summarily suspends a member who is in such financial or operating difficulty that the Association determines and so notifies the Commission that the member cannot be permitted to continue to do business as a member with safety to investors, creditors, other members, or the Association.]

[(2) The NASD Board may authorize the President of NASD Regulation or the President of Nasdaq to issue on a case-by-case basis a written notice that summarily limits or prohibits any person with respect to access to services offered by the Association if paragraph (a)(1) applies to such person or, in the case of a person who is not a member, if the NASD Board determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the Association.]

**[(b) Contents and Service of Notice]**

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[A notice issued under this subsection shall state the specific grounds and include the factual basis for the summary suspension, limitation, or prohibition and state that the member, associated person, or other person may file a written request for a hearing under Rule 9514. The notice shall be served by facsimile or overnight courier.]

**[(c) Effective Date]**

[A summary suspension, limitation, or prohibition shall be effective upon service of the notice under paragraph (b).]

**[9513. Initiation of Non-Summary Proceeding]**

**[(a) Notice]**

[Association staff may initiate a proceeding authorized under Rule 9511(a)(2)(A) or (B), by issuing a written notice to the member, associated person, or other person. Association staff may initiate a proceeding authorized under Rule 9511(a)(2)(D), after receiving written authorization from the President of NASD Regulatory Policy and Oversight or the Executive Vice President for NASD Regulatory Policy and Programs, by issuing a written notice to the member or associated person. The notice shall specify the grounds for and effective date of the cancellation, suspension, bar, limitation, or prohibition and shall state that the member, associated person, or other person may file a written request for a hearing under Rule 9514. In addition, if the proceeding is authorized under Rule 9511(a)(2)(D), the notice shall specifically identify the provision of the permanent or temporary cease and desist order that is alleged to have been violated, and shall contain a statement of facts specifying the alleged violation. The notice shall be served by facsimile or overnight commercial courier.]

**[(b) Effective Date]**

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[For any cancellation or suspension pursuant to Rule 9511(a)(2)(A), the effective date shall be at least 15 days after service of the notice on the member or associated person. For any action pursuant to Rule 9511(a)(2)(B) or (D), the effective date shall be at least seven days after service of the notice on the member or person, except that the effective date for a notice of a limitation or prohibition on access to services offered by the Association or a member thereof with respect to services to which the member, associated person, or other person does not have access shall be upon receipt of the notice.]

**[9514. Hearing and Decision]**

**[(a) Request]**

**[(1) Request by Member, Associated Person, or Other Person]**

[A member, associated person, or other person who is subject to a notice issued under Rule 2210, 2220, 9512(a), or 9513(a) may file a written request for a hearing with the Association. The request shall state the specific grounds for setting aside the notice. The request shall be filed pursuant to Rules 9135, 9136, and 9137 within seven days after service of the notice under Rule 9512 or 9513, or, with respect to notice of a pre-use filing requirement under Rule 2210(c)(4) and Rule 2220(c)(2), within 30 days of such notice. The member, associated person, or other person may withdraw its request for a hearing at any time by filing a written notice with the Association pursuant to Rules 9135, 9136, and 9137.]

**[(2) Failure to File Request]**

[If the member, associated person, or other person subject to the notice issued under Rule 2210, 2220, 9512(a), or 9513(a) does not file a written request for a hearing

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within the time period specified in subparagraph (1), the notice shall constitute final action by the Association.]

**[(3) Ex Parte Communications]**

[The prohibition against ex parte communications in Rule 9143 shall become effective under the Rule 9510 Series when Association staff has knowledge that a member, associated person, or other person intends to request a hearing under this paragraph.]

**[(b) Designation of Party for the Association and Appointment of Hearing Panel]**

[If a member, associated person, or other person subject to a notice under Rule 2210, 2220, 9512, or 9513 files a written request for a hearing, an appropriate department or office of the Association shall be designated as a Party in the proceeding, and a Hearing Panel shall be appointed.]

[(1) If the President of NASD Regulation or NASD Regulation staff issued the notice initiating the proceeding under Rule 2210, 2220, 9512(a), or 9513(a), the President of NASD Regulation shall designate an appropriate NASD Regulation department or office as a Party. For proceedings initiated under Rule 9513(a) concerning failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or mediation, the Chief Hearing Officer shall appoint a Hearing Panel composed of a Hearing Officer. For any other proceedings initiated under Rule 2210, 2220, 9512(a), or 9513(a) by the President of NASD Regulation or NASD Regulation staff, the NASD Regulation Board shall appoint a Hearing Panel composed of two or more members; one member shall be a Director of NASD Regulation, and the remaining

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member or members shall be current or former Directors of NASD Regulation or Governors. The President of NASD Regulation may not serve on a Hearing Panel.]

[(2) If the President of Nasdaq or Nasdaq staff issued the notice under Rule 9512(a) or 9513(a), the President of Nasdaq shall designate an appropriate Nasdaq department or office as a Party, and the Nasdaq Board shall appoint a Hearing Panel. The Hearing Panel shall be composed of two or more members. One member shall be a director of Nasdaq, and the remaining member or members shall be current or former directors of Nasdaq or Governors. The President of Nasdaq may not serve on the Hearing Panel.]

[(3) A Hearing Officer appointed pursuant to this provision shall have authority to do all things necessary and appropriate to discharge his or her duties as set forth under Rule 9235.]

**[(c) Stays]**

**[(1) Summary Proceeding]**

[Unless the NASD Board orders otherwise, a request for a hearing shall not stay the effectiveness of a summary suspension, limitation, or prohibition under Rule 9512.]

**[(2) Non-Summary Proceeding]**

[Unless the NASD Board orders otherwise, a request for a hearing shall stay the notice issued under Rule 2210, 2220, or 9513, except that a request for a hearing shall not stay a notice of a limitation or prohibition on services offered by the Association or a member thereof with respect to services to which a member, associated person, or other person does not have access.]

**[(d) Time of Hearing]**

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**[(1) Summary Proceeding]**

[If a member, associated person, or other person who is subject to a notice issued under Rule 9512(a) files a written request for a hearing, a hearing shall be held within seven days after the filing of the request for hearing. Not less than five days before the hearing, the Hearing Panel shall provide written notice to the Parties of the location, date, and time of the hearing by facsimile or overnight courier.]

**[(2) Non-Summary Proceeding]**

[If a member, associated person, or other person who is subject to a notice issued under Rule 2210, 2220, or 9513(a) files a written request for a hearing, a hearing shall be held within 40 days after the filing of the request for hearing. The Hearing Panel may, during the initial 40 day period, extend the time in which the hearing shall be held by an additional 30 days on its own motion or at the request of a Party. Not less than five days before the hearing, the Hearing Panel shall provide written notice to the Parties of the location, date, and time of the hearing by facsimile or overnight courier.]

**[(e) Transmission of Documents]**

[(1) Not less than five days before the hearing, the Association shall provide to the member, associated person, or other person who requested the hearing, by facsimile or overnight courier, all documents that were considered in issuing the notice under Rule 2210, 2220, 9512, or 9513, unless a document meets the criteria of Rule 9251(b) (1)(A), (B), or (C). A document that meets such criteria shall not constitute part of the record, but shall be retained by the Association until the date upon which the Association serves a final decision or, if applicable, upon the conclusion of any review by the Commission or the federal courts.]

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[(2) Not less than five days before the hearing, the Parties shall exchange proposed exhibit and witness lists. The exhibit and witness lists shall be served by facsimile or by overnight courier.]

**[(f) Hearing Panel Consideration]**

**[(1) Rights of Parties]**

[The Parties shall be entitled to be heard in person, to be represented by an attorney, and to submit any relevant evidence.]

**[(2) Witnesses]**

[A person who is subject to the jurisdiction of the Association shall testify under oath or affirmation. The oath or affirmation shall be administered by a court reporter.]

**[(3) Recordation of Hearing]**

[The hearing shall be recorded and a transcript prepared by a court reporter. The member, associated person, or other person may purchase a copy of the transcript from the court reporter at prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the Hearing Panel within a reasonable time determined by the Hearing Panel. Upon notice to the participants in the hearing, the Hearing Panel may order corrections to the transcript as requested or sua sponte.]

**[(4) Record]**

[The record shall consist of: (1) the notice issued under Rule 2210, 2220, 9512, or 9513; (2) all documents transmitted by the Association under Rule 9514(e)(1); (3) the

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request for hearing; (4) any other submissions by the Parties; (5) any evidence considered at the hearing; and (6) the transcript of the hearing and any corrections thereto.]

**[(5) Custodian of the Record]**

[If the President of NASD Regulation or NASD Regulation staff initiated the proceeding under Rule 2210, 2220, 9512, or 9513, the Office of the General Counsel of NASD Regulation shall be the custodian of the record, except that the Office of Hearing Officers shall be the custodian of record for proceedings initiated under Rule 9513(a) concerning failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or mediation. If the President of Nasdaq or Nasdaq staff initiated the proceeding under Rule 9512 or 9513, the Office of the General Counsel of Nasdaq shall be the custodian of the record.]

**[(6) Evidence Not Admitted]**

[Evidence that is proffered but not admitted during the hearing shall not be part of the record, but shall be retained by the custodian of the record until the date when the Association's decision becomes final or, if applicable, upon the conclusion of any review by the Commission or the federal courts.]

**[(g) Decision of the Hearing Panel]**

**[(1) Summary Proceeding]**

[Based on its review of the record, the Hearing Panel shall affirm, modify, or reverse the summary suspension, limitation, or prohibition. The Hearing Panel shall prepare a proposed written decision pursuant to subparagraph (3).]

**[(2) Non-Summary Proceeding]**

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[Based on its review of the record, the Hearing Panel shall decide whether a cancellation, suspension, bar, limitation, prohibition, or pre-use filing requirement shall be imposed or continue to be imposed. The Hearing Panel shall prepare a proposed written decision pursuant to subparagraph (3).]

**[(3) Contents of Decision]**

[The decision shall include:]

[(A) a statement setting forth the specific statute, rule, or NASD by-law that authorized the proceeding;]

[(B) a statement describing the investigative or other origin of the proceeding;]

[(C) the grounds for issuing the notice under Rule 2210, 2220, 9512, or 9513;]

[(D) a statement of findings of fact with respect to any act or practice that was alleged to have been committed or omitted by the member, associated person, or other person;]

[(E) a statement in support of the disposition of the principal issues raised in the proceedings; and]

[(F) if a summary suspension, limitation, or prohibition continues to be imposed, the specific grounds for imposing such suspension, limitation, or prohibition, and the terms of the suspension, limitation, or prohibition; or, if a non-summary suspension, cancellation, bar, limitation, prohibition or pre-use filing requirement is to be imposed or continue to be imposed, its effective date, time, and terms.]

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**[(4) Issuance of Decision After Expiration of Call for Review Period]**

[The Hearing Panel shall provide its proposed written decision to the NASD Board. The NASD Board may call the proceeding for review pursuant to Rule 9515. If the NASD Board does not call the proceeding for review, the proposed written decision of the Hearing Panel shall become final, and the Hearing Panel shall serve its written decision on the Parties pursuant to Rules 9132 and 9134. The decision shall be effective upon service and shall constitute the final action of the Association.]

**[9515. Discretionary Review by the NASD Board]**

**[(a) Call for Review by Governor]**

[A Governor may call a proceeding for review by the NASD Board if the call for review is made within the period prescribed by paragraph (b).]

**[(b) 15 Day Period; Waiver]**

[A Governor shall make his or her call for review not later than the next meeting of the NASD Board that is at least 15 days after the date on which the NASD Board receives the proposed written decision of the Hearing Panel. By a unanimous vote of the NASD Board, the NASD Board may shorten this period. By an affirmative vote of the majority of the NASD Board then in office, the NASD Board may, during the period, vote to extend the period.]

**[(c) Review at Next Meeting]**

[If a Governor calls a proceeding for review within the period prescribed by paragraph (b), the NASD Board shall review the decision not later than the next meeting of the NASD Board. The NASD Board may order the filing of briefs in connection with its review proceedings pursuant to this Rule.]

**[(d) Decision of the NASD Board, Including Remand]**

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[After review, the NASD Board may affirm, modify, or reverse the proposed written decision of the Hearing Panel. Alternatively, the NASD Board may remand the proceeding with instructions. The NASD Board shall prepare a written decision that includes all of the elements of Rule 9514(g)(3).]

**[(e) Issuance of Decision]**

[The NASD Board shall issue and serve its written decision on the Parties pursuant to Rules 9132 and 9134. The decision shall be effective upon service. The decision shall constitute the final action of the Association, unless the NASD Board remands the proceeding.]

**[9516. Reinstatement]**

[A member, associated person, or other person who has been suspended or limited by a final action of the Association under the Rule 9510 Series may file a written request for reinstatement on the ground of full compliance with the conditions of the suspension or limitation. The request shall be filed with the department or office of the Association that acted as a Party in the proceeding. The head of the department or office shall serve its response on the member or person via facsimile or overnight courier within five days after receipt of the request. If the head of the department or office denies the request, the member or person may file a written request for relief with the Review Subcommittee. The Review Subcommittee shall respond to the request in writing within 14 days after receipt of the request. The Review Subcommittee shall serve its response by facsimile or overnight courier.]

**[9517. Copies of Notices and Decisions to Members]**

[A copy of a notice initiating a proceeding, a notice of a hearing, or any other notice or decision that is served on a person associated with a member under the Rule 9510 Series shall be

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served simultaneously on such member by the same method of service provided for in the applicable rule.]

**[9518. Application to Commission for Review]**

[The right to have any action pursuant to this Rule Series reviewed by the Commission is governed by Section 19 of the Act. The filing of an application for review by the Commission shall not stay the effectiveness of final action by the Association, unless the Commission otherwise orders.]

**[9519. Other Action Not Foreclosed; Costs]**

[(a) Action by the Association under the Rule 9510 Series shall not foreclose action by the Association under any other Rule.]

[(b) The Association may impose on a member, associated person, or other person such costs of a denial of access proceeding as the Association deems fair and appropriate under the circumstances. Costs relating to other proceedings under the Rule 9510 Series may be imposed under Rule 8330.]

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**[9540. Failure to Provide Information or Meet the Eligibility and Qualification Standards]**

**[9541. Notice]**

**[(a) Notice to Member for Failure to Provide Information]**

[If a member fails to provide any information, report, material, data, or testimony requested or required to be filed pursuant to the NASD By-Laws or the Rules of the Association, or fails to keep its membership application or supporting documents current, the Association staff may provide written notice to such member specifying the nature of the failure and stating

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that the failure to take corrective action within 20 days after service of the notice constitutes grounds for suspension of membership.]

**[(b) Notice to Person Associated with Member for Failure to Provide Information]**

[If a person associated with a member fails to provide any information, report, material, data, or testimony requested or required to be filed pursuant to the NASD By-Laws or the Rules of the Association, the Association staff may provide written notice to such person specifying the nature of the failure and stating that the failure to take corrective action within 20 days after service of the notice constitutes grounds for suspending the association of the person with the member.]

**[(c) Notice to Member for Failure to Meet the Eligibility and Qualification Standards]**

[If a member becomes ineligible for continuance in membership because it does not meet the eligibility and qualification standards set forth in Article III of the By-Laws, the Association staff may provide written notice to such member stating that the failure to become eligible for continuance in membership within 20 days after service of the notice constitutes grounds for cancellation of membership.]

**[(d) Service of Notice]**

[The Association staff shall serve the member or person associated with a member with such notice via personal service or overnight courier or by facsimile at the location described in Rule 9134(b). Service by overnight courier shall be accomplished by sending the papers through an overnight courier service that generates a written confirmation of receipt or of attempts at delivery.]

**[(e) Effective Date of Notice]**

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[A notice issued and served under this Rule shall become effective 20 days after the date of service of the notice, unless stayed by a request for a hearing pursuant to Rule 9542(a).]

**[9542. Hearing]**

**[(a) Request for Hearing]**

[Within five days after the date of service of a notice issued under Rule 9541, the member or person served with such notice may file with the Office of Hearing Officers a written request for a hearing. The request shall state with specificity why the member or person believes that the notice should be set aside. The request for the hearing shall stay the effective date of the notice.]

**[(b) Hearing Procedures]**

**[(1) Appointment of Hearing Panel]**

[If a hearing is requested, based upon a notice issued under Rule 9541(a) or (b), the Chief Hearing Officer shall assign a Hearing Officer to preside over the matter, and appoint Panelists pursuant to Rules 9231 and 9232 to the Hearing Panel. As soon as practicable after the assignment, the Chief Hearing Officer shall serve the Parties with notice of the Hearing Panel. Recusals and disqualifications of Hearing Officers and Hearing Panels shall be governed by Rules 9233 and 9234.]

**[(2) Appointment of a Hearing Officer]**

[If a hearing is requested, based upon a notice issued under Rule 9541(c), the Chief Hearing Officer shall assign a Hearing Officer to conduct the hearing. As soon as practicable after the assignment, the Chief Hearing Officer shall serve the Parties with notice of the Hearing Officer. Recusals and disqualifications of Hearing Officers shall be governed by Rule 9233.]

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**[(3) Parties]**

[The Parties shall be the member or person to whom the notice was issued and the head of the department or office that issued the notice under Rule 9541.]

**[(4) Time of Hearing]**

[The hearing shall be held within 45 days after the date of service of the notice under Rule 9541. Not later than seven days before the hearing, the Hearing Officer shall serve the Parties with written notice of the date and time of the hearing.]

**[(5) Transmission of Documents]**

[Not later than seven days before the hearing, the head of the department or office that issued the notice under Rule 9541 shall serve the member or person associated with a member, either personally or via overnight courier, with all documents that were considered in connection with the decision to issue a notice under Rule 9541 and provide copies of the same to the Hearing Officer.]

**[(6) Counsel]**

[The Parties may be represented by counsel at a hearing conducted under this Rule.]

**[(7) Evidence]**

[Formal rules of evidence shall not apply to a hearing under this Rule. Not later than four days before the hearing, the Parties shall exchange copies of proposed hearing exhibits and witness lists and provide copies of the same to the Hearing Officer.]

**[(8) Witnesses]**

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[A person who is subject to the jurisdiction of the Association shall testify under oath or affirmation. The oath or affirmation shall be administered by a court reporter or a notary public.]

**[(9) Additional Information]**

[At any time during its consideration, the Hearing Officer may direct the Parties to submit additional information. Any additional information submitted shall be provided promptly to all Parties at least one business day before the Hearing Panel renders its decision.]

**[(10) Transcript]**

[The hearing shall be recorded and a transcript prepared by a court reporter. A Party may purchase a copy of the transcript from the court reporter at prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the Hearing Officer within a reasonable time determined by the Hearing Officer. Upon notice to the participants in the hearing, the Hearing Officer may order corrections to the transcript as requested or sua sponte.]

**[(11) Record]**

[The record shall consist of all documents that were considered in connection with the decision to issue a notice under Rule 9541, the notice issued under Rule 9541, the request for hearing filed under Rule 9542, the transcript of the hearing, and each document or other item of evidence presented to or considered by the Hearing Panel. The Office of Hearing Officers shall be the custodian of the record.]

**[(12) Evidence Not Admitted]**

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[Evidence that is proffered but not admitted during the hearing shall not be part of the record, but shall be retained by the custodian of the record until the date when the Association's decision becomes final or, if applicable, upon the conclusion of any review by the Commission or the federal courts.]

**[(13) Failure to Appear at Hearing]**

[If a member or person fails to appear at a hearing for which he has notice, the Hearing Officer may dismiss the request for a hearing as abandoned, and the notice issued under Rule 9541 shall become final. Upon a showing of good cause, the Hearing Officer may withdraw a dismissal entered pursuant to this subparagraph.]

**[9543. Decision]**

**[(a) Failure to Provide Information]**

[The Hearing Panel may impose any fitting sanction, including fines, suspensions, expulsions and bars, based upon the failure to provide any information, report, material, data, or testimony requested or required to be filed pursuant to the NASD By-Laws or the Rules of the Association, or failure to keep a membership application or supporting documents current. The Hearing Panel shall prepare a written decision, and if the Hearing Panel determines that a sanction should be imposed, the written decision shall state the grounds for the sanction, and in the case of a suspension, the conditions for terminating the suspension. A Party sanctioned under this Rule will have the right to appeal such a decision to the National Adjudicatory Council, and the decision will be subject to an NASD Board call for review, in accordance with the Rule 9300 Series. If not timely appealed or called for review, the Hearing Panel decision shall constitute final disciplinary action of the Association for purposes of SEC Rule 19d-1(c)(1).]

**[(b) Failure to Meet the Eligibility and Qualification Standards]**

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[The Hearing Officer may cancel the membership of any member who is ineligible for continuance in membership because it does not meet the eligibility and qualification standards set forth in Article III of the By-Laws. The Hearing Officer shall prepare a written decision, and if the Hearing Officer determines that a cancellation should be imposed, the written decision shall state the grounds for the cancellation. A member canceled under this Rule will have the right to appeal such a decision to the National Adjudicatory Council, and the decision will be subject to an NASD Board call for review, in accordance with the Rule 9300 Series. If not timely appealed or called for review, the Hearing Officer decision shall constitute final disciplinary action of the Association for purposes of SEC Rule 19d-1(c)(1).]

**[9544. Defaults]**

[Respondents may file motions for reinstatement with the head of the department that issued the original pre-suspension notice under Rules 9541(a) or (b) within six months of the date of the original pre-suspension notice. If such a motion is filed, a Hearing Panel will be convened under Rule 9542, and the Hearing Panel may impose any fitting sanction. Respondents who are suspended pursuant to Rules 9541(a) or (b) and who fail to request hearing to challenge the suspensions within six months of receipt of the pre-suspension notice issued under Rules 9541(a) or (b) will automatically be barred or expelled.]

**[9545. Notice to Membership]**

[The Association shall provide notice of a suspension, expulsion, cancellation, or bar under this Rule Series and the grounds therefor in the next membership supplement.]

**[9546. Copies of Notices and Decisions to Member]**

[A copy of a notice or decision under the Rule 9540 Series that is served on a person associated with a member shall be served on such member.]

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**[9547. Other Action Not Foreclosed]**

[Action by the Association under the Rule 9540 Series shall not foreclose action by the Association under any other Rule.]

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**9550. Expedited Proceedings**

**9551. Failure to Comply with Public Communication Standards**

**(a) Notice of Pre-Use Filing Requirement**

Pursuant to Rules 2210(c)(5) and 2220(c)(2), NASD staff may issue a written notice requiring a member to file advertising, educational material or sales literature with the NASD Advertising Regulation Department at least ten days prior to use if NASD staff determines that the member has departed from the standards of Rule 2210 or Rule 2220.

**(b) Service of Notice of Pre-Use Filing Requirement**

NASD staff shall serve the member with such notice in accordance with Rule 9134.

**(c) Contents of Notice**

A notice issued under this Rule shall state the specific grounds and include the factual basis for the NASD action. The notice shall state when the NASD action will take effect. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the NASD action. In addition, the notice shall explain that, pursuant to Rules 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

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**(d) Effective Date of Notice of Pre-Use Filing Requirement**

Pursuant to Rules 2210(c)(5) and 2220(c)(2), the pre-use filing requirement referenced in a notice issued and served under this Rule shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.

**(e) Request for Hearing**

A member served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made before the effective date of the notice, as indicated in paragraph (d) of this Rule. A request for a hearing must set forth with specificity any and all defenses to the NASD action.

**(f) Failure to Request Hearing**

If a member does not timely request a hearing, the pre-use filing requirements specified in the notice shall become effective 21 days after service of the notice and the notice shall constitute final NASD action.

**(g) Request for Modification or Termination of Pre-Use Filing Requirement**

A member that is subject to a pre-use filing requirement under this Rule may file a written request for modification or termination of the requirement. Such request shall be filed with the head of the NASD department or office that issued the notice or, if another NASD department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the NASD department or office that is so designated. The head of the appropriate department or office may grant relief for good cause shown.

**9552. Failure to Provide Information or Keep Information Current**

**(a) Notice of Suspension of Member, Person Associated with a Member or Person Subject to NASD's Jurisdiction if Corrective Action is Not Taken**

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If a member, person associated with a member or person subject to NASD's jurisdiction fails to provide any information, report, material, data, or testimony requested or required to be filed pursuant to the NASD By-Laws or the NASD Rules, or fails to keep its membership application or supporting documents current, NASD staff may provide written notice to such member or person specifying the nature of the failure and stating that the failure to take corrective action within 21 days after service of the notice will result in suspension of membership or of association of the person with any member.

**(b) Service of Notice of Suspension**

NASD staff shall serve the member or person with such notice in accordance with Rule 9134. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member.

**(c) Contents of Notice**

A notice issued under this Rule shall state the specific grounds and include the factual basis for the NASD action. The notice shall state when the NASD action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the NASD action. In addition, the notice shall explain that, pursuant to Rules 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

**(d) Effective Date of Suspension**

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The suspension referenced in a notice issued and served under this Rule shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.

**(e) Request for Hearing**

A member or person served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made before the effective date of the notice, as indicated in paragraph (d) of this Rule. A request for a hearing must set forth with specificity any and all defenses to the NASD action.

**(f) Request for Termination of the Suspension**

A member or person subject to a suspension pursuant to this Rule may file a written request for termination of the suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the NASD department or office that issued the notice or, if another NASD department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the NASD department or office that is so designated. The head of the appropriate department or office may grant relief for good cause shown.

**(g) Settlement Procedure**

Uncontested offers of settlement shall be permitted under this Rule and shall conform to the requirements of Rule 9270, except that, if an uncontested offer of settlement, made under Rule 9270(e) after a hearing on the merits has begun, is accepted by the Hearing Officer, the Hearing Officer shall issue the order of acceptance, which shall constitute final NASD action. Contested offers of settlement shall not be considered in proceedings initiated under this Rule.

**(h) Defaults**

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A member or person who is suspended under this Rule and fails to request termination of the suspension within six months of issuance of the original notice of suspension will automatically be expelled or barred.

**(i) Notice to Membership**

NASD shall provide notice of any final NASD action taken under this Rule in the next Notice to Members Disciplinary and Other NASD Action Section.

**9553. Failure to Pay NASD Dues, Fees and Other Charges**

**(a) Notice of Suspension, Cancellation or Bar**

If a member, person associated with a member or person subject to NASD's jurisdiction fails to pay any fees, dues, assessment or other charge required to be paid under the NASD By-Laws or Rules, or to submit a required report or information related to such payment, NASD staff may issue a written notice to such member or person stating that the failure to comply within 21 days of service of the notice will result in a suspension or cancellation of membership or a suspension or bar from associating with any member.

**(b) Service of Notice of Suspension, Cancellation or Bar**

NASD staff shall serve the member or person with such notice in accordance with Rule 9134. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member.

**(c) Contents of Notice**

A notice issued under this Rule shall state the specific grounds and include the factual basis for the NASD action. The notice shall state when the NASD action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant

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to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the NASD action. In addition, the notice shall explain that, pursuant to Rules 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

**(d) Effective Date of Suspension, Cancellation or Bar**

The suspension, cancellation or bar referenced in a notice issued and served under this Rule shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.

**(e) Request for Hearing**

A member or person served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made before the effective date of the notice, as indicated in paragraph (d) of this Rule. A request for a hearing must set forth with specificity any and all defenses to the NASD action.

**(f) Failure to Request Hearing**

If a member or person does not timely request a hearing, the suspension, cancellation or bar specified in the notice shall become effective 21 days after service of the notice and the notice shall constitute final NASD action.

**(g) Request for Termination of the Suspension**

A member or person subject to a suspension under this Rule may file a written request for termination of the suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the NASD department or office that issued the notice or, if

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another NASD department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the NASD department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

**(h) Notice to Membership**

NASD shall provide notice of any final NASD action taken pursuant to this Rule in the next Notice to Members Disciplinary and Other NASD Action Section.

**9554. Failure to Comply with an Arbitration Award or Related Settlement**

**(a) Notice of Suspension, Cancellation or Bar**

If a member, person associated with a member or person subject to NASD's jurisdiction fails to comply with an arbitration award or a settlement agreement related to an arbitration or mediation under Article VI, Section 3 of the NASD By-Laws, NASD staff may provide written notice to such member or person stating that the failure to comply within 21 days of service of the notice will result in a suspension or cancellation of membership or a suspension or bar from associating with any member.

**(b) Service of Notice of Suspension, Cancellation or Bar**

NASD staff shall serve the member or person with such notice in accordance with Rule 9134. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member.

**(c) Contents of Notice**

A notice issued under this Rule shall state the specific grounds and include the factual basis for the NASD action. The notice shall state when the NASD action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the

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respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the NASD action. In addition, the notice shall explain that, pursuant to Rules 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

**(d) Effective Date of Suspension, Cancellation or Bar**

The suspension, cancellation or bar referenced in a notice issued and served under this Rule shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.

**(e) Request for Hearing**

A member or person served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made before the effective date of the notice, as indicated in paragraph (d) of this Rule. A request for a hearing must set forth with specificity any and all defenses to the NASD action.

**(f) Failure to Request Hearing**

If a member or person does not timely request a hearing, the suspension, cancellation or bar specified in the notice shall become effective 21 days after the service of the notice and the notice shall constitute final NASD action.

**(g) Request for Termination of the Suspension**

A member or person subject to a suspension under this Rule may file a written request for termination of the suspension on the ground of full compliance with the notice or decision. Such

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request shall be filed with the head of the NASD department or office that issued the notice or, if another NASD department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the NASD department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

**(h) Notice to Membership**

NASD shall provide notice of any final NASD action taken pursuant to this Rule in the next Notice to Members Disciplinary and Other NASD Action Section.

**9555. Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services**

**(a) Notice to Member or Person of Suspension, Cancellation, Bar, or Limitation or Prohibition on Access to Services**

(1) If a member or an associated person does not meet the eligibility or qualification standards set forth in the NASD By-Laws or Rules, NASD staff may provide written notice to such member or person stating that the failure to become eligible or qualified will result in a suspension or cancellation of membership or a suspension or bar from associating with any member.

(2) If a member, associated person, or other person does not meet the prerequisites for access to services offered by NASD or a member thereof or cannot be permitted to continue to have access to services offered by NASD or a member thereof with safety to investors, creditors, members, or NASD, NASD staff may provide written notice to such member or person limiting or prohibiting access to services offered by NASD or a member thereof.

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**(b) Service of Notice**

NASD staff shall serve the member or person with such notice in accordance with Rule 9134. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member.

**(c) Contents of Notice**

A notice issued under this Rule shall state the specific grounds and include the factual basis for the NASD action. The notice shall state when the NASD action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the NASD action. In addition, the notice shall explain that, pursuant to Rules 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

**(d) Effective Date of Limitation, Prohibition, Suspension, Cancellation or Bar**

The limitation, prohibition, suspension, cancellation or bar referenced in a notice issued under this Rule shall become effective 14 days after service of the notice, except that the effective date for a notice of a limitation or prohibition on access to services offered by NASD or a member thereof with respect to services to which the member or person does not have access shall be upon service of the notice. A request for a hearing, pursuant to Rule 9559, shall stay the effectiveness of the notice, except that the effectiveness of a notice of a limitation or prohibition

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on access to services offered by NASD or a member thereof with respect to services to which the member or person does not have access shall not be stayed by a request for a hearing.

**(e) Request for Hearing**

A member or person served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made within 14 days after service of the notice. A request for a hearing must set forth with specificity any and all defenses to the NASD action.

**(f) Failure to Request Hearing**

If a member or person does not timely request a hearing, the limitation, prohibition, suspension, cancellation or bar specified in the notice shall become effective 14 days after service of the notice, except that the effective date for a notice of a limitation or prohibition on access to services offered by NASD or a member thereof with respect to services to which the member or person does not have access shall be upon service of the notice. The notice shall constitute final NASD action if the member or person does not request a hearing within 14 days after service of the notice.

**(g) Request for Termination of the Limitation, Prohibition or Suspension**

A member or person subject to a limitation, prohibition or suspension under this Rule may file a written request for termination of the limitation, prohibition or suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the NASD department or office that issued the notice or, if another NASD department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the NASD department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

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**(h) Notice to Membership**

NASD shall provide notice of any final NASD action taken pursuant to this Rule in the next Notice to Members Disciplinary and Other NASD Action Section.

**9556. Failure to Comply with Temporary and Permanent Cease and Desist Orders**

*(Rule 9556, and amendments adopted by SR-NASD-98-80 to Rule 8310, IM-8310-2(d)(1), 9120(x), 9241(c), 9290, 9311(b), 9312(b), 9360 and the Rule 9800 Series, shall expire on June 23, 2005, unless extended or permanently adopted by the Association pursuant to SEC approval at or before such date.)*

**(a) Notice of Suspension, Cancellation or Bar**

If a member, person associated with a member or person subject to NASD's jurisdiction fails to comply with a temporary or permanent cease and desist order issued under the Rule 9200, 9300 or 9800 Series, NASD staff—after receiving written authorization from the President of NASD Regulatory Policy and Oversight or the Executive Vice President for NASD Regulatory Policy and Programs—may issue a notice to such member or person stating that the failure to comply with the temporary or permanent cease and desist order within seven days of service of the notice will result in a suspension or cancellation of membership or a suspension or bar from associating with any member.

**(b) Service of Notice**

NASD staff shall serve the member or person subject to a notice issued under this Rule by facsimile, overnight courier or personal delivery. Papers served on a member or person by overnight courier or personal delivery shall conform to paragraphs (a)(1) and (3) and (b)(1) and (2) of Rule 9134. Papers served on a member by facsimile shall be sent to the facsimile number listed in the member's contact questionnaire submitted to NASD pursuant to Article 4, Section III

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of NASD's By-Laws, except that, if NASD staff has actual knowledge that an entity's contact questionnaire facsimile number is out of date, duplicate copies shall be sent to the entity by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a person by facsimile shall be sent to the person's last known facsimile number and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member. Service is complete upon sending the notice by facsimile, mailing the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete upon sending the duplicate service.

**(c) Contents of Notice**

The notice shall explicitly identify the provision of the permanent or temporary cease and desist order that is alleged to have been violated and shall contain a statement of facts specifying the alleged violation. The notice shall state when the NASD action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the NASD action. In addition, the notice shall explain that, pursuant to Rules 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

**(d) Effective Date of Suspension, Cancellation or Bar**

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The suspension, cancellation or bar referenced in a notice issued and served under this Rule shall become effective seven days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.

**(e) Request for a Hearing**

A member served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made before the effective date of the notice, as indicated in paragraph (d) of this Rule. A request for a hearing must set forth with specificity any and all defenses to the NASD action.

**(f) Failure to Request Hearing**

If a member or person does not timely request a hearing, the suspension, cancellation or bar specified in the notice shall become effective seven days after the service of the notice and the notice shall constitute final NASD action.

**(g) Request for Termination of the Suspension**

A member or person subject to a suspension under this Rule may file a written request for termination of the suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the NASD department or office that issued the notice or, if another NASD department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the NASD department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

**(h) Notice to Membership**

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NASD shall provide notice of any final NASD action taken pursuant to this Rule in the next Notice to Members Disciplinary and Other NASD Action Section.

**9557. Procedures for Regulating Activities Under Rules 3130 and 3131 Regarding a Member Experiencing Financial or Operational Difficulties**

**(a) Notice of Restriction**

NASD staff may issue a notice directing a member to restrict its business activities, either by limiting or ceasing to conduct those activities, if NASD staff has reason to believe that a condition specified in Rule 3130 or Rule 3131 exists.

**(b) Service of Notice**

NASD staff shall serve the member subject to a notice issued under this Rule by facsimile, overnight courier or personal delivery. Papers served on a member by overnight courier or personal delivery shall conform to paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by facsimile shall be sent to the facsimile number listed in the member's contact questionnaire submitted to NASD pursuant to Article 4, Section III of NASD's By-Laws, except that, if NASD staff has actual knowledge that an entity's contact questionnaire facsimile number is out of date, duplicate copies shall be sent to the entity by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Service is complete upon sending the notice by facsimile, mailing the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete upon sending the duplicate service.

**(c) Contents of Notice**

A notice issued under this Rule shall state the specific grounds and include the factual basis for the NASD action. The notice shall state when the NASD action will take effect and

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explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the NASD action. In addition, the notice shall explain that, pursuant to Rules 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

**(d) Effective Date of Restriction**

The restrictions referenced in a notice issued and served under this Rule shall become effective seven days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.

**(e) Request for a Hearing**

A member served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made before the effective date of the notice, as indicated in paragraph (d) of this Rule. A request for a hearing must set forth with specificity any and all defenses to the NASD action.

**(f) Failure to Request Hearing**

If a member does not timely request a hearing, the restrictions specified in the notice shall become effective seven days after service of the notice. The restrictions specified in the notice shall remain in effect until the head of the NASD department or office that issued the notice or, if another NASD department or office is named as the party handling the matter on behalf of the

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issuing department or office, the head of the NASD department or office that is so designated reduces or removes the restrictions pursuant to paragraph (h) of this Rule.

**(g) Order to Enforce Sanctions**

If NASD staff determines that a member has failed to comply with any restrictions imposed by a decision or an effective notice under this Rule that have not been stayed, NASD staff shall issue an order imposing the sanctions set forth in the decision or notice and specifying the effective date and time of such sanctions. The order shall inform the member that it may apply for relief from the sanctions imposed by the order by filing a written request for a hearing before the Office of Hearing Officers under Rule 9559. The procedures delineated in this Rule shall be applicable.

**(h) Additional Restrictions or the Reduction or Removal of Restrictions**

**(1) Additional Restrictions**

If a member continues to experience financial or operational difficulty specified in Rule 3130 or 3131, notwithstanding an effective notice, order or decision under this Rule, NASD Staff may impose additional restrictions by issuing a notice under paragraph (b) of this Rule. The notice shall inform the member that it may apply for relief from the additional restrictions by filing a written request for a hearing before the Office of Hearing Officers under Rule 9559. The procedures delineated in this Rule shall be applicable to such a notice.

**(2) Reduction or Removal of Restrictions**

If NASD staff determines that any restrictions previously imposed under this Rule should be reduced or removed, NASD staff shall serve a written notice on the member pursuant to Rule 9134.

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**(i) Notice to Membership**

NASD shall provide notice of any final NASD action taken pursuant to this Rule in the next Notice to Members Disciplinary and Other NASD Action Section.

**9558. Summary Proceedings for Actions Authorized by Section 15A(h)(3) of the Act**

**(a) Notice of Initiation of Summary Proceedings**

The President of NASD Regulatory Policy and Oversight or the Executive Vice President for NASD Regulatory Policy and Programs may provide written authorization to NASD staff to issue on a case-by-case basis a written notice that summarily:

(1) suspends a member, person associated with a member or person subject to NASD's jurisdiction who has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization;

(2) suspends a member who is in such financial or operating difficulty that NASD staff determines and so notifies the Commission that the member cannot be permitted to continue to do business as a member with safety to investors, creditors, other members, or NASD; or

(3) limits or prohibits any person with respect to access to services offered by NASD if paragraphs (1) or (2) of this Rule or the provisions of Section 15A(h)(3) of the Act applies to such person or, in the case of a person who is not a member, if the President of NASD Regulatory Policy and Oversight or the Executive Vice President for NASD Regulatory Policy and Programs determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot

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be permitted to continue to have such access with safety to investors, creditors, members, or NASD, and so notifies the Commission.

**(b) Service of Notice**

NASD staff shall serve the member or person subject to a notice issued under this Rule by facsimile, overnight courier or personal delivery. Papers served on a member or person by overnight courier or personal delivery shall conform to paragraphs (a)(1) and (3) and (b)(1) and (2) of Rule 9134. Papers served on a member by facsimile shall be sent to the facsimile number listed in the member's contact questionnaire submitted to NASD pursuant to Article 4, Section III of NASD's By-Laws, except that, if NASD staff has actual knowledge that an entity's contact questionnaire facsimile number is out of date, duplicate copies shall be sent to the entity by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a person by facsimile shall be sent to the person's last known facsimile number and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member. Service is complete upon sending the notice by facsimile, mailing the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete upon sending the duplicate service.

**(c) Contents of Notice**

A notice issued under this Rule shall state the specific grounds and include the factual basis for the NASD action. The notice shall state when the NASD action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant

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to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the NASD action. In addition, the notice shall explain that, pursuant to Rules 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

**(d) Effective Date of Limitation, Prohibition or Suspension**

The limitation, prohibition or suspension referenced in a notice issued and served under this Rule is immediately effective. The limitation, prohibition or suspension specified in the notice shall remain in effect unless, after a timely written request for a hearing and written request for a stay, the Chief Hearing Officer or Hearing Officer assigned to the matter finds good cause exists to stay the limitation, prohibition or suspension.

**(e) Request for a Hearing and Stay**

A member or person subject to a notice issued under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made within seven days after service of the notice issued under this Rule. A request for a hearing must set forth with specificity any and all defenses to the NASD action.

A member or person subject to a notice issued under this Rule may, concurrent with or after filing a request for a hearing, file with the Office of Hearing Officers a written request for a stay of the limitation, prohibition or suspension specified in the notice. A request for a stay must set forth with specificity any and all relevant facts and arguments supporting the request for a stay.

**(f) Failure to Request Hearing**

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If a member or person subject to a notice issued under this Rule does not timely request a hearing within the time period specified in paragraph (e) of this Rule, the notice shall constitute final NASD action.

**(g) Request for Termination of the Limitation, Prohibition or Suspension**

A member or person subject to a limitation, prohibition or suspension under this Rule may file a written request for termination of the limitation, prohibition or suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the NASD department or office that issued the notice or, if another NASD department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the NASD department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

**(h) Notice to Membership**

NASD shall provide notice of any final NASD action taken pursuant to this Rule in the next Notice to Members Disciplinary and Other NASD Action Section.

**9559. Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series**

**(a) Applicability**

The hearing procedures under this Rule shall apply to a member, person associated with a member, person subject to NASD's jurisdiction or other person who is served with a notice issued under the Rule 9550 Series and who timely requests a hearing. For purposes of this Rule, such members or persons shall be referred to as respondents.

**(b) Computation of Time**

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Rule 9138 shall govern the computation of time in proceedings brought under the Rule 9550 Series, except that intermediate Saturdays, Sundays and Federal holidays shall be included in the computation in proceedings brought under Rules 9556 through 9558.

**(c) Stays**

Unless the Chief Hearing Officer or the Hearing Officer assigned to the matter orders otherwise for good cause shown, a timely request for a hearing shall stay the effectiveness of a notice issued under Rules 9551 through 9557, except that the effectiveness of a notice of a limitation or prohibition on access to services offered by NASD or a member thereof under Rule 9555 with respect to services to which the member or person does not have access shall not be stayed by a request for a hearing. A timely request for a hearing shall not stay the effectiveness of a notice issued under Rule 9558, unless the Chief Hearing Officer or the Hearing Officer assigned to the matter orders otherwise for good cause shown.

**(d) Appointment and Authority of Hearing Officer and/or Hearing Panel**

(1) For proceedings initiated under Rules 9553 and 9554, the Chief Hearing Officer shall appoint a Hearing Officer to preside over and act as the sole adjudicator for the matter.

(2) For proceedings initiated under Rules 9551, 9552, 9555, 9556, 9557 and 9558, the Chief Hearing Officer shall appoint a Hearing Panel composed of a Hearing Officer and two Panelists. The Hearing Officer shall serve as the chair of the Hearing Panel. The Chief Hearing Officer shall select as Panelists persons who meet the qualifications delineated in Rules 9231 and 9232.

(3) Rules 9231(e), 9233 and 9234 shall govern disqualification, recusal or withdrawal of a Hearing Officer or, if applicable, Hearing Panelist.

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(4) A Hearing Officer appointed pursuant to this provision shall have authority to do all things necessary and appropriate to discharge his or her duties as set forth under Rules 9235 and 9280.

(5) Hearings under the Rule 9550 Series shall be held by telephone conference, unless the Hearing Officer orders otherwise for good cause shown.

(6) For good cause shown, or with the consent of all of the parties to a proceeding, the Hearing Officer or, if applicable, the Hearing Panel may extend or shorten any time limits prescribed by this Rule.

**(e) Consolidation or Severance of Proceedings**

Rule 9214 shall govern the consolidation or severance of proceedings, except that, where one of the notices that are the subject of consolidation under this Rule requires that a hearing be held before a Hearing Panel, the hearing of the consolidated matters shall be held before a Hearing Panel. Where two consolidated matters contain different timelines under this Rule, the Chief Hearing Officer or Hearing Officer assigned to the matter has discretion to determine which timeline is appropriate under the facts and circumstances of the case. Where one of the consolidated matters includes an action brought under Rule 9558, the limitation, prohibition or suspension specified in the notice shall not be stayed pending resolution of the case unless the Chief Hearing Officer or Hearing Officer assigned to the matter orders otherwise for good cause shown. Where one of the consolidated matters includes an action brought under Rule 9555 with respect to services to which the member or person does not have access, the effectiveness of a notice of a limitation or prohibition on access to services offered by NASD or a member thereof shall not be stayed pending resolution of the case.

**(f) Time of Hearing**

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(1) A hearing shall be held within 14 days after a respondent subject to a notice issued under Rules 9556 through 9558 files a written request for a hearing with the Office of Hearing Officers.

(2) A hearing shall be held within 60 days after a respondent subject to a notice issued under Rules 9551 through 9555 files a written request for a hearing with the Office of Hearing Officers.

(3) The timelines established by paragraphs (f)(1) and (2) confer no substantive rights on the parties.

**(g) Notice of Hearing**

The Hearing Officer shall issue a notice stating the date, time, and place of the hearing as follows:

(1) At least seven days prior to the hearing in the case of an action brought pursuant to Rules 9556 through 9558 and

(2) At least 21 days prior to the hearing in the case of an action brought pursuant to Rules 9551 through 9555.

**(h) Transmission of Documents**

(1) Not less than seven days before the hearing in an action brought under Rules 9556 through 9558 and not less than 40 days before the hearing in an action brought under Rules 9551 through 9555, NASD staff shall provide to the respondent who requested the hearing, by facsimile or overnight courier, all documents that were considered in issuing the notice unless a document meets the criteria of Rule 9251(b)(1)(A), (B) or (C). A document that meets such criteria shall not constitute part of the record, but shall be retained by NASD until the date upon which NASD serves a

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final decision or, if applicable, upon the conclusion of any review by the Securities and Exchange Commission or the federal courts.

(2) Not less than three days before the hearing in an action brought under Rules 9556 through 9558 and not less than 14 days before the hearing in an action brought under Rules 9551 through 9555, the parties shall exchange proposed exhibit and witness lists. The exhibit and witness lists shall be served by facsimile or by overnight courier.

**(i) Evidence**

Formal rules of evidence shall not apply to a hearing under this Rule Series. Rules 9262 and 9263 shall govern testimony and the admissibility of evidence.

**(j) Additional Information**

The Hearing Officer or, if applicable, the Hearing Panel may direct the Parties to submit additional information.

**(k) Record of Hearing**

Rule 9265 shall govern the requirements for the record of the hearing.

**(l) Record of Proceeding**

Rule 9267 shall govern the record of the proceeding.

**(m) Failure to Appear at a Pre-Hearing Conference or Hearing or to Comply with a Hearing Officer Order Requiring the Production of Information**

Failure of any respondent to appear before the Hearing Officer or, if applicable, the Hearing Panel at any status conference, pre-hearing conference or hearing, or to comply with any order of the Hearing Officer or, if applicable, Hearing Panel requiring production of information to support any defense to the notice that respondent has raised, shall be considered an abandonment of the respondent's defense and waiver of any opportunity for a hearing provided

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by the Rule 9550 Series. In such cases, the notice issued under the Rule 9550 Series shall be deemed to be final NASD action. The Hearing Officer or, if applicable, the Hearing Panel may permit the hearing to go forward as to those parties who appear and otherwise comply with this Rule.

**(n) Sanctions, Costs and Remands**

(1) The Hearing Officer or, if applicable, the Hearing Panel may approve, modify or withdraw any and all sanctions or limitations imposed by the notice. The Hearing Officer or, if applicable, the Hearing Panel also may impose any other fitting sanction, pursuant to Rule 8310(a).

(2) The Hearing Officer or, if applicable, the Hearing Panel may impose costs pursuant to Rule 8330.

(3) The Hearing Officer or, if applicable, the Hearing Panel may remand the matter to the department or office that issued the notice for further consideration of specified matters.

**(o) Timing of Decision**

(1) Proceedings initiated under Rules 9553 and 9554

Within 60 days of the date of the close of the hearing, the Hearing Officer shall prepare a written decision and provide it to the National Adjudicatory Council's Review Subcommittee.

(2) Proceedings initiated under Rules 9556 through 9558

Within 21 days of the date of the close of the hearing, the Hearing Officer shall prepare a written decision that reflects the views of the Hearing Panel, as determined by

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majority vote, and provide it to the National Adjudicatory Council's Review Subcommittee.

(3) Proceedings initiated under Rules 9551, 9552 and 9555

Within 60 days of the date of the close of the hearing, the Hearing Officer shall prepare a written decision that reflects the views of the Hearing Panel, as determined by majority vote, and provide it to the National Adjudicatory Council's Review Subcommittee.

(4) If not timely called for review by the National Adjudicatory Council's Review Subcommittee pursuant to paragraph (q) of this Rule, the Hearing Officer's or, if applicable, the Hearing Panel's written decision shall constitute final NASD action. The Office of Hearing Officers shall promptly serve the decision of the Hearing Officer or, if applicable, the Hearing Panel on the Parties and provide a copy to each NASD member with which the respondent is associated.

(5) The timelines established by paragraphs (o)(1)-(4) confer no substantive rights on the parties.

**(p) Contents of Decision**

The decision shall include:

(1) a statement describing the investigative or other origin of the notice issued under the Rule 9550 Series;

(2) the specific statutory or rule provisions that were alleged to have been violated;

(3) a statement setting forth the findings of fact with respect to any act or practice the respondent was alleged to have committed or omitted;

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(4) the conclusions of the Hearing Officer or, if applicable, Hearing Panel as to whether the respondent violated any provision alleged in the notice;

(5) a statement of the Hearing Officer or, if applicable, Hearing Panel in support of the disposition of the principal issues raised in the proceeding; and

(6) a statement describing any sanction or limitation imposed, the reasons therefore, and the date upon which such sanction or limitation shall become effective.

**(g) Call for Review by the National Adjudicatory Council**

(1) The National Adjudicatory Council's Review Subcommittee may call for review a decision issued under the Rule 9550 Series within 21 days after receipt of the decision from the Office of Hearing Officers. Rule 9313(a) is incorporated by reference.

(2) If the Review Subcommittee calls the proceeding for review within the prescribed time, a Subcommittee of the National Adjudicatory Council shall meet and conduct a review not later than 40 days after the call for review. The Subcommittee shall be composed pursuant to Rule 9331(a)(1). The Subcommittee may elect to hold a hearing or decide the matter on the basis of the record made before the Hearing Officer or, if applicable, the Hearing Panel. Not later than 60 days after the call for review, the Subcommittee shall make its recommendation to the National Adjudicatory Council. Not later than 60 days after receipt of the Subcommittee's recommendation, the National Adjudicatory Council shall serve a final written decision on the parties via overnight courier or facsimile. The National Adjudicatory Council may affirm, modify or reverse the decision of the Hearing Officer or, if applicable, the Hearing Panel. The National Adjudicatory Council also may impose any other fitting sanction, pursuant to Rule 8310(a), and may impose costs, pursuant to 8330. In addition, the National Adjudicatory

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Council may remand the matter to the Office of Hearing Officers for further consideration of specified matters.

(3) For good cause shown, or with the consent of all of the parties to a proceeding, the Review Subcommittee, the National Adjudicatory Council Subcommittee or the National Adjudicatory Council may extend or shorten any time limits prescribed by this Rule.

(4) The National Adjudicatory Council's written decision shall constitute final NASD action.

(5) The National Adjudicatory Council shall promptly serve the decision on the Parties and provide a copy of the decision to each NASD member with which the respondent is associated.

(6) The timelines established by paragraphs (q)(1)-(5) confer no substantive rights on the parties.

**(r) Notice to Membership**

NASD shall provide notice of any final NASD action in the next Notice to Members Disciplinary and Other NASD Action Section.

**(s) Application to Commission for Review**

The right to have any action pursuant to this Rule reviewed by the Securities and Exchange Commission is governed by Section 19(f) of the Securities Exchange Act. The filing of an application for review by the Securities and Exchange Commission shall not stay the effectiveness of final NASD action, unless the Securities and Exchange Commission otherwise orders.

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**9800. TEMPORARY CEASE AND DESIST ORDERS**

*(The entire Rule 9800 Series, and related amendments adopted by SR-NASD-98-80 to Rules 8310, IM-8310-2(d)(1), 9120(x), 9241(c), 9290, 9311(b), 9312(b), 9360, [9511(a), 9513(a) and 9513(b)] and 9556, shall expire on June 23, 2005, unless extended or permanently adopted by the Association pursuant to SEC approval at or before such date.)*

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# Notice to Members

MAY 2004

## SUGGESTED ROUTING

Legal/Compliance  
Operations  
Senior Management

## KEY TOPICS

Business Continuity Plans  
Contingency Planning  
Emergency Contact Information  
Mission Critical Systems  
Rule 3510  
Rule 3520

## GUIDANCE

### Business Continuity Plans

SEC Approves Rules Requiring Members to Create Business Continuity Plans and Provide Emergency Contact Information; **Effective Dates:**

**Rule 3510: Clearing Firms: August 11, 2004**  
**Introducing Firms: September 10, 2004**

**Rule 3520: All Firms: June 14, 2004**

### Executive Summary

On April 7, 2004, the Securities and Exchange Commission (SEC) approved the new NASD Rule 3500 Series, which requires members to establish emergency preparedness plans and procedures.<sup>1</sup> Rule 3510 requires each member to create and maintain a business continuity plan and enumerates certain requirements that each plan must address. The Rule further requires members to update their business continuity plans upon any material change and, at a minimum, to conduct an annual review of their plans. Each member also must disclose to its customers how its business continuity plan addresses the possibility of a future significant business disruption and how the member plans to respond to events of varying scope. Rule 3520 requires members to designate two emergency contact persons and provide this information to NASD via electronic process.

The Rule 3500 Series, Emergency Preparedness, is included in this *Notice* as Attachment A. NASD's Small Introducing Firm Template will be available at [http://www.nasdr.com/business\\_continuity\\_planning.asp](http://www.nasdr.com/business_continuity_planning.asp).

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## Questions/Further Information

Questions regarding this *Notice* may be directed to Daniel M. Sibears, Senior Vice President & Deputy, Member Regulation, Regulatory Policy and Oversight (RPO), (202) 728-6911; or Shirley H. Weiss, Associate General Counsel, Office of General Counsel, RPO, at (202) 728-8844.

## Discussion

### **Rule 3510. Business Continuity Plans**

NASD Rule 3510 requires each member to create and maintain a business continuity plan. Each member's plan must identify procedures relating to an emergency or significant business disruption that are "reasonably designed to enable the member to meet its existing obligations to customers." In addition, such procedures must address the member's existing relationships with other broker-dealers and counter-parties. The business continuity plan must be made available promptly upon request to NASD staff.

### *Updating Requirement*

Rule 3510(b) requires each member to update its plan in the event of any material change to the member's operations, structure, business, or location. Each member must also conduct an annual review of its plan to determine if any updates are needed in light of any changes to the member's operations, structure, business, or location.

### *Elements of a Plan*

The Rule recognizes the diversity of members' business and operations. Accordingly, the requirements of a plan are flexible and should be tailored to the size and needs of each member. However, each plan must, at a minimum, address the following ten key areas:

- (1) Data back-up and recovery (hard copy and electronic);
- (2) All mission critical systems;
- (3) Financial and operational assessments;
- (4) Alternate communications between the member and its customers;
- (5) Alternate communications between the member and its employees;
- (6) Alternate physical location of employees;
- (7) Critical business constituent, bank, and counter-party impact;
- (8) Regulatory reporting;
- (9) Communications with regulators; and

- 
- (10) How the member will assure customers' prompt access to their funds and securities in the event that the member determines that it is unable to continue its business.

Each member's plan must address the above-listed categories only to the extent applicable and necessary. At the same time, the above-listed categories are not exhaustive; members should address other key areas for their plans to be complete and thorough based on their business and operations.

NASD understands that the business of some members may not touch upon each of the categories and that members may not perform certain of the "mission critical systems" functions. If a member does not include a specified category in its plan, the member's business continuity plan must document the rationale for its absence. Similarly, if a member relies on another entity for any one of the above-listed categories or any mission critical system, the member's business continuity plan must explain the relationship with the other entity in its plan. Even where members rely on another entity to perform certain functions, members must still create specific procedures to follow in light of a significant business disruption. If, for example, a clearing firm maintains customer funds and securities on behalf of an introducing firm, the introducing firm must create its own procedures and may not merely state that the firm does not hold customer funds or securities.

NASD also understands that many introducing firms may rely on their clearing firms for most mission critical systems and the maintenance of certain books and records. As such, introducing firms may need access to information contained within its clearing firm's business continuity plan. NASD strongly encourages all clearing firms to grant their introducing firms access to their plans or create an executive summary of their plan that is relevant for the introducing firm.

#### *Plan Approval*

Rule 3510(d) requires each member to designate a member of senior management who is also a registered principal to approve the plan and be responsible for conducting the required annual review. The review does not require the member of senior management to personally conduct all aspects of the review; however, he or she must review the final plan, including any proposed changes to the existing plan.

While a single designated member of senior management must approve the final plan, the member firm remains responsible for compliance with Rule 3510. Senior management approval is intended only to ensure that a person with proper authority reviews the plan, and not to make one person responsible for a member's compliance with Rule 3510.

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### *Data Back-Up and Recovery (Hard Copy and Electronic)*

One of the categories that members' business continuity plans must address is "data back-up and recovery (hard copy and electronic)." NASD notes that the Rule does not mandate that members keep book and records (and back-up books and records) in both hard copy and electronic formats. Members should refer to SEC and NASD rules and interpretative materials that specifically address record retention requirements, including SEC Rule 17a-4 and NASD Rule 3110, to determine which records (and in what format) firms must retain.

### *Mission Critical Systems*

For purposes of Rule 3510, NASD defines "mission critical system" as "any system that is necessary, depending on the nature of a member's business, to ensure prompt and accurate processing of securities transactions, including, but not limited to, order taking, order entry, execution, comparison, allocation, clearance and settlement of securities transactions, the maintenance of customer accounts, access to customer accounts and the delivery of funds and securities." This definition is substantially similar to the SEC's definition of "mission critical system" in its Y2K Rules.

### *Financial and Operational Assessments*

Rule 3510(c)(3) defines "financial and operational assessments" as "a set of written procedures that allows a member to identify changes in its operational, financial, and credit risk exposures." Operational risk focuses on the firm's ability to maintain communications with customers and to retrieve key activity records through its "mission critical systems." Financial risk relates to the firm's ability to continue to generate revenue and to retain or obtain adequate financing and sufficient equity. In addition, an eroding financial condition could be exacerbated or caused by a deterioration in the value of the firm's investments due to the lack of liquidity in the broader market, which would also hinder the ability of the firm's counter-parties to fulfill their obligations. A firm would be expected to periodically assess changes in these exposures, quickly assess the situation, and take appropriate action relative to a significant business disruption. Members' procedures should be written and implemented to reflect the interrelationship among these risks.

### *Critical Business Constituent, Bank, and Counter-Party Impact*

Members must have procedures that assess the impact that a significant business disruption would have on critical business constituents (businesses with which a member firm has an ongoing commercial relationship in support of the member's operating activities), banks (lenders), and counter-parties (e.g., other broker-dealers or institutional customers). In addition, members must provide for alternative actions or arrangements with respect to their contractual relationships with business constituents, banks, and counter-parties in the event of a material business disruption to either party. In short, the Rule requires a member to assess the effect of a significant business

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disruption on its business constituents, banks, and counter-parties and decide appropriate actions if faced with any such situation. The Rule, however, permits each member to adopt an approach in dealing with its business constituents, banks, and counter-parties that is best suited to the member's particular operations, structure, business, and location.

Members initially will be responsible for identifying those relationships that they deem critical for purposes of complying with the Rule. However, as NASD gains experience in working with the Rule, it may decide to enumerate specific relationships that it views as critical to all members.

#### *Prompt Access to Funds and Securities*

Rule 3510(c)(10) requires each member to address how it will assure customers' prompt access to their funds and securities in the event that the member determines it is unable to continue its business. If a member has customers, the member must detail the procedures it will employ to ensure customer access to funds and securities. If a member believes that Securities Investor Protection Corporation (SIPC) rules may affect its response to this subsection, the member should address SIPC rules in its plan. NASD further notes that members may not rely on SIPC membership, by itself, to satisfy their obligations under Rule 3510(c)(10) because SIPC involvement in the liquidation of a broker-dealer is limited to SIPC's authority under the Securities Investor Protection Act of 1970.

#### *Disclosure Requirements*

Rule 3510(e) requires each member to disclose to its customers how its business continuity plan addresses the possibility of a future significant business disruption and how the member plans to respond to events of varying scope. In addressing the events of varying scope, NASD believes that each member should: (1) provide specific scenarios of varying severity (e.g., a firm-only business disruption, a disruption to a single building, a disruption to a business district, a city-wide business disruption, and a regional disruption); (2) state whether it plans to continue business during that scenario and, if so, its planned recovery time; and (3) provide general information on its intended response. The disclosure must, at a minimum, be made in writing to customers at account opening, posted on the member's Web site (if the member maintains a Web site), and mailed to customers upon request.

Members must disclose the existence of back-up facilities and arrangements. Members, however, need not disclose the following factors: the specific location of any back-up facilities; any proprietary information contained in the plan; and the parties with whom the member has back-up arrangements. Members may include cautionary language in their business continuity plans indicating that such plans are subject to modification, that updated plans will be promptly posted on the member's Web site, and that customers may alternatively obtain updated plans by requesting a written copy of the plan by mail.

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### *Applicability to Subsidiaries*

A subsidiary member firm may satisfy its obligations under Rule 3510 by participating in a corporate-wide business continuity plan of a parent corporation that addresses its subsidiary member firms, even if the parent corporation is not an NASD member. However, if a subsidiary relies on the plan of a non-member parent corporation, the subsidiary member must ensure that the parent's business continuity plan complies with Rule 3510 and addresses all requirements under the Rule.

Importantly, the member also remains responsible for complying with all requirements of Rule 3510. Among other things, the member must designate a member of senior management, who must be a registered principal, to approve the parent's plan (as it applies to the member), conduct an annual review of the plan, and require the plan to be updated as necessary to meet all of the requirements of Rule 3510. The registered principal will also be responsible for requiring the parent to update the plan in the event of any material change to the member's operations, structure, business, or location. The member must comply with the disclosure requirements set forth in Rule 3510(e). In addition, the member must retain a copy of the parent's plan in accordance with applicable federal securities laws and NASD rules, and make it promptly available to NASD staff upon request.

### **Rule 3520. Emergency Contact Information**

Rule 3520 requires members to provide NASD with emergency contact information and to update any information upon the occurrence of a material change. The Rule requires members to designate two emergency contact persons that NASD may contact in the event of a significant business disruption. Each emergency contact person must be a registered principal and a member of senior management. In the case of a member that has only one principal, the second emergency contact person should be another firm employee. In the case of a sole proprietorship with only one employee, the second emergency contact may be an individual, either registered with another firm or non-registered, who has knowledge of the member's business operations, such as the member's attorney, accountant, or clearing firm contact.

In the event of a material change, each member must promptly update its emergency contact information, via such electronic or other means as NASD may require. In addition, the member's Executive Representative, or his or her written designee, must review and, if necessary, update the member's emergency contact information within 17 business days after the end of each calendar quarter. This update must include any change to the designation of the two emergency contact persons. Furthermore, members must have adequate controls and procedures to ensure that only the Executive Representative, or his or her written designee, may perform the review and update. Members must provide this information through NASD's Contact System (NCS) (formerly known as the NASD Member Firm Contact Questionnaire or NMFCQ) at [www.nasdr.com/ncs.asp](http://www.nasdr.com/ncs.asp).

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### Repository Service

NASD, through an outside vendor, will provide a repository service for members' business continuity plans. This service is intended to provide members with a place outside of their firm to store a copy of their business continuity plan. Members will be charged a fee of \$10-15 per month for use of the repository service, although this fee is subject to change.

### Endnote

- 1 See Securities Exchange Act Release No. 49537 (Apr. 7, 2004), 69 Fed. Reg. 19586 (Apr. 13, 2004) (SEC Notice of Order Approving File No. SR-NASD-2002-108).

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## ATTACHMENT A

New language is underlined.

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### **3500. EMERGENCY PREPAREDNESS**

#### **3510. Business Continuity Plans**

(a) Each member must create and maintain a written business continuity plan identifying procedures relating to an emergency or significant business disruption. Such procedures must be reasonably designed to enable the member to meet its existing obligations to customers. In addition, such procedures must address the member's existing relationships with other broker-dealers and counter-parties. The business continuity plan must be made available promptly upon request to NASD staff.

(b) Each member must update its plan in the event of any material change to the member's operations, structure, business or location. Each member must also conduct an annual review of its business continuity plan to determine whether any modifications are necessary in light of changes to the member's operations, structure, business, or location.

(c) The elements that comprise a business continuity plan are flexible and may be tailored to the size and needs of a member. Each plan, however, must at a minimum, address:

- (1) Data back-up and recovery (hard copy and electronic);
- (2) All mission critical systems;
- (3) Financial and operational assessments;
- (4) Alternate communications between customers and the member;
- (5) Alternate communications between the member and its employees;
- (6) Alternate physical location of employees;
- (7) Critical business constituent, bank, and counter-party impact;
- (8) Regulatory reporting;
- (9) Communications with regulators; and
- (10) How the member will assure customers' prompt access to their funds and securities in the event that the member determines that it is unable to continue its business.

Each member must address the above-listed categories to the extent applicable and necessary. If any of the above-listed categories is not applicable, the member's business continuity plan need not address the category. The member's business continuity plan, however, must document the rationale for not including such category in its plan. If a member relies on another entity for any one of the above-listed categories or any mission critical system, the

member's business continuity plan must address this relationship.

(d) Members must designate a member of senior management to approve the plan and he or she shall be responsible for conducting the required annual review. The member of senior management must also be a registered principal.

(e) Each member must disclose to its customers how its business continuity plan addresses the possibility of a future significant business disruption and how the member plans to respond to events of varying scope. At a minimum, such disclosure must be made in writing to customers at account opening, posted on the member's Internet Web site (if the member maintains a Web site), and mailed to customers upon request.

(f) For purposes of this rule, the following terms shall have the meanings specified below:

(1) "Mission critical system" means any system that is necessary, depending on the nature of a member's business, to ensure prompt and accurate processing of securities transactions, including, but not limited to, order taking, order entry, execution, comparison, allocation, clearance and settlement of securities transactions, the maintenance of customer accounts, access to customer accounts and the delivery of funds and securities.

(2) "Financial and operational assessment" means a set of written procedures that allow a member to identify changes in its operational, financial, and credit risk exposures.

### **3520. Emergency Contact Information**

(a) Each member shall report to NASD, via such electronic or other means as NASD may require, prescribed emergency contact information for the member. The emergency contact information for the member includes designation of two emergency contact persons. Each emergency contact person shall be a member of senior management and a registered principal of the member.

(b) Each member must promptly update its emergency contact information, via such electronic or other means as NASD may require, in the event of any material change. Each member must review and, if necessary, update its emergency contact information, including designation of two emergency contact persons, within 17 business days after the end of each calendar quarter to ensure the information's accuracy. The member's Executive Representative, or his or her designee, which designation must be in writing, must conduct such review and any update. Furthermore, members must have adequate controls and procedures to ensure that only the Executive Representative, or his or her written designee, may perform the review and update.

# Notice to Members

MAY 2004

## SUGGESTED ROUTING

Legal & Compliance  
Operations  
Senior Management

## KEY TOPICS

Day Trading  
Margin Requirements  
Regulation T  
Rule 2520

GUIDANCE

## Credit Extension/Day Trading Requirements

NASD Reminds Member Firms of Their Obligations to Adhere to Credit Extension Requirements and Day Trading Margin Rules

### Executive Summary

On March 11, 2004, NASD announced a disciplinary action that resulted in a \$10 million fine against three firms for improperly extending credit in violation of Federal Reserve Board Regulation T and, in numerous instances, allowing trades that avoided NASD Rule 2520's day trading margin requirements (NASD actions).<sup>1</sup> Day trading is the buying and selling, or selling short and buying to cover, the same security on the same day in a margin account. Firms should familiarize themselves with the facts surrounding the NASD actions and review their own procedures to ensure that strong safeguards are in place relative to compliance with Regulation T and Rule 2520. In this regard, firms should also review the full text of Regulation T and Rule 2520, as well as related materials, to ensure full compliance with all credit extension provisions and day trading margin rules.

### Questions/Further Information

Questions concerning this *Notice* may be directed to Susan M. DeMando, Director, Financial Operations, Member Regulation Department, at (202) 728-8411.

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## Regulation T Requirements

The principal purpose of the Federal Reserve Board's Regulation T (Reg T) is to regulate the extension of credit by brokers and dealers. It imposes, among other things, initial margin requirements and payment rules on certain securities transactions.

Reg T provides for a margin account and four special purpose accounts (special memorandum accounts, good faith accounts, broker-dealer credit accounts, and cash accounts) in which to record all financial relationships between a customer and the creditor.

Any transaction not specifically permitted in a special purpose account must be recorded in a margin account. When the transaction involves a purchase of an equity security, it may only be recorded in a cash or margin account. Which account is used depends on: (1) whether the equity qualifies as a "margin security," and (2) how the customer intends to pay for the purchase.<sup>2</sup> In addition, other factors require that certain transactions be conducted in a cash account. Importantly, Reg T authorizes a broker-dealer to purchase securities for a customer in a cash account, *only* if the customer has "sufficient funds" in the account or the creditor accepts in good faith the customer's agreement that he or she will promptly make "full cash payment" for the securities before selling them. If the customer plans to sell securities before making payment, the transaction must be recorded in a margin account.

If a trade is recorded in a cash account, the transaction must comply with Reg T Section 220.8. Trades recorded in a margin account must comply with Reg T Section 220.4. In addition to the Reg T requirements, a creditor must also comply with all applicable Federal Reserve Board (FRB) interpretations. As further discussed below, the transactions that were the subject of the NASD actions were conducted in customers' cash accounts and did not comply with the requirements of Reg T Section 220.8 and FRB interpretations.

## NASD Actions

Respondents in the NASD actions permitted cash account customers to purchase and sell securities in a series of trades without requiring full cash payment for each purchase in violation of Reg T Section 220.8. Specifically, the firms allowed their customers to make purchase transactions based on proceeds due from unsettled trades. NASD further found that the respondents permitted day trading in cash accounts that, in many instances, would have required \$25,000 minimum equity under NASD rules and should have occurred only in a margin account.

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Reg T Section 220.8(a)(1) states that a broker-dealer may use a cash account to buy a security for a customer if:

- (i) There are sufficient funds in the account; or
- (ii) The creditor accepts in good faith the customer's agreement that the customer will promptly make full cash payment for the security or asset before selling it and does not contemplate selling it prior to making such payment....

FRB interpretations make clear that a customer who sells a security on trade date to pay for another security purchased on that day does not have "sufficient funds in the account" on trade date for purposes of Reg T Section 220.8(a)(1)(i).<sup>3</sup> Rather, a customer must make full payment for each separate purchase transaction in a cash account without regard to the unsettled proceeds of securities sold.<sup>4</sup> If a member firm plans to accept the unsettled proceeds of a securities sale as payment for securities purchased, the transaction must be conducted in a margin account, subject to the regulations affording protection to customers who trade in margin accounts.

### Applicability to Clearing and Introducing Firms

The NASD Actions involved both clearing firm and introducing firm members. Clearing firms and introducing firms share responsibility for compliance with Reg T and FRB interpretations. In transactions involving a customer introduced to a clearing firm on a fully disclosed basis, the clearing firm has responsibility for Regulation T and FRB interpretation compliance as the clearing firm extends the credit. Additionally, because the introducing broker opens the customer account, it must observe the requirements of the cash account, even though it is not extending the credit.<sup>5</sup>

### NASD Rule 2520

As described above, if a customer plans on selling securities before making full cash payment for them, the transactions must be recorded in a margin account. Transactions conducted in a margin account are subject to the requirements of NASD Rule 2520, as well as Reg T Section 220.4.<sup>6</sup> Rule 2520 focuses on maintenance margin requirements for positions carried overnight. The Rule also imposes initial margin requirements and, in some cases, special requirements.

To the extent a customer's trades would cause the customer to meet the definition of a "pattern day trader," such transactions must occur in a margin account and the creditor must comply with the Day Trading Margin Requirements contained in Rule 2520(f)(8)(B). The Rule defines "day trading" as buying and selling, or selling short and buying to cover, the same security on the same day in a margin account.

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As of September 28, 2001, a pattern day trader is required to maintain minimum equity of \$25,000 in his or her margin account to continue to engage in activities that would fall under the definition of day trading. If a firm permits transactions that should occur in a margin account to occur in a cash account, the transactions will most likely be inconsistent with the requirements applicable to cash accounts as discussed in this Notice. In addition, by permitting such transactions to occur in a cash account when it is not appropriate to do so, firms may be failing to impose on a customer the required \$25,000 minimum equity requirement applicable to pattern day traders, as well as the "penalties" imposed when "excess" day-trading occurs.<sup>7</sup> Any firm that seeks to avoid application of the minimum equity and other requirements of Rule 2520(f)(8)(B) by shifting customer transactions to a cash account violates both Reg T and Rule 2520.

## Endnotes

- 1 The firms subject to the NASD Actions were Ameritrade, Inc., Datek Online Financial Services LLC, and iClearing LLC. In settling these matters, the firms neither admitted nor denied the charges. See [www.nasdr.com/news/pr2004/release\\_04\\_014.html](http://www.nasdr.com/news/pr2004/release_04_014.html).
- 2 In addressing certain credit extension and day-trading margin issues, this Notice focuses on the purchase and sale of equity securities.
- 3 See Fed. Res. Staff Op., 2 Federal Reserve Regulatory Services, Part 5-616.14 (Feb. 18, 1999). See also Fed. Res. Staff Op., Federal Reserve Regulatory Services, 5-616.15 (Jan. 6, 2000).
- 4 See Board of Governors of the Federal Reserve, Notice of Proposed Rule Making, 60 Federal Register 33763, 33767 (June 29, 1995) ("Customers are required to pay for all purchases in full without netting sale proceeds from securities purchased and sold on the same day...").
- 5 See Fed. Res. Staff Op., 2 Federal Reserve Regulatory Services, Part 5-615.971 (April 19, 1991).
- 6 Where the clearing firm is designated to the New York Stock Exchange, the transactions would be subject to NYSE Rule 431 and Reg T Section 220.4.
- 7 Customers whose transactions exceed their day-trading buying power are subject to special margin calls and restrictions on their account activity until such special margin calls are satisfied.

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# Notice to Members

MAY 2004

## SUGGESTED ROUTING

Corporate Finance  
Legal and Compliance  
Operations  
Senior Management  
Technology  
Trading and Market Making  
Training

## KEY TOPICS

Debt Securities  
Operations  
Rule 6200 Series  
TRACE Rules  
Transaction Reporting

GUIDANCE

## Corporate Debt Securities

SEC Approves Amendments to Clarify the Term “TRACE-Eligible Security” and to Expand the Scope of an Exemption from TRACE Reporting Requirements; **Effective Date: June 17, 2004**

### Executive Summary

On April 2, 2004, the Securities and Exchange Commission (SEC or Commission) approved amendments to Rules 6210 and 6230 of the Trade Reporting and Compliance Engine (TRACE) rules, the Rule 6200 Series.<sup>1</sup> The amendments clarify certain terms used in the definition, “TRACE-eligible security,” and expand the trade reporting exemption to qualifying transactions in any TRACE-eligible security that is listed and quoted on The Nasdaq Stock Market, Inc. (NASDAQ). Rules 6210 and 6230, as amended, are set forth in Attachment A.

The amendments to Rules 6210 and 6230 will become effective on June 17, 2004.

### Questions/Further Information

Questions concerning this *Notice* should be directed to *tracefeedback@nasd.com*; Elliot Levine, Chief Counsel, Market Operations, Markets, Markets, Services and Information, at 202-728-8405; or Sharon K. Zackula, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at 202-728-8985.

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## Discussion

The SEC has approved amendments to clarify certain terms used in the definition of "TRACE-eligible security," set forth in Rule 6210(a), and to expand the trade reporting exemption set forth in Rule 6230(e)(2) to include additional types of NASDAQ-listed and-quoted TRACE-eligible securities.

### TRACE-Eligible Security

The amendments to the defined term, "TRACE-eligible security," in Rule 6210(a), serve to clarify the intended scope of the term. First, the amendments replace the phrase "registered with the Securities and Exchange Commission" with "registered under the Securities Act of 1933," to more accurately describe registered securities.

Second, the amendments clarify that TRACE-eligible securities include the debt securities of all U.S. and foreign private issuers, regardless of the business model used by the issuer. Currently, the term "TRACE-eligible security" includes within its scope, among other things, "...debt securities that are...issued by United States and/or foreign private *corporations* (emphasis added)." As amended, the term will include "...debt securities that are...issued by United States and/or foreign private *issuers* (emphasis added)." This amendment makes clear that, although most private issuers of securities are organized as corporations, the debt securities of issuers that use forms of business organizations other than the corporate form are TRACE-eligible securities, provided that the other conditions set forth in Rule 6210(a) are met. The clarification does not require members to report transactions in any of the classes of securities that currently are excluded from the definition of "TRACE-eligible security."

### Trade Reporting Exemption for NASDAQ-Listed Debt Securities

NASD has amended the trade reporting exemption in Rule 6230(e)(2) that is applicable to certain transactions in debt securities that are listed on NASDAQ.<sup>2</sup> Currently, Rule 6230(e)(2) provides that a transaction in a TRACE-eligible security is exempt from reporting if the transaction is in a convertible debt security that is listed and quoted on NASDAQ, the transaction is reported to NASDAQ, and the transaction information is publicly disseminated. As amended, Rule 6230(e)(2) exempts a member from reporting to TRACE a transaction in any TRACE-eligible security that is listed and quoted on NASDAQ, rather than only convertible debt securities, provided that the other two requirements for the exemption are also present (*i.e.*, the transaction is reported to NASDAQ and the information is publicly disseminated).<sup>3</sup> NASD has also made conforming changes to the defined term, "reportable TRACE transactions," in Rule 6210(c).

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## Endnotes

- 1 See Securities Exchange Act Release No. 49522 (April 1, 2004), 69 Fed. Reg. 18660 (April 8, 2004) (File No. SR-NASD-2003-182).
- 2 Currently, these TRACE-eligible securities are a very small class of convertible debt securities.
- 3 Rule 6230(e)(2) also exempts from reporting those transactions in TRACE-eligible securities that are listed on a national securities exchange, when the transactions are executed on and reported to the exchange, and the transaction information is publicly disseminated.

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## ATTACHMENT A

### Text of Rule Change

New language is underlined and deletions are in brackets.

#### **6200. TRADE REPORTING AND COMPLIANCE ENGINE (TRACE)**

##### **6210. Definitions**

The terms used in this Rule 6200 Series shall have the same meaning as those defined in NASD's By-Laws and Rules unless otherwise specified.

(a) The term "TRACE-eligible security" shall mean all United States dollar denominated debt securities that are depository eligible securities under Rule 11310(d); Investment Grade or Non-Investment Grade; issued by United States and/or foreign private issuers[corporations]; and: (1) registered under the Securities Act of 1933[with the Securities and Exchange Commission] or (2) issued pursuant to Section 4(2) of the Securities Act of 1933 and purchased and sold pursuant to Rule 144A of the Securities Act of 1933. The term "TRACE-eligible security" excludes debt issued by government-sponsored entities, mortgage- or asset-backed securities, collateralized mortgage obligations, and money market instruments. For purposes of the Rule 6200 Series, the term "money market instrument" means a debt security that at issuance has a maturity of one year or less.

(b) No Change.

(c) The term "reportable TRACE transaction" shall mean any secondary market transaction in a TRACE-eligible security except transactions in TRACE-eligible securities that are listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, when such transactions are executed on, and reported to the exchange and the

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transaction information is disseminated publicly, or transactions in [convertible debt]TRACE-eligible securities that are listed and quoted on the Nasdaq Stock Market, Inc. (Nasdaq), when such transactions are reported to Nasdaq and the transaction information is disseminated publicly.

(d) through (i) No Change.

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### **6230. Transaction Reporting**

(a) through (d) No Change.

#### **(e) Transactions [Not Required To Be Reported]Exempt From Reporting**

The following types of transactions shall not be reported:

- (1) Transactions that are part of a primary distribution by an issuer.[:]
- (2) Transactions in TRACE-eligible securities that are listed on a national securities exchange, when such transactions are executed on and reported to the exchange and the transaction information is disseminated publicly, and transactions in [convertible debt]TRACE-eligible securities that are listed and quoted on Nasdaq, when such transactions are reported to Nasdaq and the transaction information is disseminated publicly.[:; and]

(3) No Change.

(f) No Change.

# Notice to Members

MAY 2004

## SUGGESTED ROUTING

Executive Representatives  
Operations  
Trading

## KEY TOPICS

ACT Reporting Requirements  
IM-6130  
Rule 3350  
Rule 6130  
Short Sale Reporting Requirements

GUIDANCE

## Short Sale Reporting Requirements

NASD Clarifies ACT Short Sale Reporting Requirements

### Executive Summary

On May 20, 2004, NASD, through its subsidiary, The Nasdaq Stock Market, Inc. (NASDAQ), filed for immediate effectiveness with the Securities and Exchange Commission (SEC) proposed interpretive material to Rule 6130 clarifying that, as currently required by the text of Rule 6130 (Trade Report Input), a "short sale" or "short sale exempt" indicator, as applicable, is required in *all* short-sale transactions reported to the Automated Confirmation Transaction Service (ACT), including transactions in: (1) NASDAQ National Market (NNM) securities; (2) NASDAQ SmallCap Market (SmallCap) securities; (3) over-the-counter (OTC) transactions in exchange-listed securities; (4) OTC Bulletin Board; and (5) OTC equity securities.<sup>1</sup> New IM-6130 is set forth in Attachment A. Because of confusion that may have existed in the marketplace regarding the application of these requirements, NASD and NASDAQ are providing members additional time to re-program their systems, if necessary, to comply with the clarification. Accordingly, the operative date of these requirements is **July 26, 2004**.

### Questions/Further Information

Questions concerning this *Notice* may be directed to Jeffrey S. Davis, Office of General Counsel, NASDAQ, at (202) 912-3035; the Legal Section, Market Regulation, NASD, at (240) 386-5126; or Office of General Counsel, Regulatory Policy and Oversight, NASD, at (202) 728-8071.

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## Background and Discussion

In 1994, the SEC approved on a temporary pilot basis NASD's short sale rule (Short Sale Rule or Rule 3350) generally prohibiting members from effecting short sales<sup>2</sup> in NNM securities at or below the inside bid when the current inside bid is below the previous inside bid.<sup>3</sup> As part of early amendments to the Short Sale Rule, NASD also amended Rule 6130(d)(6) (previously ACT Rule (d)(4)(F)) to require that members indicate on ACT reports whether a transaction is a short sale or a short sale exempt transaction ("ACT short-sale reporting requirements").<sup>4</sup>

The amendments to Rule 6130(d)(6) did not limit the ACT short-sale reporting requirements to NNM securities transactions. Rather, the requirements in Rule 6130 require members to file ACT reports not just for NNM securities transactions, but for other securities transactions, including transactions in exchange-listed, SmallCap, convertible debt, OTC Bulletin Board, and OTC equity securities.

However, guidance issued on the ACT short-sale reporting requirements indicating that it applied only to NNM securities<sup>5</sup> has created confusion in the marketplace regarding the types of securities that are subject to the ACT short-sale reporting requirements. To eliminate any confusion that may have existed, NASD and NASDAQ filed for immediate effectiveness with the SEC proposed interpretive material to Rule 6130 clarifying that, as required by the current text of Rule 6130, the ACT short-sale reporting requirements apply to all short-sale transactions in all securities reported to ACT, including:

- ◆ NNM securities;
- ◆ SmallCap securities;
- ◆ OTC transactions in exchange-listed securities;
- ◆ OTC Bulletin Board securities; and
- ◆ OTC equity securities.

Thus, all short-sale transactions in these securities reported to ACT must carry a "short sale" indicator (or a "short sale exempt" indicator if it is a short sale transaction in an NNM or exchange-listed security that qualifies for an exemption from the Short Sale Rule or Rule 10a-1 under the Exchange Act).<sup>6</sup> Because of the potential for confusion in the marketplace relating to the application of these requirements, NASD and NASDAQ are providing members additional time to educate staff and re-program their systems, if necessary, to comply with the clarification. Accordingly, the operative date of these requirements is **July 26, 2004**.

Members also are reminded that where execution systems such as the NASDAQ Market Center trade report to ACT on behalf of the member, members remain responsible for the proper reporting of the short-sale indicator and, therefore, must ensure that applicable short-sale information is entered accurately into the execution system.

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## Endnotes

- 1 See File No. SR-NASD-2004-056 and Amendment No. 1 thereto.
- 2 A short sale is a sale of a security that the seller does not own or any sale that is consummated by the delivery of a security borrowed by, or for the account of, the seller. To determine whether a sale is a short sale, members must adhere to the definition of a "short sale" contained in SEC Rule 3b-3, which is incorporated into NASD's short sale rule by NASD Rule 3350(k)(1).
- 3 See Securities Exchange Act Release No. 34277 (June 29, 1994), 59 FR 34885 (July 7, 1994) ("Short Sale Rule Approval Order"). NASD and the Commission have subsequently extended the pilot on numerous occasions, most recently until June 15, 2004.
- 4 See Securities Exchange Act Release No. 31729 (January 13, 1993), 58 FR 5791 (January 22, 1993).
- 5 See ACT Notice 94-1 (August 22, 1994) and Nasdaq Fax #32 (April 2, 1997).
- 6 See, e.g., NASD Rule 3350(c), (h) and (i) (provisions detailing when a short sale in an NNM security is exempt from the Short Sale Rule requirements); see also *Notice to Members 94-68* (August 1994) and *Notice to Members 94-83* (October 1994) (providing guidance on, among other things, when a short sale in an NNM security qualifies for one of the Short Sale Rule exemptions).

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©2004. NASD. All rights reserved. *Notices to Members* attempt to present information to readers in a format that is easily understandable. However, please be aware that, in case of any misunderstanding, the rule language prevails.

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## Attachment A

New language is underlined.

### **IM 6130. Trade Reporting of Short Sales**

The NASD's short sale rule (Short Sale Rule or Rule 3350) generally prohibits members from effecting short sales in NNM securities at or below the inside bid when the current inside bid is below the previous inside bid. Rule 6130(d)(6) requires that members indicate on ACT reports whether a transaction is a short sale or a short sale exempt transaction ("ACT short sale reporting requirements"). Rule 6130 explicitly requires members to file ACT reports not just for NNM securities transactions, but for other securities transactions, including transactions in exchange-listed, SmallCap, convertible debt, OTC Bulletin Board, and OTC equity securities. Thus, all short sale transactions in these securities reported to ACT must carry a "short sale" indicator (or a "short sale exempt" indicator if it is a short sale transaction in an NNM or exchange-listed security that qualifies for an exemption from Rule 3350 or SEC Rule 10a-1).

\* \* \* \* \*

# Disciplinary and Other NASD Actions

## REPORTED FOR MAY

NASD® has taken disciplinary actions against the following firms and individuals for violations of NASD rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this *Notice* is current as of the end of April 2004.

### Firm Expelled

**Metro Trading, Inc. (CRD #42484, Deerfield Beach, Florida)** was censured, fined \$222,743, and expelled from NASD membership. The sanctions were based on findings that the firm engaged in trading ahead of research and failed to mark and annotate affirmative determinations for short sale transactions. The findings also stated that the firm failed to establish, maintain, and enforce a supervisory system and to implement supervisory procedures reasonably designed to achieve compliance with NASD conduct rules relating to trading ahead of research, affirmative determinations for short sale transactions, and the duty of registered representatives to notify firms with whom they have an account of their association with another firm. The findings further stated that the firm's supervisory system failed to provide for the establishment and maintenance of written procedures, the designation of an appropriately registered principal without authority to carry out the supervisory responsibilities for each type of business in which the firm engages, the assignment of each registered person to an appropriately registered representative and/or principal to supervise that person's activities, and the designation of one or more principals to review the firm's supervisory system, procedures, and inspections implemented by the firm. The fine must be paid when or if the firm seeks to resume its NASD membership. (NASD Case #CMS030047)

### Firm Expelled, Individual Sanctioned

**Castle Securities Corp. (CRD #16077, Freeport, New York) and Michael Thomas Studer (CRD #707394, Registered Principal, Rockville Centre, New York)** The firm was expelled from NASD membership and Studer was barred from NASD membership in any capacity. 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 the firm churned the account of a public customer, and that Studer and the firm failed to reasonably supervise trading in the account of a public customer. The findings also stated that the firm induced a public customer to execute margin guarantees that benefited the firm and exposed the customer to significant risk.

This action has been appealed to the Securities and Exchange Commission (SEC) and all sanctions, other than the bar, are not in effect pending consideration of the appeal. (NASD Case #C3A010036)

## Firms and Individuals Fined

**First Commonwealth Securities Corporation (CRD #20854, New Orleans, Louisiana) and Norbert Alonzo Simmons (CRD #1740163, Registered Principal, Fort Lauderdale, Florida)** 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 firm and Simmons consented to the described sanctions and to the entry of findings that the firm participated as co-managing underwriter in negotiated municipal bond issues and, acting through Simmons, failed to file Municipal Securities Rulemaking Board (MSRB) Form G-37/38 reporting its underwriting activity. The findings also stated that Simmons failed to keep his application for registration current in that he failed to disclose that he had been the subject of a formal NASD disciplinary action and failed to disclose his association in outside business activities. (NASD Case #C05040015)

**Huberman Financial, Inc. (CRD #28760, Dallas, Texas) and Isac Huberman (CRD #251958, Registered Principal, Dallas, Texas)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$10,000, jointly and severally. Without admitting or denying the allegations, the firm and Huberman consented to the described sanctions and to the entry of findings that the firm, acting through Huberman, conducted a securities business while it failed to maintain minimum required net capital. (NASD Case #C06040007)

**Peregrine Financials & Securities, Inc. (CRD #43992, Chicago, Illinois) and Thomas Eugene Pearson (CRD #1844334, Registered Principal, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$251,100, including disgorgement of \$211,022.48 in commissions retained. Pearson was censured and fined \$25,000. Without admitting or denying the allegations, the firm and Pearson consented to the described sanctions and to the entry of findings that the firm, acting through Pearson, charged public customers excessive and unfair commissions for listed options transactions. The findings also stated that the firm failed to adequately and properly supervise the transactions in that they permitted the charging of unfair and excessive commissions. The findings further stated that the firm, acting through Pearson, entered into an agreement with a foreign broker to pay a finder's fee for opening option contracts for listed options transactions and failed to satisfy all of the conditions of NASD Membership and Registration Rule 1060(b). NASD also found that the firm failed to preserve copies of some electronic mail communications for the required three-year period and/or to maintain electronic communications for two years in an accessible place. In addition, NASD found that the firm had no preservation system to store electronic mail communications records in a non-rewritable, non-erasable manner for the required time period as required by SEC Rule 17a-4(f). Furthermore, NASD found that the firm engaged in

activities that required it to be registered as a municipal securities dealer, while it failed to employ any individual who was registered as a municipal securities principal. Moreover, NASD found that the firm permitted registered persons employed by the firm to perform duties as general securities representatives while their registration status with NASD was inactive due to their failure to complete timely the Regulatory Element of NASD's Continuing Education Rule. (NASD Case #C8A040015)

## Firm and Individual Suspended

**First Montauk Securities Corporation (CRD #13755, Red Bank, New Jersey) and Paul Lieberman (CRD #2187798, Associated Person, Middletown, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$75,000, and suspended from the activity of issuing research reports for three months. The firm was also required to retain an independent consultant to review and make recommendations concerning the adequacy of the firm's current supervisory and operating procedures (written and otherwise), including the adequacy of its supervisory procedures relating to the issuance of research reports. Lieberman was fined \$15,000 and suspended from association with any NASD member in a supervisory capacity for 30 days. Without admitting or denying the allegations, the firm and Lieberman consented to the described sanctions and to the entry of findings that the firm issued a research report on a stock issuer that failed to disclose material facts; failed to disclose important risks; and made exaggerated, unwarranted, and misleading statements. The findings also stated that the research report failed to provide a sound basis for evaluating facts regarding the issuer and failed to disclose the source for the statistical tables, charts, graphs, and illustrations in the report.

NASD also found that the firm failed to disclose in the research report that it owned warrants to purchase stock from the issuer or that the firm had received compensation for investment banking services in the past 12 months or that it expected to receive, or intended to seek, compensation for investment banking services in the next three months. In addition, NASD found that the firm did not have a principal review or initial the research report as evidence of supervisory review before the firm released the report or maintain copies of the research report in a separate file with a record of the names of the persons who prepared the report or approved its use. Furthermore, NASD found that the research report did not have a reasonable basis for the projected revenue; failed to contain an adequate disclosure of the risks associated with, or that might impede achievement of, the price target, including that the price projection was predicated on the issuer implementing a new untried business model; and did not make certain disclosures in a prominent manner. Moreover, NASD found that the firm failed to adopt and implement written supervisory procedures

reasonably designed to ensure compliance with the provisions of NASD Rule 2711 or to ensure that research reports issued by the firm that were prepared by associated persons complied with NASD rules and applicable securities laws and regulations. In addition, NASD found that the firm's written procedures failed to set forth a procedure for the review of research reports prepared by outside consultants and failed to outline steps to be taken to achieve compliance with the review, filing, and approval requirements of NASD Rule 2210 for such reports. The findings also stated that Lieberman failed to supervise adequately the preparation of the research report to prevent violations of NASD Rules 2210 and 2711. NASD also found that Lieberman actively engaged in the management of the firm without registering as a principal with the firm.

The firm's suspension began May 3, 2004, and will conclude at the close of business June 2, 2004. Lieberman's suspension began May 3, 2004, and will conclude at the close of business June 1, 2004. (NASD Case #CAF040026)

See also First Montauk Securities Corporation, NASD Case #C3A040014, under "Firms Fined" below.

## Firms Fined

**CRT Capital Group LLC (CRD #28830, Stamford, Connecticut)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$11,000, and required to revise within 30 business days its written supervisory procedures with respect to applicable securities laws, regulations, and NASD rules concerning trade reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit through the Automated Confirmation Transaction Service<sup>SM</sup> (ACT<sup>SM</sup>) last sale reports of transactions in Over-the-Counter (OTC) Equity securities; failed to designate through ACT last sale reports as late; and incorrectly designated as ".SLD" through ACT last sale reports of transactions in OTC Equity securities reported to ACT within 90 seconds of execution. The findings also stated that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws, regulations, and NASD rules concerning trade reporting. (NASD Case #CMS040045)

**Dupont Securities Group, Inc. (CRD #42305, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,000, and required to revise within 30 business days its written supervisory procedures with respect to applicable securities laws, regulations, and NASD rules concerning trade reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to accept or decline in ACT transactions in eligible securities within 20 minutes after

execution that it had an obligation to accept or decline. The findings also stated that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning trade reporting. (NASD Case #CMS040021)

**Essex Radez Company (CRD #34649, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it transmitted to the Order Audit Trail System<sup>SM</sup> (OATS<sup>SM</sup>) reports that contained inaccurate, incomplete, or improperly formatted data in that the reports failed to match to an ACT trade report. The findings also stated that the firm submitted to OATS reports with equity securities traded on the Nasdaq Stock Market, Inc., that were not in the electronic form prescribed by NASD. The findings further stated that the reports were rejected by OATS and notice of such rejection was made available to the firm on the OATS Web site, but the firm failed to correct or replace 98 percent of the reports. (NASD Case #CMS040023)

**FFP Securities, Inc. (CRD #16337, St. Louis, Missouri)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to file advertisements and pieces of sales literature with NASD's Advertising Regulation Department. The findings also stated that the firm approved for use, and distributed pieces of, sales literature regarding variable annuities that were misleading, failed to present balanced discussions, and omitted material information regarding dollar-cost averaging. NASD also found that the firm approved for use and distributed sales literature that compared aspects of mutual funds and variable annuities but failed to present a balanced discussion and omitted information about costs, risks, and restrictions when making that comparison. (NASD Case #CAF040023)

**First Montauk Securities Corporation (CRD #13755, Red Bank, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$45,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to promptly amend Forms U4 and U5 for representatives after becoming aware of information that triggered an obligation to amend the forms. The findings stated that the firm failed to comply with NASD Rule 3070 in that the firm failed to timely report arbitration awards and/or settlements. NASD also found that the firm failed to report terminations for cause. In addition, NASD determined that the firm's written supervisory procedures were not reasonably designed to achieve compliance with Form U4 and Form U5 amendments, 3070 disclosure reporting, and the identification of responsible principals. (NASD Case #C3A040014)

See also First Montauk Securities Corporation, NASD Case #CAF040026, under "Firm and Individual Suspended" above.

**Fulcrum Global Partners LLC (CRD #104455, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$75,000, and required to revise within 30 business days its written supervisory procedures with respect to applicable securities laws, regulations, and NASD rules concerning the treatment of rumors by firm research analysts, the trading of securities by the firm's employees, and the avoidance of conflicts of interest by the firm's employees. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning the treatment of rumors by firm research analysts, the trading of securities by the firm's employees, and the avoidance of conflicts of interest by the firm's employees. (NASD Case #CMS040046)

**Garden State Securities, Inc. (CRD #10083, Wall, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,000, and required to revise within 30 business days its written supervisory procedures with respect to applicable securities laws, regulations, and NASD rules concerning compliance with the 20 minute Rule, NASD Marketplace Rule 6130(b). Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to accept or decline in ACT transactions in eligible securities within 20 minutes after execution that the firm had an obligation to accept or decline in ACT as the Order Entry Firm. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the 20 minute Rule, NASD Marketplace Rule 6130(b). (NASD Case #CMS040033)

**ING Financial Markets LLC (CRD #28872, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$15,000, and required to revise within 30 business days its written supervisory procedures with respect to applicable securities laws, regulations, and NASD rules concerning ACT short sale trade reporting. 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 NASDAQ National Market® (NNM®) securities at or below the current inside bid when the current inside bid was below the preceding inside bid in the security. The findings also stated that the firm 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. The findings further stated that the firm failed to report to ACT the correct symbol indicating whether firm

executed transactions in eligible securities in a principal or agency capacity. In addition, NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning ACT short sale reporting. (NASD Case #CMS040024)

**J.J.B. Hilliard, W.L. Lyons, Inc. (CRD #453, Louisville, Kentucky)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,000, and required to revise its written supervisory procedures with respect to the applicable securities laws, regulations, and NASD rules concerning OATS within 30 business days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it submitted to OATS reports with respect to equity securities traded on NASDAQ that were not in the electronic form prescribed by NASD and were repairable. The findings also stated that the subject reports were rejected by the OATS system and notice of such rejection was made available to the firm on the OATS Web site, but the firm failed to correct or replace the subject reports. The findings further stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws, regulations, and NASD rules concerning OATS. (NASD Case #CMS040041)

**J.P. Morgan Securities Inc. (CRD #18718, 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 it failed, within 90 seconds after execution, to transmit through ACT last sale reports of transactions in eligible securities. (NASD Case #CMS040044)

**Keane Securities Co., Inc. (CRD #8452, 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, in connection with contingency, private placement offerings, the firm failed to deposit customer funds into a separate bank account established for the beneficial interests of the customers. The findings also stated that the firm failed to time stamp accurately order tickets relating to NNM and Small Cap transactions to reflect either the time of entry or time of execution of the underlying order. (NASD Case #C10040024)

**NFP Securities, Inc. (CRD #42046, Austin, Texas)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to file advertisements and pieces of sales literature concerning registered investment companies with NASD's Advertising Regulation Department.

The findings also stated that the firm approved for use, published, and distributed advertisements and sales literature that were misleading because they suggested that individuals purchasing variable annuities would pay no fees when, in fact, they would. NASD also found that the firm approved for use and distribution to public customers and prospects pieces of sales literature that described the benefits of a variable annuity but failed to present a balanced discussion of the product and omitted information regarding costs, risks, and restrictions. In addition, NASD found that the sales literature failed to disclose that certain benefits were available only if the customer paid an extra cost and that there were surrender charges and reductions in benefits if certain withdrawals were made from the product. Furthermore, NASD found that newsletters failed to identify that the product being discussed was a variable annuity. (NASD Case #CAF040024)

**Scott & Stringfellow, Inc. (CRD #6255, Richmond, Virginia)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$25,000, and required to pay \$615.43, plus interest in restitution to a public customer. 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 public customer, 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 customer was as favorable as possible under prevailing market conditions. (NASD Case #CMS040022)

**Sonic Technologies, LLC (CRD #104249, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,000, and required to revise within 30 business days its written supervisory procedures with respect to applicable securities laws, regulations, and NASD rules concerning affirmative determination, the bid test rule, ACT reporting, mandatory close-out, and marking of customer tickets. 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 NNM securities at or below the current inside bid when the current inside bid was below the preceding inside bid in the security. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws, regulations, and NASD rules concerning affirmative determination, the bid test rule, ACT reporting, mandatory close-out, and marking of customer tickets (NASD Case #CMS040043)

**Washington Square Securities, Inc. (CRD #2882, Des Moines, Iowa)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$50,000, and ordered to pay \$48,955.35 in partial restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, acting

through its agents, it effected, or caused to be effected, purchases of large positions of Class B mutual fund shares in the accounts of public customers that were unsuitable because they deprived the customers of the benefit of sales charge breakpoints, which they would have received had they purchased Class A shares, including those acquired through letters of intent or rights of accumulation. The findings also stated that these purchases deprived the customers of lower 12b-1 fees that they would have received had they purchased Class A shares and also exposed the customers to potentially higher contingent deferred sales charges upon liquidation. NASD also found that the firm, acting through its agents, failed to establish, maintain, and enforce a supervisory system reasonably designed to enable the firm and its supervisors to scrutinize Class B share purchases with a view to detecting and preventing unsuitably large Class B share purchases. (NASD Case #C04040015)

**Wayne Hummer Investments, LLC. (CRD #875, Chicago, Illinois)** 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 failed to report its short interest positions for NNM securities to NASD. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with the applicable securities laws and regulations concerning the timely reporting of short interest positions. (NASD Case #CMS040042)

**Wien Securities Corporation (CRD #10467, Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$30,500, and required to revise within 30 business days its written supervisory procedures with respect to applicable securities laws, regulations, and NASD rules concerning limit order display; firm quote; limit order protection; best execution; order execution and routing information; the three-quote rule; short sales; "Chinese Walls"; trade reporting; books and records; locked/crossed markets; and OATS compliance.

Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report through ACT last sale reports of transactions in NNM securities; failed to report to ACT the correct symbol indicating whether the firm executed transactions in eligible securities in a principal, riskless principal, or agency capacity; failed to provide written notification disclosing to its customer its correct capacity in the transaction; and failed to show the correct time of entry and execution on brokerage order memoranda. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning limit order display; firm quote; limit order protection; best execution; order execution and routing

information; the three-quote rule; short sales; "Chinese Walls"; trade reporting; books and records; locked/crossed markets; OATS compliance. NASD also found that the firm failed to enforce a supervisory system reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning registration of personnel, front running in CQS securities, and affirmative determination. (NASD Case #CMS040035)

## Individuals Barred or Suspended

**Gregory Ralph Caputo (CRD #1758741, Registered Principal, North Caldwell, 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 10 business days. The fine must be paid before Caputo reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Caputo consented to the described sanctions and to the entry of findings that he effected, or caused to be effected, transactions in the account of a public customer on a discretionary basis without obtaining prior written authorization from the customer and acceptance in writing from his member firm of the account as discretionary.

Caputo's suspension began April 19, 2004, and concluded at the close of business April 30, 2004. (NASD Case #C9B040024)

**Timothy Mark Carder (CRD #3193024, Registered Principal, Chandler, Arizona)** 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 Carder reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Carder consented to the described sanctions and to the entry of findings that he willfully failed to disclose material information on his Form U4.

Carder's suspension began April 19, 2004, and will conclude July 18, 2004. (NASD Case #C3A040013)

**Christopher Alan Chambers (CRD #4634681, Associated Person, Overland, Kansas)** 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 Chambers reassociates with any NASD member firm following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Chambers consented to the described sanctions and to the entry of findings that he willfully failed to disclose material facts on his Form U4.

Chambers' suspension began April 19, 2004, and will conclude at the close of business October 18, 2004. (NASD Case #C04040012)

**Thomas John Chase (CRD #1313012, Registered Principal, Bratenahl, Ohio)** 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, Chase consented to the described sanction and to the entry of findings that, without the knowledge or consent of a public customer, he caused checks totaling \$405,600.83 to be withdrawn from the securities account of a public customer, endorsed the checks, and used the proceeds for his own benefit or for the benefit of someone other than the customer. The findings also stated that Chase, without the knowledge or consent of public customers, faxed forged letters of authorization to his member firm requesting that checks totaling \$261,357.03 be disbursed from the customers' securities accounts at his member firm, deposited the checks into his personal bank account, and used the funds for his own personal benefit or for some purpose other than the benefit of the customer. NASD also found that Chase took possession of a \$6,800 insurance premium refund check issued to a public customer, endorsed the check, and used the proceeds for his own benefit or for the benefit of someone other than the customer. In addition, NASD found that Chase failed to respond to NASD requests for documents and information. (NASD Case #C8B030031)

**William David DeLee (CRD #4639794, Associated Person, Hanover, 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 DeLee reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, DeLee consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on his Form U4.

DeLee's suspension began April 5, 2004, and will conclude at the close of business October 4, 2004. (NASD Case #C9A040005)

**Jessy Lilly Dirks (CRD #711347, Registered Principal, New York, New York)** and **Sal Nuccio (CRD #860000, Associated Person, Yonkers, New York)** submitted Offers of Settlement in which Dirks was fined \$15,000 and suspended from association with any NASD member in a principal or supervisory capacity for six months. Nuccio was fined \$15,000 and suspended from association with any NASD member in any capacity for 30 days. The fines must be paid before Dirks or Nuccio reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Dirks and Nuccio consented to the described sanctions and to the entry of

findings that a member firm, acting through Dirks, failed to adopt and implement written supervisory procedures reasonably designed to ensure that the firm and its employees complied with NASD Rule 2711. The findings also stated that Dirks failed to exercise adequately or reasonably her supervisory responsibilities to supervise research analysts and to ensure that their research reports complied with NASD Rules 2210 and 2711. NASD also found that Nuccio wrote research reports distributed to public customers that contained "Strong Buy" or "Buy" recommendations but failed to define what was meant by a "Strong Buy" or "Buy" recommendation and did not disclose any risks that could impede the achievement of those targets. In addition, NASD found that Nuccio wrote research reports that failed to disclose the dependence of an issuer on a limited number of customers, the impact that dependence had on potential earnings, that the firm was a market maker in one of the issuers, and included target price projections for which he failed to have a reasonable basis and omitted material information that made them misleading in light of the company's actual financial condition.

Dirks' suspension will begin May 17, 2004, and will conclude at the close of business November 16, 2004. Nuccio's suspension will begin May 17, 2004, and will conclude at the close of business June 15, 2004. (NASD Case #CAF030063)

**Larry Orrin Dubin (CRD #1260073, Registered Representative, Marina Del Rey, 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 10 business days. Without admitting or denying the allegations, Dubin consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing written or oral notification to, and receiving approval from, his member firm.

Dubin's suspension began April 19, 2004, and concluded at the close of business April 30, 2004. (NASD Case #C02040012)

**Dane Stephen Faber (CRD #1020637, Registered Representative, Sausalito, California)** was barred from association with any NASD member in any capacity and ordered to pay \$82,220, plus interest, in restitution to public customers. The SEC imposed the sanctions following appeal of an NASD decision. The sanctions were based on findings that Faber engaged in fraudulent misrepresentations and omissions of fact in his recommendations to public customers to purchase shares of a speculative security. The findings also stated that Faber made an unsuitable recommendation to a public customer without a reasonable basis for his recommendation. (NASD Case #CAF010009)

**Edward Kenneth Fazekas (CRD #1533218, Registered Representative, Chesterland, Ohio)** 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 \$8,220.78, plus interest, in restitution to a public customer. Without admitting or denying the allegations, Fazekas consented to the described sanctions and to the entry of findings that he converted funds totaling \$59,060 belonging to a public customer to his own use without the customer's knowledge, consent, or authorization. (NASD Case #C04040014)

**Jaime Antonio Flechas (CRD #2837750, Registered Representative, Ridgeland, Mississippi)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Flechas arranged for the transfer of \$18,500 from the account of a public customer without the consent or authorization of the customer. The findings also stated that Flechas failed to respond to NASD requests for information. (NASD Case #C05030047)

**Joseph S. Germano (CRD #4668582, Associated Person, Henderson, Nevada)** 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 allegation, Germano consented to the described sanction and to the entry of findings that he willfully misrepresented a material fact on his Form U4. (NASD Case #C02040010)

**Hal Stuart Goldenberg (CRD #501694, Registered Principal, Tinton Falls, 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, Goldenberg consented to the described sanction and to the entry of findings that he forged, or caused to be forged, the signatures of customers on various account documents, including margin agreements and new account forms. NASD also found that Goldenberg settled a customer complaint for \$5,000 without the knowledge or consent of his member firm. The findings also stated that Goldenberg opened an account on behalf of public customers and effected various transactions in the account without the customers' prior knowledge, authorization, or consent. In addition, NASD found that Goldenberg failed to respond to NASD requests for documents and information. (NASD Case #C9B040016)

**James Richard Gonzales (CRD #4235861, Registered Representative, Plano, Texas)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Gonzales executed unauthorized transactions in the accounts of public customers and failed to respond to NASD requests for information. (NASD Case #C05030050)

**Elizabeth Ann Gowen (CRD #2775793, Registered Principal, Redding, California)** submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Gowen consented to the described sanctions and to the entry of findings that she settled verbal customer complaints by making payments totaling \$2,863.24 to the customers. The findings also stated that Gowen failed to inform her firm of the complaints or the corresponding payments.

Gowen's suspension began May 3, 2004, and concluded at the close of business May 14, 2004. **(NASD Case #C01040008)**

**Barry George Hartman (CRD #1361232, Registered Principal, Missoula, Montana)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,000 and suspended from association with any NASD member in any capacity for 15 days. Without admitting or denying the allegations, Hartman consented to the described sanctions and to the entry of findings that he falsely identified himself as another individual in a conversation with an insurance company regarding a variable annuity policy it had issued to a public customer.

Hartman's suspension began May 3, 2004, and will conclude at the close of business May 17, 2004. **(NASD Case #C3B040009)**

**Stevan Barry Haslehurst (CRD #4429340, Registered Representative, Orlando, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Haslehurst consented to the described sanction and to the entry of findings that he received \$3,600 from a public customer to invest in securities for the customer, but failed to follow the customer's instructions and deposited the funds into his own account, thereby converting the funds to his own use and benefit. The findings also stated that Haslehurst failed to respond to NASD requests for information. **(NASD Case #C07040033)**

**Byron Groo Hathaway (CRD #4044654, Registered Representative, Oreland, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hathaway consented to the described sanction and to the entry of findings that he created a fictitious letter requested that a co-worker forge the name of a deceased former customer of his member firm on the letter and submitted the letter to his firm in an attempt to obtain reimbursement for tuition-related expenses. **(NASD Case #C9B040018)**

**Rodolfo Hernandez (CRD #2818510, Registered Representative, Jackson 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 nine months. The fine must be paid before Hernandez reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Hernandez consented to the described sanctions and to the entry of findings that he made purchases in the accounts of public customers without their consent or authority.

Hernandez's suspension began April 19, 2004, and will conclude at the close of business January 18, 2005. **(NASD Case #C9B040017)**

**Richard Scott Jacobson (CRD #2326286, Registered Principal, Tucson, Arizona)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Jacobson exercised discretion in the account of a public customer without written authorization. NASD also found that Jacobson falsely represented to his member firm that he had failed to effect a sell order placed by the public customer in order to induce the firm to restore value to the customer's account. **(NASD Case #C3A030024)**

**Clifford R. James (CRD #4620719, Associated Person, Saint Ann, Missouri)** 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, James consented to the described sanction and to the entry of findings that he failed to disclose material information on his Form U4. The findings also stated that James failed to respond to NASD requests for information. **(NASD Case #C04030065)**

**Edward Terry Jaramillo (CRD #2573010, Registered Representative, Coral Gables, Florida)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Jaramillo consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for documents. **(NASD Case #CMS030283)**

**Kevin Richard Johnson (CRD #1369794, Registered Supervisor, Princeton, 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 one year. The fine must be paid before Johnson reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Johnson consented to the described sanctions and to the entry of findings that he recommended a stock to public customers and inexperienced registered representatives without conducting due diligence regarding the stock. The findings also stated that Johnson failed to disclose

material information and omitted material facts concerning the stock to public customers and acted recklessly when he recommended the stock to customers without a reasonable basis. NASD also found that Johnson failed to submit the required form for approval of his solicitations of the stock not covered by his firm's research analysts or excepted from the approval requirement. In addition, NASD found that Johnson marked numerous solicited trades as "unsolicited" in his firm's automated order-entry system, causing the firm's records to be inaccurate and to violate Section 17(a) of the Securities Exchange Act and SEC Rule 17a-3.

Johnson's suspension began April 19, 2004, and will conclude at the close of business April 18, 2005. (NASD Case #CAF030064)

**Dennis Keith Jones (CRD #2026153, Registered Representative, Harrison, 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, Jones consented to the described sanction and to the entry of findings that he induced his relatives to invest approximately \$211,222.95 in a scheme that he created or perpetuated. The findings also stated that Jones made these claims knowing them to be false, and converted the funds for his personal benefit, and not for the benefit of his relatives. (NASD Case #C8A040016)

**Melissa Dawn London (CRD #4475688, Registered Representative, Parkersburg, 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, London consented to the described sanction and to the entry of findings that, while working as a personal banker, she converted funds totaling \$1,247.14 by withdrawing the funds from the bank's accounts and depositing the money into her personal bank accounts without the permission or authority of the bank. The findings also stated that London converted \$1,500 from the bank account of a public customer by transferring the money from the customer's bank account into her personal bank accounts without the permission or authority of the customer. (NASD Case #C8A040013)

**James Harold McKamy (CRD #2279234, Registered Principal, Richardson, Texas)** 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 McKamy reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, McKamy consented to the described sanctions and to the entry of findings that, at the direction of another individual, he prepared, signed, and backdated his member firm's management agreement for the purpose of

furthering an attempt to mislead NASD concerning its investigation of an individual's principal related activities.

McKamy's suspension began May 17, 2004, and will conclude at the close of business November 16, 2004. (NASD Case #C06030035)

**Peter Courtney Mell, Sr. (CRD #2213795, Registered Principal, Chester, 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, Peter consented to the described sanction and to the entry of findings that he fabricated and provided multiple falsified account statements to his member firm and stated that these account statements reflected the existence of securities purportedly owned by the firm. NASD also found that these account statements were false and fictitious, as no such accounts ever existed. NASD further found that Mell fabricated and provided to his member firm a letter falsely reflecting that the accounts, which never existed, had been closed. In addition, NASD determined that Mell also forged, or caused to be forged, the signature of a representative of another member firm on the letter. (NASD Case #C9B040023)

**Richard Joseph Monello (CRD #1644006, Registered Principal, Irving, Texas)** submitted an Offer of Settlement in which he was suspended from association with any NASD member in any principal or supervisory capacity for three months. In light of the financial status of Monello, no monetary sanctions have been imposed. Without admitting or denying the allegations, Monello consented to the described sanction and to the entry of findings that a member firm, acting through Monello, engaged in a securities business while failing to maintain sufficient net capital. The findings also stated that Monello failed to establish and maintain a supervisory system to supervise the trading activities of a registered representative. In addition, NASD found that Monello failed to establish, maintain, and enforce reasonable written supervisory procedures designed to ensure the firm's compliance with all aspects of NASD trade reporting rules.

Monello's suspension began May 3, 2004, and will conclude at the close of business August 2, 2004. (NASD Case #C06030035)

**Steve Charles Morgan (CRD #3026067, Registered Representative, Berthoud, Colorado)** submitted a Letter of Acceptance, Waiver, and Consent in which he was ordered to pay \$15,739 in partial restitution to public customers and suspended from association with any NASD member in any capacity for six months. The restitution must be paid before Morgan reassociates with any NASD member following the suspension. Without admitting or denying the allegations, Morgan consented to the described sanctions and to the entry

of findings that he presented to and discussed with public customers a home equity management program involving the use of a portion of the equity in their home to purchase a variable annuity and allocate the investment 35 percent to fixed income-based sub-accounts, and 65 percent in equity-based sub-accounts. NASD also found that Morgan did not have reasonable grounds for believing that the customers had the financial ability to purchase the recommended variable annuity, without using the proceeds from the mortgaging of their home to do so, and that he had no reasonable grounds for believing that they would be able to meet their mortgage commitment should the variable annuity not perform at the levels needed to avoid depletion of principal.

Morgan's suspension began April 5, 2004, and will conclude at the close of business October 4, 2004. **(NASD Case #C3A040016)**

**Dawn Ann Muzoleski (CRD #4208814, Registered Representative, Bear, Delaware)** 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, Muzoleski consented to the described sanction and to the entry of findings that she received a \$1,520 check from a public customer to deposit into the customer's brokerage account and, without the customer's knowledge or authorization, deposited the check into an account that she owned, retaining the customer's funds before depositing the funds by means of a separate instrument into the customer's brokerage account at the firm. NASD also found that Muzoleski failed to respond to NASD requests for documents and information. **(NASD Case #C9A040007)**

**John Lewis Myers (CRD #1034020, Registered Representative, Las Vegas, Nevada)** 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 \$109,990.64, plus interest in restitution to public customers. Without admitting or denying the allegations, Myers consented to the described sanctions and to the entry of findings that he received \$109,990.64 from public customers intended to be used for investment purposes, but failed to apply the funds as directed and, instead, misused the customers' funds without their knowledge and consent. **(NASD Case #C02040015)**

**Dennis Stuart O'Brien (CRD #3245317, Registered Representative, Willow Grove, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, O'Brien consented to the described sanction and to the entry of findings that he transmitted by facsimile to a firm copies of documents that purported to be bank money orders totaling \$1,660 payable to the firm for applications for insurance for public customers.

NASD found that O'Brien falsely represented to the firm that the money orders had previously been submitted to the firm with the insurance applications when, in fact, the customers had not paid such sums, nor had such sums been submitted to the firm. The findings also stated that the money orders were copies of actual bank money orders issued to O'Brien, which he had made payable to his landlord and not to the firm, with the insurance applications on the lives of the customers. In addition, NASD found that the firm, acting in reliance upon the purported premium payments represented by the falsified money orders, placed in force policies on the lives of the customers and paid O'Brien commissions of \$1,328.04. **(NASD Case #C9A040006)**

**Collin Jesus Olympius (CRD #2766903, Registered Representative, Pasadena, 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 30 days. The fine must be paid before Olympius reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Olympius consented to the described sanctions and to the entry of findings that he failed to disclose material information on his Form U4.

Olympius' suspension began April 19, 2004, and will conclude at the close of business May 18, 2004. **(NASD Case #C02040014)**

**Sean Donald Pascoe (CRD #2331266, Registered Representative, Boca Raton, Florida)** was barred from association with any NASD member in any capacity and ordered to pay \$11,133, plus interest, in restitution to a public customer. The sanctions were based on findings that Pascoe executed transactions in the account of a public customer without the knowledge or consent of the customer. The findings also stated that Pascoe failed to respond to NASD requests to appear for an on-the-record interview. **(NASD Case #C07030060)**

**Paul Joseph Pollack (CRD #1157243, Registered Representative, San Francisco, California)** submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 10 business days. The fine must be paid before Pollack reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Pollack consented to the described sanctions and to the entry of findings that he failed to disclose a material fact on his Form U4.

Pollack's suspension began May 3, 2004, and will conclude at the close of business May 14, 2004. **(NASD Case #C01030034)**

**Paul Samuel Porter, II (CRD #2045684, Registered Representative, River Ridge, Louisiana)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one month. Without admitting or denying the allegations, Porter consented to the described sanctions and to the entry of findings that he recommended and effected the purchase of Class B mutual funds by a public customer in the aggregate amount of \$80,000 without having reasonable grounds for believing the recommendations and resultant transactions were suitable for the customer on the basis of the customer's financial situation and needs.

Porter's suspension began April 19, 2004, and will conclude at the close of business May 18, 2004. **(NASD Case #C05040016)**

**Max M. Quasem (CRD #4648641, Associated Person, Rancho Cucamonga, California)** submitted an Offer of Settlement 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 Quasem reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Quasem consented to the described sanctions and to the entry of findings that he failed to disclose a material fact on his Form U4.

Quasem's suspension began April 5, 2004, and concluded at the close of business May 4, 2004. **(NASD Case #C02040004)**

**Darryl Kent Reeder (CRD #2442970, Registered Representative, Fort Lauderdale, 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 18 months. The fine must be paid before Reeder reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Reeder consented to the described sanctions and to the entry of findings that he created business entities, including a hedge fund, and, prior to selling any interests in the fund, presented his member firm with information about the fund but failed to obtain written approval to participate in any transactions involving the hedge fund. The findings also stated that Reeder was prohibited by his firm from participating in transactions in the fund but continued his participation by selling interests in the fund to additional investors.

Reeder's suspension began April 19, 2004, and will conclude at the close of business October 11, 2005. **(NASD Case #C07040030)**

**Louis Enrigne Rivadeneira (CRD #2826609, Registered Representative, New York, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Rivadeneira converted \$56,000 belonging to public customers to his own use. NASD found that Rivadeneira forged the signature of a customer on an Individual Retirement Account Distribution Request Form and a Flexible Payment Annuity Surrender Form. The findings also stated that Rivadeneira failed to respond to NASD requests for information and to appear for an NASD on-the-record interview. **(NASD Case #C10030107)**

**Jeffrey Dirk Roberts (CRD #1139510, Registered Principal, Boise, Idaho)** 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, Roberts consented to the described sanction and to the entry of findings that he received checks totaling \$152,473 from a public customer to be used for investment purposes and deposited the checks in an account he controlled, thereby converting the funds to his own use and benefit. **(NASD Case #C3B040007)**

**William Domizio Sargent (CRD #4555931, Associated Person, Shirley, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$3,500 and suspended from association with any NASD member in any capacity for 45 days. The fine must be paid before Sargent reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Sargent consented to the described sanctions and to the entry of findings that he failed to disclose material facts on his Form U4.

Sargent's suspension began April 19, 2004, and will conclude at the close of business June 2, 2004. **(NASD Case #CLI040005)**

**Frederick Gus Schiffman (CRD #1398182, Registered Representative, Jackson, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$3,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Schiffman consented to the described sanctions and to the entry of findings that he recommended that public customers sell certain investments and purchase growth technology mutual funds in their accounts. The findings also stated that Schiffman made these recommendations without having reasonable grounds for believing that his recommendations and the resultant transactions were suitable for the customers on the basis of their financial situation, investment objectives, and needs.

Schiffman's suspension began April 19, 2004, and concluded at the close of business April 30, 2004. **(NASD Case #C9B040021)**

**Elliot Seth Simon (CRD #845441, Registered Representative, Weston, Florida)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Simon consented to the described sanction and to the entry of findings that he engaged in private securities transactions and failed to give prior written notice to, or receive approval from, his member firm. **(NASD Case #C07030062)**

**Timothy Paul Stohs (CRD #1634086, Registered Representative, Boothwyn, 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 15 business days. The fine must be paid before Stohs reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Stohs consented to the described sanctions and to the entry of findings that he failed to provide his member firm with prompt written notice of his outside business activities.

Stohs' suspension began May 3, 2004, and will conclude at the close of business May 21, 2004. **(NASD Case #C9A040008)**

**James William Striegel (CRD #1779775, Registered Representative, Bixby, Oklahoma)** submitted an Offer of Settlement 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 Striegel reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Striegel consented to the described sanctions and to the entry of findings that he sent a public customer communications that failed to provide a sound basis for evaluating the securities held in the customer's account and included potentially misleading statements regarding the value of the securities. The findings also stated that Striegel failed to respond to NASD requests for information.

Striegel's suspension began May 3, 2004, and will conclude at the close of business November 2, 2004. **(NASD Case #C05030061)**

**Patrick Avent Turlington (CRD #2928710, Registered Representative, Winston-Salem, 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, Turlington consented to the described sanction and to the entry of findings that he received \$22,000 from a public customer to deposit in the customer's account at Turlington's member firm, failed to deposit the funds, and converted the funds for his own use and benefit. The findings also stated that Turlington failed to respond to NASD requests to appear and provide testimony. **(NASD Case #C07040034)**

**Susan Young U (CRD #2559770, Registered Principal, East Meadow, New York)** 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, U consented to the described sanction and to the entry of findings that she effected a false change of address for a public customer without the knowledge or authorization of the customer. The findings also stated that U failed to respond to an NASD request for information. **(NASD Case #C10030124)**

**Thomas Hans Underdahl, Jr. (CRD #1614866, Registered Representative, Yarmouth, Maine)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$4,000, \$1,500 of which represents disgorgement of his commissions, and suspended from association with any NASD member in any capacity for 10 business days. The fine must be paid before Underdahl reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Underdahl consented to the described sanctions and to the entry of findings that he sold income-oriented investments and purchased Class B mutual funds for the account of a public customer without having reasonable grounds for believing that his recommendations and resultant transactions were suitable for the customer on the basis of her financial situation, investment objectives, and needs.

Underdahl's suspension began April 19, 2004, and concluded at the close of business April 30, 2004. **(NASD Case #C11040011)**

**Dmitry Verkhovsky (CRD #2171637, 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, Verkhovsky consented to the described sanction and to the entry of findings that he arranged for an impostor to take the Series 6 and Series 63 qualification exams on his behalf. **(NASD Case C10040018)**

**Karla Zorina Wilkie (CRD #1690469, Registered Representative, Brentwood, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$7,500 and suspended from association with any NASD member in any capacity for 25 days. Without admitting or denying the allegations, Wilkie consented to the described sanctions and to the entry of findings that she failed to disclose timely material facts on her Form U4.

Wilkie's suspension began May 3, 2004, and will conclude at the close of business May 27, 2004. **(NASD Case #C10040020)**

**Jimmy Ji Zhou (CRD #4104172, Registered Representative, El Monte, 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 nine months. Without admitting or denying the allegations, Zhou consented to the described sanctions and to the entry of findings that he willfully failed to disclose material information on his Form U4.

Zhou's suspension began April 19, 2004, and will conclude at the close of business January 18, 2005. (NASD Case #C02040013)

## Complaints Filed

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

**John Edward Brigandi (CRD #1388900, Registered Representative, Greenvale, New York)** was named as a respondent in an NASD complaint alleging that he directed and pursued a short-term trading strategy in the account of a public person and used a large amount of margin to finance the trading activity. The complaint also alleges that Brigandi executed the transactions in the customer's account without reasonable grounds for believing that the level of activity represented by such transactions was suitable for the customer on the basis of his financial situation, investment objectives, and needs. (NASD Case #C10040025)

**Robin Carter Calvert (CRD #1185609, Registered Representative, Spartanburg, South Carolina)** was named as a respondent in an NASD complaint alleging that she recommended the purchase of corporate bonds to public customers without reasonable basis for her representations, and failed to disclose to public customers that the bonds were rated significantly below investment grade and were speculative and risky investments. The complaint also alleges that Calvert made recommendations to public customers to purchase bonds and to sell mutual fund holdings in their IRA accounts to fund bond purchases without reasonable grounds for believing that the recommendations and resultant transactions were suitable for the customers on the basis of their financial situation and needs. In addition, the complaint alleges that Calvert failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #C07040029)

**Dana Alexander Korosi (CRD #816161, Registered Representative, Moreland Hills, Ohio)** was named as a respondent in an NASD complaint alleging that he converted \$188,398 from a securities account of a trust maintained at his member firm by writing checks made payable to himself, endorsing the checks, and using the proceeds from the checks for his own benefit or for the benefit of someone other than the trust beneficiaries, without the knowledge or consent of the beneficiaries of the trust. The complaint also alleges that Korosi failed to respond to NASD requests for documents and information. (NASD Case #C8A040017)

**Cory Andrew Mongno (CRD #2648751, Registered Representative, Bridgewater, New Jersey)** was named as a respondent in an NASD complaint alleging that he engaged in a pattern of unsuitable mutual fund switches in the accounts of a public customer that involved open-end Class A and Class B shares and closed-end mutual funds. The complaint also alleges that Mongno recommended the transactions without having reasonable grounds for believing that such transactions were suitable for the customer in view of the frequency of the transactions, the type of investments being recommended, and the customer's financial situation and needs. In addition, the complaint alleges that, while Mongno's switching had negative financial consequences for the customer, it generated gross commissions of approximately \$52,000 for Mongno and his member firm. (NASD Case #C9B040020)

**Oscar Armando Montenegro (CRD #4222514, Registered Representative, Brooklyn, New York)** was named as a respondent in an NASD complaint alleging that he received \$39,975 from public customers for investment, deposited the funds into his personal banking account, and forwarded only \$20,000 of one customer's funds for investment, thereby converting \$19,975 for his own use and benefit. The complaint also alleges that Montenegro created a Web site for his own direct access trading firm and specified that customer trades would be effected through a member firm, without the permission of any registered principal of the firm to use the Web site. The complaint further alleges that Montenegro provided false testimony during an NASD on-the-record interview. (NASD Case #C10040019)

**John R. Murdock, III a/k/a Rusty Murdock (CRD #4464537, Associated Person, Texarkana, Texas)** was named as a respondent in an NASD complaint alleging that Murdock received \$3,737.50 in insurance premium payments from public customers for application to the customers' insurance policies and converted the funds to his personal use and benefit without the customers' knowledge, authorization, or consent. The complaint also alleges that Murdock failed to respond to NASD requests for information and documentation. (NASD Case #C06040009)

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

Financial Links, Inc.  
Needham Heights,  
Massachusetts  
(March 26, 2004)

Harmonic Research, Inc.  
New York, New York  
(March 26, 2004)

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

Kanatani, Kirk W.  
Prairieville, Louisiana  
(March 26, 2004)

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

The following firms were suspended from membership in the NASD for failure to comply with formal written requests to submit financial information to the NASD. The action was based on the provisions of NASD Rule 8221.

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

Diesel Energy  
International, L.L.C.  
Dallas, Texas  
(March 11, 2004)

Financial Links, Inc.  
Needham Heights,  
Massachusetts  
(March 11, 2004)

Equity Financial  
Management Services, Inc.  
Chicago, Illinois  
(March 11, 2004)

### **Individuals Barred Pursuant to NASD Rule 9544 for Failure to Provide Information Requested Under NASD Rule 8210**

(The date the bar became effective is listed after the entry.)

Ceparano, Louis C.  
Melville, New York  
(April 5, 2004)

Quattrochi, Joseph C.  
Staten Island, New York  
(March 30, 2004)

Charlton, Michael E.  
Nashville, Tennessee  
(March 5, 2004)

Riccardi, Jr., Elio  
Staten Island, New York  
(March 29, 2004)

Chenhall, Terry  
St. Petersburg Beach, Florida  
(March 22, 2004)

Signorelli, Jr., Joseph  
Parkland, Florida  
(March 5, 2004)

Everin, Peggy Louis  
Wyoming, Michigan  
(March 29, 2004)

Stabile, Bach  
Sherman Oaks, California  
(March 26, 2004)

Lyster, Charles E.  
San Clemente, California  
(March 22, 2004)

Wegesser, Hans  
Menomonee Falls, Wisconsin  
(March 26, 2004)

Millard, John L.  
Jupiter, Florida  
(March 22, 2004)

Willis, John Carl  
Englewood, Florida  
(March 12, 2004)

Mongie, Francis B.  
Provo, Utah  
(March 19, 2004)

### **Individuals Suspended Pursuant to NASD Rule 9541(b) for Failure to Provide Information Requested under NASD Rule 8210**

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

Clancy, William James  
Rahway, New Jersey  
(March 30, 2004)

Gray, Barry K.  
West Columbia, South  
Carolina  
(April 5, 2004)

Dhillon, Hardip S.  
Fremont, California  
(March 30, 2004)

Hsieh, Tu-Chih  
Ridgefield, New Jersey (March  
31, 2004)

Flor, Gary J.  
Huntington, New York (March  
31, 2004)

Jacks, Gary M.  
Maineville, Ohio  
(March 29, 2004)

Floyd, Brian C.  
Orlando, Florida  
(April 5, 2004)

Leonardi, Carl D.  
Rochester, New York  
(March 10, 2004)

## **Individuals Suspended Pursuant to NASD Rule Series 9510 for Failure to Comply With an Arbitration Award or a Settlement Agreement**

Becker, James David  
Marshfield, Massachusetts  
(March 18, 2004)

Harris, II, Ronald A.  
West Orange, New Jersey  
(March 26, 2004)

## **NASD Charges Dallas, San Diego Brokerage Firms with Fraudulent Promotion of Pink Sheet Securities**

### *Six Individuals Associated with RichMark Capital; Back Bay Capital Also Charged*

NASD filed complaints against Dallas-based RichMark Capital Corporation and San Diego-based Back Bay Capital, Inc. for using fraudulent tactics to sell highly speculative OTC (or Pink Sheet) securities to customers. Three persons associated with RichMark and three persons associated with Back Bay were also charged.

RichMark, its owner Doyle Mark White, and its former president Michael Ray Claiborne have been charged with fraudulently manipulating the price of the common stock of Paradise Tan, Inc, which operates tanning salons in Texas and Arizona. Paradise Tan's stock was first quoted on the Pink Sheets in July 2002. White is charged with engaging in unlawful "wash" sales of Paradise Tan shares to create the appearance of a genuine, independent market for the stock. Claiborne is charged with executing White's wash sales—even though he knew they were not bona fide market transactions, but simply trades between accounts controlled by White.

James G. Morgan, Jr., a former RichMark broker, is charged with fraud in connection with his solicitation of customers to purchase Paradise Tan promissory notes. One victim was a 91-year-old widow living in a retirement home on a limited, fixed income, whom Morgan persuaded to purchase a \$25,000 promissory note that could be converted into Paradise Tan shares.

White and Claiborne are also charged with allowing an unregistered person at RichMark to trade in Paradise Tan stock as part of this fraudulent scheme.

In a second case, NASD filed fraud charges against Back Bay, its owner and president Albert Carazolez, and registered representative Vladimir Feldman in connection with their promotion and sale of shares of InterContinental Services Corp., a now-defunct OTC company. InterContinental, which had little revenue and significant debt, purportedly was going to engage in the design and manufacture of "interactive toys."

NASD also charged Robert Meyer—who owned a minority interest in Back Bay, was the former CEO of InterContinental, and was InterContinental's major stockholder—with failing to register as a principal in Back Bay. Meyer had been registered with NASD, from 1988 until 1994, when Montana state securities regulators obtained a default judgment against him for violating Montana anti-fraud regulations and employing unregistered agents to sell unregistered securities.

Feldman—who operated from a satellite office of Back Bay located in Brooklyn, NY—is charged with fraudulently inducing customers, some of them elderly and with limited incomes, to purchase approximately 400,000 shares of InterContinental in September and October 2002 for more than \$200,000. The NASD complaint alleges that most of the stock sold by Feldman came from a personal account of Meyer's. As part of the scheme, Carazolez purchased almost 100,000 shares of InterContinental stock prior to Feldman's fraudulent solicitation efforts, and then dumped most of those shares at a profit after Feldman developed artificial interest in the market for InterContinental shares.

Under NASD rules, the individuals and the firms named in the complaint can file a response and request a hearing before an NASD disciplinary panel. Possible sanctions include a fine, suspension, bar, or expulsion from NASD.

## **NASD Files Enforcement Action against Sigma Financial for Harassing Clients, Violating Arbitration Code**

NASD has brought an enforcement action charging Sigma Financial Corporation of Ann Arbor, MI, and its president with unethical conduct and violations of NASD's Code of Arbitration Procedure for frivolously pursuing legal action against an elderly couple who had won an arbitration award against the firm. This action is the most recent effort by NASD to curb abuses in the arbitration process and ensure compliance by regulated firms.

"This case is an example of a brokerage firm using the courts to harass and intimidate customers because the firm did not like an arbitration award," said Mary L. Schapiro, NASD Vice Chairman and President of Regulatory Policy and Oversight. "The firm's frivolous claims have caused these customers to incur significant legal fees and court costs over the three years that they have been forced to protect their rights in state court."

"This kind of behavior is in clear violation of NASD Rules and the firm's own agreement with its customers, and it will not be tolerated," Schapiro said. "Any firm found abusing the arbitration process, including misusing lawsuits in the civil courts, will face disciplinary action."

According to NASD's complaint, Sigma Financial and its president, Jerome S. Rydell, were the subjects of an arbitration claim filed on July 21, 1999, by a couple who had lost money in investments they had made through the firm. Following seven days of hearings, on April 3, 2001, an NASD arbitration panel entered an award in the customers' favor in the amount of \$318,096, which included attorneys' fees and costs. Shortly after the award was rendered, however, on April 23, 2001, Sigma filed two lawsuits in Michigan Circuit Court against the customers.

The first lawsuit was an attempt to vacate the arbitration award. In the second lawsuit, Sigma claimed, for the first time, that it was entitled to damages as a third-party beneficiary to agreements the customers signed with the issuer of the investments, which they purchased through the firm. Sigma did not seek to arbitrate this claim despite its agreement to arbitrate any controversy and waive its right to seek remedies in court.

On September 26, 2001, the Michigan Circuit Court confirmed the NASD arbitration award in favor of the customers, dismissed the second lawsuit and sanctioned the firm \$500 for filing a frivolous claim. Despite these rulings, Sigma continued to litigate against the customers in state court, filing numerous motions and pleadings from November 2001 through April 2002. In May 2002, after finding Sigma's latest series of motions to be in bad faith, the Michigan Circuit Court again sanctioned Sigma. This time, the court ordered the firm and its counsel to pay the customers \$1,000 and took the unusual step of requiring Sigma to obtain the Circuit Court's permission prior to filing any other motions.

Sigma appealed the Michigan Circuit Court's rulings to the Michigan Court of Appeals, in filings made on January 22, 2002, and February 19, 2002. On February 19, 2004, the Michigan Court of Appeals upheld the Circuit Court's confirmation of the NASD arbitration award, dismissal of the second lawsuit, and imposition of sanctions. Three years after the NASD Arbitration award was issued, Sigma continues to pursue its claims against its former customers in Michigan courts: on April 1, 2004, Sigma filed an appeal with the Michigan Supreme Court.

Under NASD rules, the individuals and the firms named in the complaint can file a response and request a hearing before an NASD disciplinary panel. Possible sanctions include a fine, suspension, bar, or expulsion from NASD.

## **NASD Fines Long Island Brokerage Firm David Lerner Assoc., \$100,000 for Prohibited Mutual Fund and Variable Product Sales Contests**

### ***Two Executives also Censured and Fined for Supervisory Violations***

NASD has censured and fined Long Island-based brokerage firm David Lerner Assoc., \$100,000 for running sales contests to promote certain David Lerner proprietary mutual funds and selected variable annuity and variable life insurance products, all in violation of NASD rules.

Between Sept. 25, 2000, and March 21, 2003, the firm conducted six sales contests and offered or awarded various prizes to the winning broker-dealer representatives, including three- and four-day trips to resorts in Puerto Rico, the Bahamas, Las Vegas, and New England. Other prizes included valuable home electronics, such as large-screen television sets, digital cameras, and DVD players. The estimated value of the contest awards totaled \$700,000.

Two of the contests violated NASD rules because the sales contests offered credit only for sales of David Lerner's own proprietary mutual funds. Four other contests violated NASD rules because the firm's proprietary mutual funds or selected variable products received favorable treatment for contest purposes.

"The sales contests engaged in by the firm increase the potential for investors to be steered into investments that are in the representatives' financial interests instead of the best interests of the customers," said Mary L. Schapiro, NASD's Vice Chairman and President of Regulatory Policy and Oversight. "Our rules are designed to prevent the conflicts of interest that arise when brokers are encouraged to recommend investments based on lucrative awards paid by their employers, rather than on the merits of the investments and the needs of their customers."

NASD also charged David Lerner Assoc., and its Vice President of Compliance, Daniel E. Chafetz, with supervisory violations for failing to have any supervisory systems or procedures in place to detect and prevent the sales contest violations in question. Additionally, NASD charged the firm and its Vice President of Sales, John Dempsey, Sr., with failing to supervise the firm's sales force to prevent the sales contest violations. NASD censured Chafetz and Dempsey and fined each \$10,000 for their supervisory violations.

In settling these charges, David Lerner Assoc., Chafetz, and Dempsey neither admitted nor denied the charges.





