

Notices to Members

October 2000

Notices

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Notices to Members (December 1996 to current) are also available on the Internet at www.nasdr.com.

**ACTION REQUESTED BY
OCTOBER 31, 2000**

Limit Orders— Manning Interpretation

**Nasdaq Requests
Comment On Extending
Manning Limit Order
Protection Interpretation
To Premarket Hours;
Comment Period Expires
October 31, 2000**

SUGGESTED ROUTING

The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.

- Legal & Compliance
- Operations
- Senior Management
- Technology
- Trading & Market Making

KEY TOPICS

- IM-2110-2
- Limit Orders
- Manning Interpretation

Executive Summary

The Nasdaq Stock Market, Inc. (The Nasdaq Stock Market®) is seeking member comment on a proposal to extend the National Association of Securities Dealers, Inc. (NASD®) *Manning* Limit Order Protection Interpretation (IM-2110-2 or *Manning*) at the customer's discretion to premarket hours (8:40 a.m.¹ to 9:30 a.m. Eastern Time). *Manning* prohibits an NASD member firm from trading ahead of a customer limit order. *Manning* currently applies only during regular Nasdaq® trading hours.

The proposal is designed to respond to increasing member activity in premarket hours and to provide customers with the opportunity to have their priced orders protected and potentially executed in this premarket period. Limit orders from customers who do not elect to have their orders protected in the 8:40 a.m. to 9:30 a.m. time period will continue to be protected and executed in the normal fashion at the market open when *Manning* already applies.

Request For Comment

Nasdaq encourages all members and interested parties to comment on the proposal. For your convenience, we have provided a checklist (see Attachment A) so that in a minimum amount of time you can provide Nasdaq with your general comments. Comments must be received by **October 31, 2000**.

Members and interested parties can submit their comments using the following methods:

- 1) mailing in the checklist (Attachment A)
- 2) mailing in written comments

- 3) e-mailing written comments to: pubcom@nasd.com
- 4) submitting comments online at the NASD Regulation, Inc. (NASD RegulationSM) Web Site (www.nasdr.com)

If you decide to send comments using both the checklist and one of the other methods listed above, please let us know. The checklist and/or written comments should be mailed to:

Joan C. Conley
Office of the Corporate Secretary
NASD Regulation, Inc.
1735 K Street, NW
Washington, DC 20006-1500

The only comments that will be considered are those submitted in writing, either via e-mail, regular mail, or the NASDR Web Site.

Before becoming effective, the Nasdaq Board of Directors must adopt, and the Securities and Exchange Commission (SEC) must approve, any rule change. The NASD Board of Governors also may review the rule change.

Questions/Further Information

As noted, written comments should be submitted to Joan C. Conley. Questions concerning this *Notice to Members—Request for Comment* may be directed to Thomas P. Moran, Assistant General Counsel, Office of General Counsel, The Nasdaq Stock Market, at (202) 728-8294.

Background

Increasingly, public customers are entering orders with their brokers prior to the market open. In an attempt to service those orders, member firms are increasing their trading in the premarket to manage order imbalances. However,

customer limit orders do not, other than the general duty of best execution, currently have the protection mandated by *Manning* when member firms trade during this period.

To respond to this change in market activity, the NASD Board of Governors recently approved a proposal to extend, at the customer's discretion, *Manning* to 8:40 a.m. to 9:30 a.m. ET. *Manning* prohibits an NASD member firm that is holding a customer limit order from trading for its own account at a price that would satisfy the customer's limit order without executing that customer limit order. *Manning* currently applies only during regular Nasdaq trading hours (9:30 a.m. to 4:00 p.m. ET) and Nasdaq's extended hours session (4:00 p.m. to 6:30 p.m. ET) (see *Notice to Members 95-67* and SEC Release No. 34-42003).

Under the Board's proposal, customers who do not choose to have their orders protected in the premarket will have their orders executed in the normal manner at market open. Given the risk that market makers and customers

assume when trading in the premarket, only those customers who affirmatively agree to have their limit orders protected will be eligible for *Manning* protection. Such agreements between customers and their firms will highlight the potential that premarket executions may occur at prices that could be inferior to the price a customer might have obtained by waiting to trade until the market has formally opened.

Questions For Comment

Given the potential for significant member system reprogramming associated with the expansion of *Manning* to the premarket, Nasdaq is seeking member comment on this proposal prior to submitting this rule change to the SEC for approval. Specifically, Nasdaq seeks comment on the following:

- What are the specific technology challenges and issues facing your firm in connection with the expansion of *Manning* to the 8:40 a.m. to 9:30 a.m. time period?

- What changes to your firm's current process for organizing and executing customer limit orders would have to be made to comply with a rule mandating *Manning* limit order protection to the premarket time period?
- What is the best estimate of time it would take for your firm to become prepared to comply both technologically and operationally with an expansion of *Manning* to the premarket time period?

Endnote

¹The 8:40 a.m. *Manning* start time was selected in order to avoid conflicting with the traditional 8:30 a.m. public release of economic and material company information and to allow all market participants sufficient time to adjust and enter orders in response to that information.

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ATTACHMENT A

Request For Comment Checklist—Questions For Members And Other Interested Parties

The following list of questions provides a quick and easy means to comment on some of the provisions contained in the proposal. This list of questions does not cover all of the changes contained in the proposal; therefore, we encourage members and other interested parties to review the entire proposal and to comment separately on all aspects of the proposal.

Instructions

Comments must be received by **October 31, 2000**. Members and interested parties can submit their comments using the following methods:

- mailing in this checklist
- e-mailing written comments to *pubcom@nasd.com*
- mailing in written comments
- submitting comments online at the NASDR Web Site (*www.nasdr.com*)

The checklist and/or written comments and should be mailed to:

Joan C. Conley
Office of the Corporate Secretary
NASD Regulation, Inc.
1735 K Street, NW
Washington, DC 20006-1500

Proposed Extension Of Manning Limit Order Protection Interpretation

1. What are the specific technology challenges and issues facing your firm in connection with the expansion of *Manning* to the 8:40 a.m. to 9:30 a.m. time period? _____

2. What changes to your firm’s current process for organizing and executing customer limit orders would have to be made to comply with a rule mandating *Manning* limit order protection to the premarket time period?

3. What is the best estimate of time it would take for your firm to become prepared to comply both technologically and operationally with an expansion of *Manning* to the premarket time period? _____

Contact Information

Name: _____ Firm: _____
Address: _____ City/State/Zip: _____
Phone: _____ E-Mail: _____

Are you:

- An NASD Member
- An Investor
- A Registered Representative
- Other: _____

NASD

Member Benefits Programs

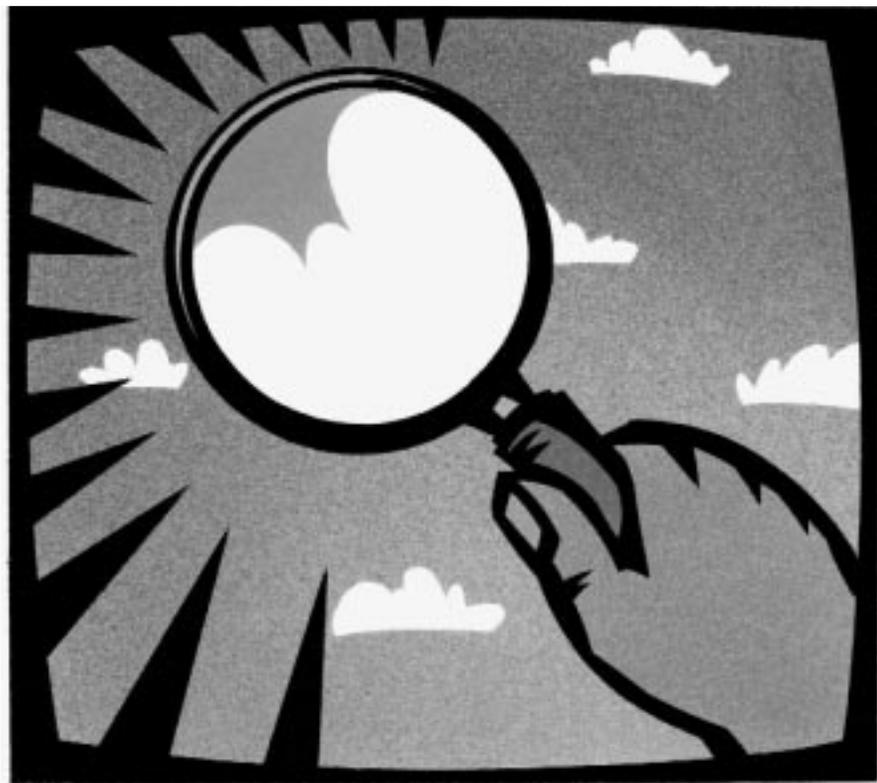
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- Pre-employment Credit
- Social Security Number

**Pricing for New York searches may be higher
because of state court fees.*



Conducting background searches is the single most precautionary measure your firm can implement to reduce exposure to risk.

Visit ADREM's special NASD Web page at www.adpro.com
and enter "NASD" as your ID and "ADREM" as your password.
Or call (800) 281-1250.



This *Special Notice to Members* was mailed to *Notice to Members* subscribers on October 11, 2000.

INFORMATIONAL

NAC Nominees

NASD Announces Nominees For Regional Industry Member Vacancies On The National Adjudicatory Council

SUGGESTED ROUTING

The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.

- Legal & Compliance
- Senior Management

KEY TOPICS

- National Adjudicatory Council

Special NASD Notice to Members 00-71

Executive Summary

The purpose of this *Special Notice to Members* is to announce the nominees for the National Adjudicatory Council (NAC) for the North Region, South Region, and Central Region. The nominees, nominated for two-year terms beginning in January 2001, are listed in Exhibit I. These nominees will be proposed to the National Association of Securities Dealers, Inc. (NASD[®]) National Nominating Committee in 14 calendar days, unless an election is contested.

We appreciate the interest shown by many members in expressing their desire to serve on the NAC and thank everyone for their continuing support of the self-regulatory process. The Regional Nominating Committees thoroughly reviewed the background of every candidate before selecting their nominee in an effort to secure appropriate and fair representation of the regions.

Contested Election Procedures

If an officer, director, or employee of an NASD member in the North Region, South Region, or Central Region has not been proposed for nomination by the Regional Nominating Committee and wants to seek the nomination, he or she should send a written notice to Joan Conley, Corporate Secretary, at the address below within 14 calendar days after the publishing date of this *Special Notice*.

Joan C. Conley, Senior Vice President and Corporate Secretary
National Association of Securities Dealers, Inc.
1735 K Street NW
Washington, D.C. 20006
(202) 728-8381

The Contested Nomination Procedures can be found in Article VI of the NASDRSM By-Laws. If no additional candidate comes forward within 14 calendar days, the Regional Nominating Committees shall certify their candidates to the National Nominating Committee.

Questions/Further Information

Questions concerning this *Special Notice to Members* may be directed to Joan C. Conley, Senior Vice President and Corporate Secretary, NASD, at (202) 728-8381 or via e-mail at: joan.conley@nasd.com

Special NASD Notice to Members 00-71

National Adjudicatory Council Membership And Function

Membership

The NAC consists of 14 members—seven Industry members and seven Non-Industry members. Two Industry members are nominated by the NASD National Nominating Committee and are appointed by the Board of Directors of NASD Regulation, Inc. (NASD RegulationSM) as at-large members. Five Industry members each represent one of the following geographic regions:

West Region: Hawaii, California, Nevada, Arizona, Colorado, New Mexico, Utah, Wyoming, Alaska, Idaho, Montana, Oregon, and Washington
(Districts 1, 2, and 3)

South Region: Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Oklahoma, Tennessee, Texas, Florida, Georgia, North Carolina, South Carolina, Puerto Rico, Virginia,

Canal Zone, and the Virgin Islands (Districts 5, 6, and 7)

Central Region: Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Illinois, Indiana, Michigan, part of Western New York state, and Wisconsin
(Districts 4 and 8)

North Region: Delaware, Maryland, Pennsylvania, West Virginia, District of Columbia, New Jersey, Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, and New York (except for New York City, Long Island, and Western New York state) (Districts 9 and 11)

New York: New York City and Long Island (District 10)

Only three regions (North, South, and Central) have vacancies for this election. NAC members for the other two regions (West and New York) are completing the second year of their two-year term.

Function

According to the NASD By-Laws, the NAC is authorized to act for the NASD Board of Governors in matters concerning:

- appeals or reviews of disciplinary proceedings, statutory disqualification proceedings, or membership proceedings;
- the review of offers of settlement; letters of acceptance, waiver, and consent; and minor rule violation plan letters;
- the exercise of exemptive authority; and
- other proceedings or actions authorized by the Rules of the Association.

The NAC also considers and makes recommendations to the Board on enforcement policy and rule changes relating to the business and sales practices of NASD members and associated persons.

Special NASD Notice to Members 00-71

EXHIBIT I
Nominees For NAC Industry Member Vacancies

South Region (Districts 5, 6, and 7)

Barbara L. Weaver, Vice President and Southeast Compliance Officer
Legg Mason Wood Walker, Inc.
New Orleans, LA

Central Region (Districts 4 and 8)

Douglas L. Kelly, Corporate Vice President and Director of Law and Compliance
A.G. Edwards & Sons, Inc.
St. Louis, MO

North Region (Districts 9 and 11)

Theodore W. Urban, Executive Vice President and General Counsel
Ferris, Baker Watts, Incorporated
Washington, D.C.

NASD Institute For Professional Development Programs

The NASD Institute provides a number of programs, including a credential distinguishing regulatory and securities industry professionals.

The Certificate Program requires 120 hours of education, broken into three phases. Sessions held at the Wharton School in Philadelphia (Phases I and III) provide a total of 60 hours of this Program. An additional 60 hours (Phase II) is achieved through programs sponsored or approved by the NASD Institute and the Wharton School.

Phase II 2000

Held on the campus of Fordham University in New York City:

➔ Variable Products

October 30-31, 2000

Phase I 2001

All held at the Wharton School:

August 19-24, 2001

November 4-9, 2001

Phase III 2001

All held at the Wharton School:

April 30-May 4, 2001

August 26-31, 2001

Visit our Web Pages for program details: http://www.nasd.com/nipd_index.htm



NASD® INSTITUTE FOR
PROFESSIONAL DEVELOPMENT

ACTION REQUIRED

**Broker/Dealer
And Agent
Renewals**

Broker/Dealer And Agent
Renewals For 2001;
Payment Deadline:
December 8, 2000

SUGGESTED ROUTING

The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.

- Executive Representatives
- Legal & Compliance
- Operations
- Registered Representatives
- Registration
- Senior Management

KEY TOPICS

- Maintenance Fees
- Registration
- Renewals
- Web CRD

Executive Summary

The National Association of Securities Dealers, Inc. (NASD[®]) 2001 Broker/Dealer and Agent Registration Renewal Program begins November 6, 2000. This annual program simplifies the registration renewal process through the payment of one amount on the member firm's Preliminary Renewal Statement that includes fees for NASD personnel assessments, NASD system processing fees, NASD branch offices, New York Stock Exchange (NYSE), American Stock Exchange (Amex[®]), Chicago Board Options Exchange (CBOE), Pacific Exchange (PCX), and Philadelphia Stock Exchange (PHLX) maintenance fees. The statement also includes state agent renewal fees and state broker/dealer renewal fees.

Members should read this *Notice*, any instructions posted to the NASD Regulation, Inc. (NASD RegulationSM) Web Site (www.nasdr.com), and any mailed information to ensure continued eligibility to do business in the states effective January 1, 2001. Any renewal processing changes subsequent to the publishing of this *Notice to Members* will be published in a *Special Notice to Members*.

Questions/Further Information

Questions concerning this *Notice* may be directed to the CRD/PD Gateway Call Center at (301) 869-6699.

Preliminary Renewal Statements

Between November 6 and November 17, 2000, Preliminary Renewal Statements will be available on the Web CRDSM system

for all member firms. The statements will include fees for NASD personnel assessments; NASD system processing fees; NASD branch-office fees; NYSE, Amex, CBOE, PCX, and PHLX maintenance fees; state agent renewal fees; and state broker/dealer renewal fees. The NASD must receive full payment of the November Preliminary Renewal Statement amount **no later than December 8, 2000**.

The Preliminary Renewal Statements and rosters are available electronically for viewing and printing through the Web CRD system. There will be three rosters available with the Preliminary Renewal Statement:

- The **Firm Renewal Roster (Agent)** will list all agents registered with your firm and the information contained in it is sorted by regulator.
- The **Branches Renewal Roster** lists each branch registered with the NASD and lists branch offices for which the firm is being assessed a fee. Firms should use this roster to reconcile their records for renewal purposes.
- The **Non-NASD Registered Individuals Roster** will contain all individuals who are not registered with the NASD but are registered with one or more jurisdictions. This roster will only be available if a firm has agents whose status falls within this category. This roster should be used to determine if any NASD registrations need to be requested or jurisdictions terminated.

Fees

NASD personnel assessments for 2001 will be based on the number

of registered personnel with an approved NASD license (that includes Approved Pending Prints, Inactive-Prints, Temporary Registration, and Inactive-Continuing Education registration statuses) on or before December 31, 2000. The personnel assessment is currently \$10 per person. A system processing fee will be assessed for each person who renews registration with any regulator through the NASD Broker/Dealer Renewal Program. The system processing fee is \$30. The NASD branch office assessment fee is \$75 per branch, based on the number of active branches as of December 31, 2000.

Agent renewal fees for NYSE, Amex, CBOE, PCX, PHLX, and state affiliations are listed in the Preliminary Renewal Statement on the Web CRD system. A matrix, which includes a list of broker/dealer renewal fees for states that participate in the NASD Broker/Dealer Renewal Program, is posted on the CRD Web Page of the NASDRSM Web Site (www.nasdr.com/3400.htm) under the "License Renewal Information" menu selection. NYSE, Amex, CBOE, PCX, and PHLX maintenance fees—collected by the NASD for firms that are registered with those exchanges, as well as the NASD—are based on the number of NYSE, Amex, CBOE, PCX, and PHLX registered personnel employed by the member.

If a state does not participate in this year's Broker/Dealer Renewal Program, members registered in that state must contact the state directly to ensure compliance with renewal requirements. In addition, some participating states may require steps beyond the payment of renewal fees to complete the broker/dealer renewal process.

Members should contact jurisdictions directly for further information on jurisdiction renewal requirements.

Payment of the Preliminary Renewal Statement should be either in the form of a check made payable to NASD Regulation, Inc. or by bank wire transfer. The check should be drawn on the member firm's account with the firm's CRD number included on the check. Submit the check, along with the first page of the online statement, and mail to:

NASD Regulation, Inc. - Renewals
Department Number 0653
C/O Riggs National Bank
5700 River Tech Court
Riverdale, MD 20737-1250

To ensure prompt processing, the Preliminary Renewal Statement payment must include the first page of your statement with no other forms or fee submissions. Members are advised that failure to return full payment to the NASD by the December 8, 2000, deadline could cause a member to immediately become ineligible to do business in its registered jurisdictions effective January 1, 2001.

Filing Forms U-5

Members may avoid paying unnecessary renewal fees by electronically filing Forms U-5 via the Web CRD system for agents terminating in one or more jurisdiction affiliations. The NASD will again accept post-dated agent termination notices on the Forms U-5. Between November 1 and December 22, 2000, firms may process Forms U-5 (both partial and full terminations) with a post-dated termination date of **December 31, 2000** (this is the only date that can be used for a post-dated Form U-5). If the Form

U-5 indicates a termination date of December 31, 2000, an agent may continue doing business in a jurisdiction until the end of the calendar year without being assessed renewal fees for that jurisdiction. Please ensure that Forms U-5 are filed by the renewal deadline date of 8:00 p.m., Eastern Time (ET), on December 22, 2000.

Members should exercise care when submitting post-dated Forms U-5. The NASD will systematically process these forms as they are received but cannot withdraw a post-dated termination once processed. To withdraw a post-dated termination, a member would have to file, electronically, a new Form U-4 after December 31, 2000.

Filing Forms BDW

The CRD Phase II Program allows firms requesting BD termination (either full or partial) to electronically file their Forms BDW with the Web CRD system and avoid the assessment of renewal fees with regulators, provided that the regulator is a CRD Phase II participant. Currently, there are three regulators that are not participating in Phase II. They are:

- American Stock Exchange
- New York Stock Exchange
- Pacific Exchange

Firms requesting termination with any of the above-listed regulators must submit a paper Form BDW directly to the regulator, as well as electronically through the Web CRD system.

The deadline for electronic filing of Forms BDW for firms that want to terminate an affiliation before year-end 2000 is 8:00 p.m., ET, on December 22, 2000. This same

date applies to the filing of Forms BDW with the regulators that are not participating in Phase II. Post-dated Forms BDW filed on the Web CRD system will be accepted and processed in the same manner as post-dated Forms U-5.

Removing Open Registrations

In addition to providing members with the Firm Renewal Roster and the Branches Renewal Roster, the NASD will also be making available to its members the Non-NASD Registered Individuals Roster. This roster identifies agents whose NASD registration is either terminated or purged due to the existence of a deficient condition (*i.e.*, exams or fingerprints) but maintain an approved registration with a state. Firms should use this roster to terminate obsolete state registrations through the submission of Forms U-5 or reinstate the NASD licenses through the filing of an amendment to Form U-4 indicating such in the appropriate section. This roster should aid in the reconciliation of personnel registrations prior to year's end. The Non-NASD Registered Individuals Roster will only be available on the Web CRD system if a firm has agents within this category.

Final Renewal Statements

Between January 2 and January 22, 2001, the NASD will make available Final Renewal Statements to its members. These statements will reflect the final status of firm and agent registrations as of December 31, 2000. Any adjustments in fees owed as a result of registration terminations or approvals subsequent to the Preliminary Renewal Statement will be made in this final reconciled statement on the Web CRD system. If a member has more agents and/or branch offices registered at year's end than it did on the Preliminary Renewal Statement, additional fees will be assessed. If a member has fewer agents and/or branch offices registered at year's end than it did in November, a credit/refund will be issued.

Members should access the Reports Tab for the Firm Renewal Roster, which will list all renewed personnel with the NASD, NYSE, Amex, CBOE, PCX, PHLX, and each jurisdiction. Persons whose registrations are approved in any of these jurisdictions during November and December will be included in this roster, while registrations that are pending approval or are deficient at year's end will not be

included in the renewal process. Firms will also see an NASD Renewal Branch Office Roster that lists all branches for which they have been assessed.

Two reports will also be available with the Final Renewal Statement, a Billing Code Summary Report, and a Billing Code Detail Report. These reports will aid firms in their internal research and allocation of fees.

Firms then will have until March 19, 2001, to report any discrepancies on the Renewal Rosters. All jurisdictions should be contacted directly in writing. Specific information and instructions concerning the Final Renewal Statements and Renewal Rosters will appear in the January 2001 issue of *Notices to Members*. Firms may also refer to the Renewal edition of the *CRD/PD Bulletin*, which will be published in November, for details concerning the renewal process.

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NASD Regulation, Inc.

2000 Advertising Regulation Seminar

Topics covered will include:

Internet and Electronic Communications

Performance Illustrations

Telemarketing

Mutual Funds

Variable Insurance Products

Case Studies

Filing Requirements

Watch your mail for registration brochures. Please note, attendance will be limited for the seminar.

For more information, please visit the NASD Regulation Web Site at www.nasdr.com or call (202) 728-8383.

Join us this fall to learn valuable compliance tips for financial services advertising. This practical, hands-on seminar will be led by advertising regulation experts—the people who work in advertising compliance every day.

November 15, 2000

The Sheraton Palace Hotel
San Francisco, CA
(415) 512-1111

Registration Fee:

<u>Early Bird</u> (Before Oct. 13)	Unavailable
<u>Regular</u> (After Oct. 13)	\$375

Comprehensive one-day program in conjunction with the Fall Securities Conference, November 16-17



NASD[®]
REGULATION

An NASD Company

INFORMATIONAL**Membership Rules**

SEC Approves
Amendments To NASD
Membership Rules;
**Effective Date:
November 15, 2000**

SUGGESTED ROUTING

The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.

- Legal & Compliance
- Senior Management

KEY TOPICS

- IM-1011-1
- Membership Rules
- New Member Applicants
- Membership Agreements
- Rule 1011
- Rule 1012
- Rule 1013
- Rule 1014
- Rule 1015
- Rule 1016
- Rule 1017
- Rule 1018
- Rule 1140

Executive Summary

On August 15, 2000, the Securities and Exchange Commission (SEC) approved rule changes by the National Association of Securities Dealers, Inc. (NASD® or Association) that amend the Rule 1010 Series (Membership Rules or Rules) which governs the NASD membership application process. The amendments are designed to streamline and reorganize the current rules to make them more efficient for member firms and new applicants while preserving their investor protection function.

The amendments include the following changes:

- adopting new definitions under Rule 1011 for “material change in business operations,” “principal place of business,” and “sales practice event”;
- adopting Interpretive Material 1011-1, which creates a safe harbor for certain business expansions that are presumed not to be material changes and therefore do not require a firm to file an application pursuant to amended Rule 1017;
- simplifying administrative procedures for submitting an application and calculating the various applicable time limits;
- permitting the staff to immediately reject applications that are not substantially complete; and
- adopting new requirements for applicants to submit information concerning communications and operational systems to ensure business continuity.

In addition, current Rules 1017, “Removal or Modification of Business Restriction,” and 1018,

“Change in Ownership, Control or Operations,” are consolidated into an amended Rule 1017.

Revisions also will be made to the reference documents, *How To Become A Member Of The National Association of Securities Dealers, Inc.* and *A Guide to Areas of Inquiry in Continuing Membership Applications and Applications to Remove or Modify Restrictions* to conform them to the amended rules. Both revised documents will be found on the NASD Regulation, Inc. (NASD RegulationSM) Web Site (www.nasdr.com) after the rule amendments become effective.

The rule changes are included with this *Notice* (see Attachment A). These changes become effective on November 15, 2000.

Questions/Further Information

Questions concerning this *Notice* may be directed to Jeffrey S. Holik, Vice President and Director of Regulation Policy, Department of Member Regulation, NASD Regulation, at (202) 728-8387, or by e-mail at: jeffrey.holik@nasd.com, Allison Reid, Membership Manager, Department of Member Regulation, NASD Regulation, at (202) 728-6954, or by e-mail at: allison.reid@nasd.com, or Gregory Dean, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8159, or by e-mail at: gregory.dean@nasd.com.

Background

Beginning in August 1998, NASD Regulation staff worked with the Membership Admission Review Committee (Committee),¹ an ad-hoc committee convened to identify and recommend changes, if

appropriate, to the Membership Rules in order to clarify and streamline the Rules while preserving their investor protection function. The Committee's recommendations were published in *Notice to Members 99-67*, "NASD Requests Comment On Proposed Amendments To Membership Rules" (August 1999).

Based upon comments received, the proposals were revised and submitted to the SEC. The SEC approved the publication of the proposals for comment on June 1, 2000.² On August 15, 2000, the SEC issued an order approving the proposed amendments to the Membership Rules.³

The most significant changes are as follows:

- reorganizing and consolidating some of the current rules to make them easier to use;
- clarifying the rules and policies for members' business expansions that are intended to provide more certainty to members regarding the types of expansions not requiring approval, while at the same time, preserving flexibility to allow NASD Regulation staff to review the more significant changes in members' businesses. This is achieved by:
 - ◆ adopting a policy of building members' expansion plans into membership agreements;
 - ◆ providing more guidance in the rules about the types of "material changes in business operations" that will require a member to file an application for approval with NASD Regulation; and

- ◆ providing a safe harbor for certain business expansions that will be presumed not to be material changes, and therefore, do not require members to file an application for approval;

- requiring applicants to submit information concerning communications and operational systems to ensure business continuity;
- simplifying administrative procedures for submitting an application and calculating the various applicable time limits that apply to the process;
- permitting the staff to reject immediately applications that are not substantially complete; and
- rescinding permanently the National Adjudicatory Council's (NAC) authority to review membership decisions that are not appealed by an applicant.

Below are the detailed explanations of the amendments.

Rule 1011 – Definitions

The definition of "Associated Person" is amended to clarify that it includes only natural persons.

The term "principal place of business" is defined for the first time. An applicant's principal place of business determines which NASD Regulation District Office (District Office) will process its application. "Principal place of business" means the location where the officers, partners, or managers direct and control the activities of the applicant, unless NASD Regulation staff designates a different location based upon where the largest number of

associated persons are located or where the books and records are kept. This definition will provide more consistency and certainty regarding which District Office will process a firm's application.

NASD Regulation has redefined "sales practice violations" as "sales practice event." A sales practice event is one of the factors that NASD Regulation considers in determining whether an applicant satisfies the admission standard in Rule 1014(a)(3), which requires a showing that the applicant and its associated persons are capable of complying with, among other things, the federal securities laws and the Association rules. The new term is intended to encompass matters, including any customer complaint, arbitration, or civil litigation, that have been or are required to be reported to the Central Registration Depository (CRDSM) or otherwise are required to be reported to NASD Regulation (e.g., via reports pursuant to Rule 3070).⁴ This change is in response to concerns that some items required to be reported to CRD or pursuant to Rule 3070 are not considered to be formal violations. While this change does not affect the existing review standards under Rule 1014, it does provide clarification to amended Rule 1014(a)(3)(B).

The terms "Applicant" and "Interested Association Staff" are also amended to conform them to other rule changes.

The term "material change in business operations" is being defined for the first time. The term is defined to include, but is not limited to, removing or modifying a membership agreement restriction;⁵ market making, underwriting, or acting as a dealer for the first time; or adding business activities that

require a higher minimum net capital. All other expansions, including those categories of new business lines identified on Form BD, are to be evaluated on a facts and circumstances, case-by-case basis.

NASD Regulation does not believe that it is possible to develop an exhaustive definition of the term “material change in business operations.”⁶ If a change in a member’s business falls outside of the definition or the safe harbor provisions described below in Interpretive Material 1011-1 (IM-1011-1) (e.g., because it exceeded the safe harbor limits or the member has disciplinary history), then the member must determine whether, based upon all facts and circumstances, the change is material. A member may, but is not required to, contact the District Office to obtain guidance on this issue. Ultimately, the member is responsible for compliance with amended Rule 1017. If the staff determines that the change is indeed material, then the member potentially could be subject to disciplinary action for failure to file an application under Rule 1017.

In instances when a member intends to add a line of business, staff experience has shown that this type of expansion is often a significant event that has an impact on the firm’s supervisory and compliance infrastructure, personnel, and/or finances. When such an impact occurs, NASD Regulation staff is required under the rules to verify that the member continues to meet each of the membership criteria identified in Rule 1014.⁷ However, NASD Regulation recognizes that the characterization of any proposed new business line as a “material change in business operations” ultimately depends on an

assessment of all relevant facts and circumstances, including:

- the nature of the proposed expansion;
- the relationship, if any, between the proposed new business line and the firm’s existing business;
- the effect the proposed expansion is likely to have on the firm’s capital;
- the qualifications and experience of the firm’s personnel; and
- the degree to which the firm’s existing financial, operational, supervisory, and compliance systems can accommodate the proposed new business line.

Based upon these factors, we believe that at least some proposed expansions by member firms into new areas of business would not constitute a material change and thus not trigger a review under amended Rule 1017. Certain proposed new business lines, such as market making, underwriting, and acting as a dealer for the first time, will invariably constitute a material change in business operations.

Interpretive Material 1011-1 (IM-1011-1)

IM-1011-1 is added to create a safe harbor for certain changes that are presumed not to be a “material change in business operations,” and therefore do **not** require a member to submit an application pursuant to amended Rule 1017 for approval of the change. The safe harbor was created out of the recognition that firms need to be able to grow while essential investor protections are maintained.

The safe harbor is intended to balance these needs while allowing firms to file and NASD Regulation staff to review those proposed business expansions that are most likely to affect the financial, compliance, and/or internal control systems of firms. Firms with certain membership agreement restrictions or a disciplinary history would not be able to use the safe harbor.

The safe harbor is available to those firms that do not have a membership agreement and to those firms that have a membership agreement but the agreement does not contain a restriction on the permissible expansion areas of the safe harbor (number of associated persons involved in sales, number of offices, and number of markets made). The safe harbor is not available to a firm that has a specific restriction in its membership agreement on any one of those three areas of expansion. Similarly, if a firm has a membership agreement that already permits greater expansion levels than permitted by the safe harbor, then membership agreement levels take precedence over the safe harbor levels. In both of these situations, NASD Regulation staff have already evaluated a firm’s systems and procedures and the staff have incorporated the restrictions or expansion plans into the membership agreement.

If a proposed expansion is outside of the safe harbor provisions, it does not necessarily mean that the expansion is a “material change in business operations.” The safe harbor provisions are meant to provide guidance on what changes will not be considered material. Whether changes and expansions outside of the safe harbor provisions are material will need to be determined on a case-by-case

basis by reviewing the particular facts and circumstances. A member may, but is not required to, contact its District Office to obtain guidance on this issue.

In addition, the safe harbor would not be available to members that have a defined "disciplinary history."⁸ A member with a disciplinary history as defined by IM-1011-1 does not necessarily need to apply under amended Rule 1017 for every business expansion. Again, whether changes and expansions to be undertaken by a firm with "disciplinary history" are material would be determined on a case-by-case basis.

Rule 1012 – Filing By Applicant Or Service By The Association

NASD Regulation has amended the service and filing provisions to permit additional methods of delivery and to use consistent terminology for calculating deadlines. The term "commercial courier" is replaced with "overnight courier" to clarify that applicants and NASD Regulation staff may use the overnight delivery service offered by the United States Postal Service. NASD Regulation interprets the term "overnight courier" to refer to any entity that regularly provides overnight delivery services, such as Federal Express, DHL, or the United States Postal Service. Use of the term "overnight courier" is not intended to imply that only actual overnight delivery may be used under the Rule. Overnight delivery should be used if it is available. However, if overnight delivery is not available for a particular location, the applicant or NASD Regulation staff may use the most rapid delivery option available (e.g., two-day

service) from the overnight courier and still be in compliance with the Rule.

Throughout the amended Rules, the term "file" is used uniformly to refer to submissions by an applicant, and the term "serve" is used uniformly to refer to delivery of requests, decisions, and the like by the Association. These terms replace other terms, such as "issuance" and "receipt."⁹ These changes provide greater clarity and consistency in calculating deadlines in accordance with amended Rule 1012(a).

"Lapse Of Application" Provisions

The "lapse of application" provisions are consolidated and moved from existing Rules 1013(b), 1017(c), and 1018(d) to amended Rule 1012(b) for ease of reference. The lapse rule permits the staff to discontinue processing an application if an applicant does not timely provide requested information or documents. If the information or documents are not timely provided, then the rule permits the staff to "lapse" the application. The staff then notifies the applicant that the application has lapsed, all fees are forfeited, and the applicant is required to start over with the application process if it still wants to pursue the application.

The changes to the lapse rule also are designed to permit the staff and the applicant to agree on a submission date for the executed membership agreement, rather than requiring that all signed agreements be submitted within 25 days. In addition, the changes clarify that application fees are not refunded for lapsed applications.

Rule 1013 – New Member Application And Interview

Application Submission Procedures

One of the major changes to amended Rule 1013 is to simplify the application submission procedures. Currently, Rule 1013 requires applicants to submit their applications in two parts. Part One, which includes primarily forms and fees (e.g., the initial Forms BD and U-4), is sent directly to the CRD in Rockville, Maryland, for processing. Part Two, which includes all remaining documents required for member admission, is sent to the District Office that will review the application. At the time the Rule was initially adopted, the staff thought it would be more efficient to send each part to the location where it would be processed. In practice, this has created problems when both parts of the application are not submitted at the same time, or one or both parts are incomplete, making it difficult to determine when the application should be treated as filed. Determining the application filing date is critical in order to meet the requirement that a decision on the application be rendered within 180 days.

To alleviate this problem, Rule 1013 has been amended to create one point of entry for the entire application, the District Office.

Procedures For Applications That Are Not Substantially Complete

NASD Regulation has added subparagraph (a)(4) to amended Rule 1013 for handling applications that are not substantially complete at the time of submission. Currently, the staff does not have any express authority in the existing rule to refuse to begin processing

an incomplete application. Instead, NASD Regulation staff attempts to begin processing such an application by sending a request for further information to the applicant.

Under the amended rule, if an application is so deficient upon initial submission that the staff cannot begin conducting a meaningful review, then the staff may reject the application and deem it to not have been filed. The staff must make this determination within 30 days after submission, and is required to provide reasons for its action in writing. NASD Regulation will assess a \$350 processing fee for the rejection of an application that is not substantially complete. NASD Regulation considered but rejected defining the term “substantially complete” because the determination will vary depending on, among other things, the type and complexity of the proposed business.

Amended Rule 1013 also is simplified for applicants by removing requirements that they submit information that has already been provided to CRD because District Office staff has full access to CRD. This change will make the application process simpler for applicants by eliminating duplicate submissions.

Initial And Subsequent Document Filings

Under Rule 1013(a)(2), an applicant will continue to submit only its initial Forms BD and U-4 in paper along with the rest of the application. Under amended Rule 1013(a)(3), the applicant must make all subsequent Form filings and amendments electronically via Web CRDSM. Prior to making electronic filings, an applicant must seek and receive approval of the

Web CRD entitlement request form by NASD Regulation. This process is in conformity with SEC requirements for the submission of Form BD and amendments to it.¹⁰ Conforming amendments have been made to Rule 1140.

New Membership Application Requirements

Adequacy of Communication and Operational Systems

New subparagraph (a)(2)(F)(xii) of amended Rule 1013 adds a new requirement for applicants to provide a description of the communications and operational systems that they will use to conduct business as well as plans and procedures they will employ to ensure business continuity. Included with the documentation should be information about the capacity to handle anticipated usage, contingency plans, and disaster recovery plans, among other things. In addition, this requirement has been formulated into a new standard for membership admission and has been added to requirements contained in Rule 1014. This new standard in amended Rule 1014 requires that such systems are adequate and provide reasonably for the business' continuity for each area set forth in amended Rule 1013(a)(2)(F)(xii).

It is not the staff's intention to investigate the adequacy of the systems, plans, and procedures; rather applicants, in order to demonstrate that their systems are adequate and will reasonably provide for business continuity, must file a certification as part of their application. The applicant may self-certify or may choose to rely on a third party (e.g., a vendor of such a system) to provide such certification.¹¹

Updated Financial Information

Rule 1013 is amended by adding new subparagraph (b)(5) to require applicants to provide updated financial information at the time of their membership interview. The updated information shall be prepared as of a date that is within 45 days before the interview.

Rule 1014 – Department Decision

Standards For Admission

As described above, Rule 1013 has been amended to require that the applicant submit a description of the communications and operational systems that the applicant will employ to conduct business and the plan and procedures to ensure business continuity. The amended Rule 1014 requires that such systems must be adequate and reasonably provide for business continuity before an application is approved.

In addition, Rule 1014 is amended to require that an applicant's supervisory procedures must specifically include procedures to ensure that proper registrations for principals and representatives are obtained by the firm.

The Committee and NASD Regulation also reevaluated the requirement of current Rule 1014(a)(9)(C) (amended Rule 1014(a)(10)(D)) that prospective supervisors have at least one year of direct experience or at least two years of related experience in the subject area to be supervised. It was determined that the supervisory experience requirements should not be increased at this time. Interpretive guidance on this matter has been published in *How To Become A Member Of The National*

Association of Securities Dealers, Inc., which is available in the area for members on the NASD Regulation Web Site (www.nasdr.com).

Submission Of Membership Agreements

Rule 1014(c), which concerns the submission of membership agreements, is amended by deleting the requirement in subsection (c)(1) that all membership agreements contain an undertaking binding the member to “engage only in the business set forth in the business plan and the membership agreement.” NASD Regulation believes that the current rule was too restrictive, particularly for firms with no disciplinary history. The provision also puts members with a membership agreement at a disadvantage to members that do not have a membership agreement.¹² Henceforth, whether business expansions require approval by NASD Regulation will be governed solely by the requirements of amended Rule 1017.

When the amended Rules become effective, to ensure that members are treated equally, NASD Regulation will permit members that are eligible for the safe harbor to use it even if their membership agreement includes a general requirement to obtain approval from NASD Regulation of any change in business outside the terms of the agreement. When NASD Regulation examines a member, the membership agreement will be updated to reflect the new Rule.

In addition, when the Rule amendments become effective, NASD Regulation will begin, to the extent practicable, including business expansion plans in membership agreements. Members

that have not been through the membership review process or examined under the Rules adopted by the Association in August of 1997 and have existing restrictions in membership agreements, may want to contact their District Office to see if it would be appropriate to have the restriction removed.

Rule 1015 – Review By National Adjudicatory Council

Under Rule 1015, an applicant can appeal an adverse District Office decision to the NAC. In addition, the NAC or the NAC Review Subcommittee may call for review a District Office decision on a membership application, even though no appeal has been filed by an applicant. NASD Regulation considered at length whether procedures or policies could effectively be developed to implement the call for review provision when no appeal was taken, but ultimately determined that developing such procedures and policies was not practicable.

NASD Regulation believes that the oversight function envisioned for the call for review provision is effectively performed through a variety of other existing mechanisms. The Department of Member Regulation (Department) employs a full time Membership Manager to coordinate and oversee the national program. Included in the Manager’s responsibilities is a quality control function. This function is carried out in several ways: maintenance of a Membership Procedures Manual; periodic advice memoranda sent to District Office staff (MAP Bulletins); regularly scheduled telephone conferences with District Office staff to discuss procedural and substantive issues arising in the program; and periodic training sessions for new and incumbent staff.

To supplement these tools, the Department’s Office of Quality Assurance conducts periodic peer reviews of the membership application program. The purpose of these peer reviews is to assess the District Offices’ application of the membership rules and procedures. The reviews include, among other things, spot checks of source documents to confirm the facts underlying the decisions.

In light of NASD Regulation’s national coordination and internal review procedures, Rule 1015 has been amended to delete the provision whereby the NAC or the NAC Review Subcommittee may call for review of a decision on a membership application made by the Department staff, even if the applicant does not appeal the decision.¹³

Rule 1015 has been amended to include a new paragraph (h) for dismissing appeals that are abandoned by an applicant, which includes, among other things, failing to appear at a hearing as set forth in current Rule 1015(f)(5), among other things.

Rule 1016 – Discretionary Review by NASD Board

Conforming amendments are being made to Rule 1016.

Rule 1017 – Application For Approval Of Change In Ownership, Control, Or Business Operations

Current Rule 1017, “Removal or Modification of Business Restriction,” and Rule 1018, “Change in Ownership, Control or Operations,” are consolidated in the amended Rule 1017. This change is being made to assist firms in filing and NASD Regulation staff in

reviewing applications for a change in firm ownership or control, or for a material change in the firm's business operations. Currently, a member may initiate business changes that involve both Rule 1017 and Rule 1018. This has created some confusion as to which rule should be used. By consolidating these rules, NASD Regulation anticipates making the process more efficient and effective for applicants and thus eliminating any confusion that may arise from the previously overlapping provisions. The consolidation of the two rules is achieved in part by defining, for the first time, the term "material change in business operations," in amended Rule 1011(i) to include certain types of business expansions as well as the removal or modification of a membership agreement restriction.

Amended Rule 1017 also sets forth additional documentation requirements for the review of an application (detailed below).

As provided in current Rules 1017 and 1018, an application and its accompanying documents need to be filed with the member's District Office. In the event of a merger between two members with principal places of business in two or more districts, the application must be filed and processed by the District Office where the surviving firm's principal place of business is located.

Change In Ownership Or Control

One type of change that triggers an application under amended Rule 1017 is a change in the equity ownership or partnership capital of the member that results in one person or entity owning or controlling 25 percent or more of the equity or partnership capital. NASD Regulation wishes to clarify that a group of individuals acting in

concert to obtain control of 25 percent or more of the equity or partnership capital of a member will be deemed to be an "entity" for purposes of the Rule, and as such, will trigger the requirement to submit an application to obtain approval of the ownership change.

In addition, NASD Regulation will discontinue its review of certain other types of changes. Under amended Rule 1017, NASD Regulation will discontinue review of member mergers and acquisitions that are reviewed by the New York Stock Exchange. This will eliminate duplicate reviews by self-regulatory organizations.

Filing And Content Of Application Requirements

Amended Rule 1017(b) sets forth for the first time what type of information should be included in an application for approval of a change in ownership, control, or business operations.

Paragraph (b) of amended Rule 1017 contains the initial content requirements and specifies where the application should be filed. Generally, this paragraph incorporates NASD Regulation's standard practices under current Rules 1017 and 1018. However, subparagraph (b)(2), for the first time, identifies items that must be included with an application. Specifically, the items include details on the change in ownership, control or business operations, including a business plan, pro forma financial statements, an organizational chart, and written supervisory procedures that reflect the change.

For applications requesting removal or modification of a membership agreement restriction, the content requirements of current Rule 1017(a) are carried forward in the

amended rule and will, therefore, still apply. In addition, the new documentation requirements of paragraph (b)(2) of amended Rule 1017 (detailed in the above paragraph) must be supplied with an application.

Effecting Change And Imposition Of Interim Restrictions

In addition, amended Rule 1017(c) sets forth the timing and conditions for effecting a change under amended Rule 1017. For a member that is filing an application for approval of a change in ownership or control, amended Rule 1017(c)(1) states that the application shall be filed at least 30 days before the event. A member may effect a change prior to the conclusion of NASD Regulation's review of the application or issuance of the Department's decision on the application; however, NASD Regulation may place new interim restrictions on the member based upon the standards contained in Rule 1014 pending final action.

For a member that is filing an application for the removal or modification of a restriction contained in a membership agreement, amended Rule 1017(c)(2) states that the change may not be effected until NASD Regulation has reached a decision. Until a decision has been reached, all existing restrictions must remain in place.

For a member's application seeking approval of a material change in business operations (other than for the removal or modification of a membership agreement restriction), the change will be effective upon the Department's decision approving the application. In addition, Rule 1017(c)(3) does allow the member to effect the change prior to NASD Regulation's

decision, but only with prior agreement of the Department.

Lapse Or Denial Of Application For Approval Of Change In Ownership

NASD Regulation is adopting a new paragraph (k) to Rule 1017 to clarify the courses of action when an application for approval of a change in ownership lapses or is denied and all appeals are exhausted or waived. The rule change provides the member with a fixed period of time, 60 days, to submit a new application,¹⁴ unwind the transaction, or file a Form BDW.

The Department may shorten the 60-day period for the protection of investors. In addition, the Department may lengthen the 60-day period upon good cause shown by the applicant. The Department may continue to place interim restrictions on the member during the 60-day (or extended) period. The purpose of the rule change is to clarify NASD Regulation's procedures and to ensure that proper investor protections are maintained. If a member operates outside or beyond the specified time period, then NASD Regulation may bring an action and/or seek the suspension or cancellation of the membership, as appropriate.

Rule 1018 – Reserved

NASD Regulation has deleted the provisions contained in Rule 1018 and reserves this Rule number for future use.

Rule 1140 – Electronic Filing Rules

Conforming amendments are being made to Rule 1140 to clarify that the initial filing of Forms under amended Rule 1013(a)(2) must be filed in paper form. All subsequent

filings must be filed through an electronic process.

Additional Guidance

Revisions also will be made to the reference documents, *How To Become A Member Of The National Association of Securities Dealers, Inc.* and *A Guide to Areas of Inquiry in Continuing Membership Applications and Applications to Remove or Modify Restrictions* in order to conform them to the amended rules. Both revised documents will be found on the NASD Regulation Web Site (www.nasdr.com) after November 15, 2000.

Endnotes

¹Members of the Committee were: Faith Colish, New York, New York; Linda Lerner, All-Tech Investment Group, Inc., Montvale, New Jersey; Brian T. Shea, Pershing, Division of Donaldson, Lufkin & Jenrette Securities Corporation, Jersey City, New Jersey; Theodore W. Urban, Ferris, Baker & Watts, Incorporated, Washington, D.C.; and Richard P. Woltman, Spelman & Co., Inc., San Diego, California. Mr. Urban chaired the Committee.

²Exchange Act Release No. 42885 (June 1, 2000), 65 Fed. Reg. 36860 (June 12, 2000), (File No. SR-NASD-99-67).

³Exchange Act Release No. 43157 (August 15, 2000), 65 Fed. Reg. 51377 (August 23, 2000).

⁴NASD Regulation has not made any changes to the definition of "sales practice violation" on the Form U-4.

⁵NASD Regulation included removing or modifying a restriction in this definition to facilitate the consolidation of current Rules 1017 and 1018. The rationale for the consolidation is set forth in the section titled "Rule 1017," below.

⁶Efforts were made during the Committee's deliberations to devise a comprehensive definition of "material change in business operations" that would provide members with greater certainty about when an application is required while affording staff the opportunity to review those proposed business expansions that were most likely to affect the financial, compliance, and/or internal control systems of the firm. After much thought and discussion, Committee members and NASD Regulation staff concluded that it was preferable not to develop a comprehensive definition of the term. Instead, the Committee recommended, and the amended rules provide, two measures designed to add greater clarity to the process and still preserve flexibility in applying the rule to individual situations: the adoption of IM-1011-1 to create a safe harbor for certain changes that are presumed not to be material and therefore do not require a member to submit an application; and the adoption of a non-exhaustive definition of "material change in business operations" that would alert members to some of the types of business expansions that can be expected to trigger the need to file an application.

⁷NASD Regulation staff tailors the scope of its review of proposed business expansions to the particular circumstances presented. In some cases, for example, when a firm seeks to expand into an area in which it already has relevant experience and comprehensive supervisory and internal controls, NASD Regulation's review would be more limited. In other cases, when a firm seeks to add a completely new business line unrelated to its current business mix, the scope of review could be more extensive.

⁸"Disciplinary history" means a finding of a violation by the member or a principal of the member in the past five years by the SEC, a self-regulatory organization, or a foreign financial regulatory authority of one or more of the following provisions (or comparable foreign provisions) or rules or regulations thereunder:

Sections 15(b)(4)(E) and 15(c) of the Securities Exchange Act of 1934 (failure to supervise; fraud and

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manipulation); Section 17(a) of the Securities Act of 1933 (fraudulent interstate transactions); SEC Rules 10b-5 (fraud and manipulation), and 15g-1 through 15g-9 (penny stock rules); NASD Rules 2110 (just and equitable principles of trade), 2120 (fraud and manipulation), 2310 (suitability), 2330 (protection of customer securities and funds), 2440 (fair prices and commissions), 3010 (failure to supervise only), 3310 (manipulative and deceptive quotations), and 3330 (payments to influence market prices); and MSRB Rules G-19 (suitability), G-30 (prices and commissions), and G-37(b) & (c) (political contributions).

⁹See, e.g., Rule 1013(a)(5) and (b)(1), Rule 1014(c)(3).

¹⁰See Exchange Act Release No. 41594 (Jul. 2, 1999), 64 Fed. Reg. 37586 (Jul. 12, 1999).

¹¹See Exchange Act Release No. 42885 (June 1, 2000), 65 Fed. Reg. 36860 (June 12, 2000) at page 36874.

¹²In 1984, the SEC approved a codification of the NASD's member admission procedures, which included a requirement that any restriction on a member's business be included in a membership agreement executed by the member. See Exchange Act Release No. 21159, 49 Fed. Reg. 30268 (Jul. 27, 1984) (File No. SR-NASD-82-24). Thus, a member admitted before 1984 or a member admitted without any restriction from 1984 to 1997 may not have a membership agreement. In 1997, NASD Regulation began requiring all new members

to execute a membership agreement, regardless of whether NASD Regulation imposed any restriction. See NASD Rule 1014(c); Exchange Act Release No. 38908 (Aug. 7, 1997); 62 Fed. Reg. 43385 (Aug. 13, 1997) (File No. SR-NASD-97-28).

¹³Until these rule amendments go into effect, NASD Regulation has temporarily suspended calls for review of membership decisions and proposes to delete this provision. See Exchange Act Release No. 41311 (Apr. 20, 1999), 64 Fed. Reg. 20347 (Apr. 26, 1999) (File SR-NASD-99-15), for further explanation of this decision.

¹⁴A lapsed applicant may propose the same owners; a denied applicant must propose new owners.

ATTACHMENT A

(Note: New text is underlined; deletions are in brackets.)

1010. Membership Proceedings**1011. Definitions**

Unless otherwise provided, terms used in the Rule 1010 Series shall have the meaning as defined in Rule 0120.

(a) "Applicant"

The term "Applicant" means a person [or entity] that applies for membership in the Association under Rule 1013[,] or a member that files an application [to remove or modify a restriction under Rule 1017, or files a notice and application for continuance in membership under Rule 1018] for approval of a change in ownership, control, or business operations under Rule 1017.

(b) "Associated Person"

The term "Associated Person" means: (1) a natural person registered under the Rules of the Association; or (2) a sole proprietor, partner, officer, director, branch manager, or other natural person occupying a similar status or performing similar functions who will be or is anticipated to be associated with the Applicant, or a natural person engaged in the investment banking or securities business who will be or is anticipated to be directly or indirectly controlling or controlled by the Applicant, whether or not any such person is registered or exempt from registration under the NASD By-Laws or the Rules of the Association.

(c) "Department"

The term "Department" means the Department of Member Regulation of NASD Regulation.

(d) "Director"

The term "Director" means a member of the NASD Regulation Board.

(e) "district"

The term "district" means a district established by the NASD Regulation Board.

(f) "district office"

The term "district office" means an office of NASD Regulation located in a district.

(g) "Governor"

The term "Governor" means a member of the NASD Board.

(h) "Interested Association Staff"

The term "Interested Association Staff" means an employee who directly participates in a decision under Rule 1014[,] or 1017, [or 1018,] an employee who directly supervises an employee with respect to such decision, an employee who conducted an investigation or examination of a member that files an application under Rule 1017 [or a notice and application under Rule 1018], the District Director for the relevant district, and the head of the Department.

(i) "material change in business operations"

The term "material change in business operations" includes, but is not limited to:

(1) removing or modifying a membership agreement restriction;

(2) market making, underwriting, or acting as a dealer for the first time; and

(3) adding business activities that require a higher minimum net capital under SEC Rule 15c3-1.

[(i)](j) "NASD Board"

The term "NASD Board" means the Board of Governors of the NASD.

[(j)](k) "NASD Regulation Board"

The term "NASD Regulation Board" means the Board of Directors of NASD Regulation.

(l) "principal place of business"

The term "principal place of business" means the executive office from which the sole proprietor or the officers, partners, or managers of the Applicant direct, control, and coordinate the activities of the Applicant, unless the Department determines that the principal place of business is where: (1) the largest number of Associated Persons of the Applicant are located; or (2) the books and records necessary to provide information and data to operate the business and comply with applicable rules are located.

[(k)](m) "sales practice [violations] event"

The term "sales practice [violations] event" means any [conduct directed at or involving a customer that would constitute a violation of any Rule in the Rule 2000 or 3000; any provision of the Act, Securities Exchange Act of 1934; or any state statute prohibiting fraudulent conduct in connection with the offer, sale, or purchase of a security or in connection with the rendering of investment advice] customer complaint, arbitration, or civil litigation

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that has been reported to the Central Registration Depository, currently is required to be reported to the Central Registration Depository, or otherwise has been reported to the Association.

[(I)](n) “Subcommittee”

The term “Subcommittee” means a subcommittee of the National Adjudicatory Council that is constituted pursuant to Rule 1015 to conduct a review of a Department decision issued under the Rule 1010 Series.

IM-1011-1. Safe Harbors for Business Expansions

This interpretive material concerns the types of business expansions that will not require a member to submit a Rule 1017 application to obtain NASD Regulation’s approval of the expansion. This safe harbor applies to: (1) firms that do not have a membership agreement, and (2) firms that have a membership agreement that does not contain a restriction on the factors listed below.

The safe harbor is not available to a member that has a membership agreement that contains a specific restriction as to one or more of the factors listed below. In that case,

the agreement takes precedence because NASD Regulation has determined that a particular restriction should apply as to one or more of the factors, and NASD Regulation has issued a decision with a rationale for that restriction. Similarly, the safe harbor also does not apply if the member has a membership agreement that permits expansion beyond the limits set forth below (e.g., an Applicant requests and obtains approval for ten registered representatives in the first six months with an additional ten registered representatives in the next year); in such case, the Department has specifically considered the firm’s expansion plans and approved them.

The safe harbor is not available to any member that has disciplinary history. For purposes of this Interpretation, “disciplinary history” means a finding of a violation by the member or a principal of the member in the past five years by the Securities and Exchange Commission, a self-regulatory organization, or a foreign financial regulatory authority of one or more of the following provisions (or a comparable foreign provision) or rules or regulations thereunder: Sections 15(b)(4)(E) and 15(c) of the Securities Exchange Act of 1934; Section

17(a) of the Securities Act of 1933; SEC Rules 10b-5 and 15g-1 through 15g-9; NASD Rules 2110, 2120, 2310, 2330, 2440, 3010 (failure to supervise only), 3310, and 3330; and MSRB Rules G-19, G-30, and G-37(b) & (c).

For those firms to which the safe harbor is available, the following types of expansions are presumed not to be a material change in business operations and therefore do not require a Rule 1017 application. For any expansion beyond these limits, a member should contact its district office prior to implementing the change to determine whether the proposed expansion requires an application under Rule 1017. Expansions in each area are measured on a rolling 12-month basis; members are required to keep records of increases in personnel, offices, and markets to determine whether they are within the safe harbor.

“Associated Persons involved in sales” includes all Associated Persons, whether or not registered, who are involved in sales activities with public customers, including sales assistants and cold callers, but excludes clerical, back office, and trading personnel who are not involved in sales activities.

	Safe Harbor – Increase Permitted Within One Year Period Without Rule 1017 Application
Number of Associated Persons Involved in Sales 1-10 11 or more	10 persons 10 persons or a 30 percent increase, whichever is greater
Number of Offices (registered or unregistered) 1-5 6 or more	3 offices 3 offices or a 30 percent increase, whichever is greater
Number of Markets Made 1-10 11 or more	10 markets 10 markets or a 30 percent increase, whichever is greater

1012. General Provisions**(a) [Service of Notices and Decisions;] Filing by Applicant or Service by the Association**

[A notice or a decision issued by the Association under the Rule 1010 Series with respect to an application shall be served promptly by first-class mail on the Applicant or its counsel, unless a Rule specifies a different method of service. Service by the Association or filing by an Applicant by mail shall be deemed complete upon mailing. Service by the Association or filing by an Applicant by commercial courier or facsimile shall be deemed complete on the date specified in the written confirmation of receipt.]

(1) An Applicant may file an application or any document or information requested under the Rule 1010 Series by first-class mail, overnight courier, or hand delivery. If the Department and the Applicant agree, the Applicant also may file a requested document or information by facsimile.

(2) The Association shall serve a notice or decision issued under the Rule 1010 Series by first-class mail on the Applicant or its counsel, unless a Rule specifies a different method of service.

(3) Service by the Association or filing by an Applicant shall be deemed complete as follows:

(A) Service or filing by first-class mail shall be deemed complete on the date of postmark;

(B) Service or filing by overnight courier shall be deemed complete on the date of delivery to the overnight

courier as specified in the airbill;

(C) Service or filing by hand delivery shall be deemed complete on the date of receipt as evidenced by a date stamp; and

(D) Service or filing by facsimile shall be deemed complete on the date specified in the document and on the written confirmation of transmission.

(b) Lapse of Application

(1) Absent a showing of good cause, an application filed under Rule 1013 or 1017 shall lapse if an Applicant fails to:

(A) respond fully within 60 days after service of an initial written request for information or documents under Rule 1013, within 30 days after service of an initial written request for information or documents under Rule 1017, within 30 days after service of a subsequent written request for information or documents under Rule 1013 or 1017, or within such other time period agreed to by the Department and the Applicant;

(B) appear at or otherwise participate in a scheduled membership interview pursuant to Rule 1013(b) or 1017(f); or

(C) file an executed membership agreement under Rule 1014(d) or Rule 1017(g)(4) within 25 days after service of the agreement, or within such other period agreed to by the Department and the Applicant.

(2) If an Applicant wishes to continue to seek membership or approval of a change in ownership, control, or business opera-

tions, then the Applicant shall be required to submit a new application and fee under Rule 1013 or 1017, respectively. The Association shall not refund any fee for a lapsed application.

[(b)] (c) Ex Parte Communications

(1) The prohibitions against ex parte communications shall become effective when Association staff has knowledge that an Applicant intends to file a written request for review by the National Adjudicatory Council under Rule 1015.

[(1)] (2) Unless on notice and opportunity for an Applicant and Interested Association Staff to participate, or to the extent required for the disposition of ex parte matters as authorized by the Rules of the Association:

(A) an Applicant, a counsel or representative of an Applicant, or an Interested Association Staff shall not make or knowingly cause to be made an ex parte communication relevant to the merits of a membership proceeding under the Rule 1010 Series to a Governor, a member of the National Adjudicatory Council or a Subcommittee thereof, or an Association employee who is participating or advising in a decision of such a person with respect to that proceeding; and

(B) a Governor, a member of the National Adjudicatory Council or a Subcommittee thereof, or an Association employee who is participating or advising in the decision of such a person with respect to a membership proceeding shall not make or knowingly cause to be made to an Applicant, a counsel or rep-

representative of the Applicant, or an Interested Association Staff an ex parte communication relevant to the merits of that proceeding.

[(2)] (3) A Governor, a member of the National Adjudicatory Council or a Subcommittee thereof, or an Association employee participating or advising in the decision of such a person, who receives, makes, or knowingly causes to be made a communication prohibited by this paragraph shall place in the record of the membership proceeding:

(A) all such written communications;

(B) memoranda stating the substance of all such oral communications; and

(C) all written responses and memoranda stating the substance of all oral responses to all such communications.

[(3)] The prohibitions against ex parte communications shall become effective when Association staff has knowledge that an Applicant intends to file a written request for review by the National Adjudicatory Council under Rule 1015.]

[(c)](d) Recusal or Disqualification

A Governor or a member of the National Adjudicatory Council or a Subcommittee thereof shall not participate in a matter governed by the Rule 1010 Series as to which that person has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. In such a case, the person shall

recuse himself or shall be disqualified as follows:

(1) The Chair of the NASD Board shall have authority to direct the disqualification of a Governor, and a majority of the Governors of the NASD Board excluding the Chair shall have authority to direct the disqualification of the Chair of the NASD Board.

(2) The Chair of the National Adjudicatory Council shall have authority to direct the disqualification of a member of the National Adjudicatory Council or a member of a Subcommittee appointed pursuant to Rule 1015, and the Vice Chair of the National Adjudicatory Council shall have authority to direct the disqualification of the Chair of the National Adjudicatory Council.

[(d)](e) Computation of Time

(1) Calendar Day

In the Rule 1010 Series, "day" means calendar day.

(2) Formula

In computing a period of time under the Rule 1010 Series, the day of the act, event, default, or lapse from which the period of time designated begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays shall be excluded from the computation when the period prescribed is ten days or less.

1013. New Member Application [and Membership] and Interview

(a) Filing of Application

(1) Where To File

[Each Applicant for Association membership shall file its application in two parts. The first part of the application shall be filed with the Membership Department and shall include the following documents:]

An Applicant for Association membership shall file its application with the Department of Member Regulation at the district office in the district in which the Applicant intends to have its principal place of business as defined in Rule 1011(l).

(2) Contents

The application shall include:

(A) an original signed and notarized paper Form BD, with applicable schedules;

(B) an original signed paper Form U-4 for each Associated Person who is required to be registered under the Rules of the Association;

(C) an original NASD-approved fingerprint card for each Associated Person who will be subject to SEC Rule 17f-2;

(D) a new member assessment report;

[(E)] (E) a new member firm contact questionnaire; and]

[(F)] (E) a check for the appropriate fee[.];

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[(2) The second part of the application shall be filed with the Department of Member Regulation at the district office in the district in which the Applicant intends to have its principal place of business and shall include the following information and documents:]

[(A)] (F) a detailed business plan[, in a form prescribed by the Association,] that adequately and comprehensively describes all material aspects of the business that will be, or are reasonably anticipated to be, performed at and after the initiation of business operations, including future business expansion plans, if any, and includes:

(i) a trial balance, balance sheet, supporting schedules, and computation of net capital, each of which has been prepared as of a date that is within 30 days before the fil-
ing date of the application;

(ii) a monthly projection of income and expenses, with a supporting rationale, for the first twelve months of operations;

(iii) an organizational chart;

(iv) [a list of] the intended [locations] location of [all offices,] the Applicant's principal place of business and all other offices, if any, whether or not such offices would be required to be registered under the Rules of the Association, and the names of the persons who will be in charge of each office;

(v) a list of the types of securities to be offered and sold and the types of retail or insti-

tutional customers to be solicited;

(vi) a description of the methods and media to be employed to develop a customer base and to offer and sell products and services to customers, including the use of the Internet, telephone solicitations, seminars, or mailings;

(vii) a description of the business facilities and a copy of any proposed or final lease;

(viii) the number of markets to be made, if any, the type and volatility of the products, and the anticipated maximum inventory positions;

(ix) any plan to enter into contractual commitments, such as underwritings or other securities-related activities;

(x) any plan to distribute or maintain securities products in proprietary positions, and the risks, volatility, degree of liquidity, and speculative nature of the products; [and]

(xi) any other activity that the Applicant may engage in that reasonably could have a material impact on net capital within the first twelve months of business operations; and

(xii) a description of the communications and operational systems the Applicant will employ to conduct business with customers or other members and the plans and procedures the Applicant will employ to ensure business continuity, including: system capacity to handle the anticipated level of usage; contin-

gency plans in the event of systems or other technological or communications problems or failures that may impede customer usage or firm order entry or execution; system redundancies; disaster recovery plans; system security; disclosures to be made to potential and existing customers who may use such systems; and supervisory or customer protection measures that may apply to customer use of, or access to, such systems;

[(B) a copy of the Applicant's most recent Form BD;]

[(C)](G) a copy of any decision or order by a federal or state authority or self-regulatory organization taking permanent or temporary adverse action with respect to a registration or licensing determination regarding the Applicant or an Associated Person;

[(D)](H) a list of all Associated Persons[, the most recent Form U-4 and Form U-5 for each Associated Person, any other document that discloses the disciplinary history of each Associated Person, and a list of any other persons or entities that will exercise control with respect to the Applicant's business];

[(E)](I) documentation of any of the following events, unless the event has been reported to the Central Registration Depository:

(i) a regulatory action against or investigation of the Applicant or an Associated Person by the Commission, the Commodity Futures Trading Commission, a federal, state, or

foreign regulatory agency, or a self-regulatory organization that is pending, adjudicated, or settled;

(ii) an investment-related civil action for damages or an injunction against the Applicant or an Associated Person that is pending, adjudicated, or settled;

(iii) an investment-related customer complaint or arbitration [involving sales practice violations, theft, misappropriation, conversion, or breach of fiduciary duty, against the Applicant or an Associated Person that is pending, settled, or has resulted in an award or judgement] that is required to be reported on Form U-4; [and]

(iv) a criminal action (other than a minor traffic violation) against the Applicant or an Associated Person that is pending, adjudicated, or that has resulted in a guilty or no contest plea; and

[(F)](v) a copy of any document evidencing a termination for cause or a permitted resignation after investigation of an alleged violation of a federal or state securities law, a rule or regulation thereunder, a self-regulatory organization rule, or an industry standard of conduct;

[(G)](J) a description of any remedial action, such as special training [or], continuing education requirements, or heightened supervision, imposed on an Associated Person by a state or federal authority or self-regulatory organization;

[(H)](K) a written acknowledgment that heightened supervisory procedures and special educational programs may be required pursuant to Notice to Members 97-19 for an Associated Person whose record[s] reflects[:

(i) disciplinary actions [involving] or sales practice [violations] events;

(ii) customer complaints; or

(iii) arbitrations that were resolved adversely to the Associated Person;]

[(I)](L) a copy of final or proposed contracts with banks, clearing entities, or service bureaus, and a general description of any other final or proposed contracts;

[(J)](M) a description of the nature and source of Applicant's capital with supporting documentation, including a list of all persons or entities that have contributed or plan to contribute financing to the Applicant's business, the terms and conditions of such financing arrangements, the risk to net capital presented by the Applicant's proposed business activities, and any arrangement for additional capital should a business need arise;

[(K)](N) a description of the financial controls to be employed by the Applicant;

[(L)](O) a description of the Applicant's supervisory system and a copy of its written supervisory procedures, internal operating procedures (including operational and internal controls), internal inspections plan, written approval process, and

qualifications investigations required by Rule 3010;

[(M)](P) a description of the number, experience, and qualifications of supervisors and principals and the number, experience, and qualifications of persons to be supervised by such personnel, the other responsibilities of the supervisors and principals with the Applicant, their full-time or part-time status, any business activities that the supervisors or principals may engage in outside of their association with the Applicant, the hours per week devoted to such activities, and an explanation of how a part-time supervisor or principal will be able to discharge his or her designated functions on a part-time basis;

[(N)](Q) a description of Applicant's proposed recordkeeping system;

[(O)](R) a copy of the Applicant's written training plan to comply with Firm Element continuing education requirements described in Rule 1120(b), including the name of the Associated Person responsible for implementation; and

[(P)](S) [a copy of the documents described in paragraph (a)(1)] a Web CRD entitlement request form and a Member Contact Questionnaire user access request form.

(3) Electronic Filings [The Applicant shall file both parts of the application simultaneously by commercial courier. The application shall be deemed received on the date specified in the written confirmation of receipt generated by the commercial courier for the delivery of the second part of the

application to the district office.] Upon approval of the Applicant's Web CRD entitlement request form, the Applicant shall submit any amendments to its Forms BD or U-4, any additional Forms U-4, and any Form U-5 electronically via Web CRD. Upon approval of the Applicant's membership, the Applicant shall submit any amendments to its Member Contact Questionnaire electronically.

(4) Rejection Of Application That Is Not Substantially Complete

If the Department determines within 30 days after the filing of an application that the application is not substantially complete, the Department may reject the application and deem it not to have been filed. In such case, within the 30 day period, the Department shall serve a written notice on the Applicant of the Department's determination and the reasons therefor. The Association shall refund the application fee, less \$350, which shall be retained by the Association as a processing fee. If the Applicant determines to continue to seek membership, the Applicant shall submit a new application and fee under this Rule.

(5) Request For Additional Documents Or Information

Within 30 days after the [receipt] filing of an application, the Department shall [determine whether the application is complete and, if not, shall request] serve an initial request for any additional information or documents necessary to render a decision on the application. The Department may [request] serve subsequent requests for additional information or documents

at any time during the membership application process.

[(5)] Unless otherwise agreed by the Department and the Applicant, the Applicant shall file any additional information and documents with the Department within 60 days after service of the Department's initial request and 30 days after service of any subsequent request.

[(b) Lapse of Application]

[(1)] Absent a showing of good cause, an application for membership shall lapse if an Applicant fails to:

(A) respond fully within 60 days after an initial request for information or documents, within 30 days after any subsequent request, or within such other time period agreed to by the Department and the Applicant;

(B) appear at or otherwise participate in a scheduled membership interview pursuant to paragraph (c); or

(C) return an executed membership agreement under Rule 1014(c) within 25 days after service of the agreement.]

[(2)] The lapse of an application shall require an Applicant continuing to seek membership to submit a new application under paragraph (a).]

[(c)](b) Membership Interview

(1) Requirement for Interview

Before the Department [issues a] serves its decision on an application for new membership in the Association, the Department shall conduct a membership interview with a representative or representatives of the Applicant.

(2) Service of Notice

At least seven days before the membership interview, the Department shall serve on the Applicant a written notice that specifies the date and time of the interview and the representative or representatives of the Applicant who are required to participate in the interview. The Department shall serve the notice by facsimile or [commercial] overnight courier. The Applicant and the Department may agree to a shorter or longer period for notice or a different method of service under this subparagraph.

(3) Time

Unless the Department directs otherwise for good cause shown, a membership interview shall be scheduled to occur within 90 days after the [receipt] filing of an application or within 60 days after the [receipt] filing of all additional information or documents requested, whichever is later.

(4) Place

Unless the Department and the Applicant otherwise agree, the membership interview shall be conducted in the district office for the district in which the Applicant has or intends to have its principal place of business.

(5) Updated Financial Documents

On or before the date of the membership interview, the Applicant shall file an updated trial balance, balance sheet, supporting schedules, and computation of net capital. The Applicant shall prepare such documents as of a date that is within 45 days before the date of the membership inter-

view, unless the Applicant and the Department agree on a longer period. The Applicant shall promptly notify the Department in writing of any material adverse change in its financial condition that occurs before a decision constituting final action of the Association is served on the Applicant.

[(5)](6) Review of Standards for Admission

During the membership interview, the Department shall review the application and the standards for admission to membership with the Applicant's representative or representatives.

[(6)](7) Information From Other Sources

During the membership interview, the Department shall provide to the Applicant's representative or representatives any information or document that the Department has obtained from the Central Registration Depository or a source other than the Applicant and upon which the Department intends to base its decision under Rule 1014. If the Department receives such information or document after the membership interview or decides to base its decision on such information after the membership interview, the Department shall promptly serve the information or document and an explanation thereof on the Applicant.

1014. Department Decision

(a) Standards for Admission

After considering the application, the membership interview, other information and documents provided by the Applicant, other informa-

tion and documents obtained by the Department, and the public interest and the protection of investors, the Department shall determine whether the Applicant meets each of the following standards:

(1) The application and all supporting documents are complete and accurate.

(2) The Applicant and its Associated Persons have all licenses and registrations required by state and federal authorities and self-regulatory organizations.

(3) The Applicant and its Associated Persons are capable of complying with the federal securities laws, the rules and regulations thereunder, and the Rules of the Association, including observing high standards of commercial honor and just and equitable principles of trade. In determining whether this standard is met, the Department may take into consideration whether:

(A) a state or federal authority or self-regulatory organization has taken permanent or temporary adverse action with respect to a registration or licensing determination regarding the Applicant or an Associated Person;

(B) an Applicant's or Associated Person's record[s] reflects: (i) disciplinary actions involving sales practice violations; (ii) customer complaints; or (iii) arbitrations that were resolved adversely to the Applicant or Associated Person] a sales practice event;

(C) an Applicant or Associated Person is the subject of a pending, adjudicated, or settled regulatory action or investigation by the Commission, the Com-

modity Futures Trading Commission, a federal, state, or foreign regulatory agency, or a self-regulatory organization; a pending, adjudicated, or settled investment-related civil action for damages or an injunction; [an investment-related customer complaint or arbitration alleging sales practice violations, theft, misappropriation, conversion, or breach of fiduciary duty that is pending, settled, or has resulted in an award or judgment;] or a criminal action (other than a minor traffic violation) that is pending, adjudicated, or that has resulted in a guilty or no contest plea;

(D) an Associated Person was terminated for cause or permitted to resign after an investigation of an alleged violation of a federal or state securities law, a rule or regulation thereunder, a self-regulatory organization rule, or industry standard of conduct;

(E) a state or federal authority or self-regulatory organization has imposed a remedial action, such as special training [or], continuing education requirements, or heightened supervision, on an Associated Person; and

(F) a state or federal authority or self-regulatory organization has provided information indicating that the Applicant or an Associated Person otherwise poses a threat to public investors.

(4) The Applicant has established all contractual or other arrangements and business relationships with banks, clearing corporations, service bureaus, or others necessary to: (A) initiate

the operations described in the Applicant's business plan, considering the nature and scope of operations and the number of personnel; and (B) comply with the federal securities laws, the rules and regulations thereunder, and the Rules of the Association.

(5) The Applicant has or has adequate plans to obtain facilities that are sufficient to: (A) initiate the operations described in the Applicant's business plan, considering the nature and scope of operations and the number of personnel; and (B) comply with the federal securities laws, the rules and regulations thereunder, and the Rules of the Association.

(6) The communications and operational systems that the Applicant intends to employ for the purpose of conducting business with customers and other members are adequate and provide reasonably for business continuity in each area set forth in Rule 1013(a)(2)(F)(xii);

[(6)][7] The Applicant is capable of maintaining a level of net capital in excess of the minimum net capital requirements set forth in SEC Rule 15c3-1 adequate to support the Applicant's intended business operations on a continuing basis, based on information [that is current within 30 days before the membership interview] filed under Rule 1013(b)(5). The Department may impose a reasonably determined higher net capital requirement for the initiation of operations after considering:

(A) the amount of net capital sufficient to avoid early warning level reporting requirements, such as SEC Rule 17a-11;

(B) the amount of capital necessary to meet expenses net of revenues for at least twelve months, based on reliable projections agreed to by the Applicant and the Department;

(C) any planned market making activities, the number of markets to be made, the type and volatility of products, and the anticipated maximum inventory positions;

(D) any plan to enter into other contractual commitments, such as underwritings or other securities-related activities;

(E) any plan to distribute or maintain securities products in proprietary positions, and the risks, volatility, degree of liquidity, and speculative nature of the products; and

(F) any other activity that the Applicant will engage in that reasonably could have a material impact on net capital within the first twelve months of business operations.

[(7)][8] The Applicant has financial controls to ensure compliance with the federal securities laws, the rules and regulations thereunder, and the Rules of the Association.

[(8)][9] The Applicant has compliance, supervisory, operational, and internal control practices and standards that are consistent with practices and standards regularly employed in the investment banking or securities business, taking into account the nature and scope of Applicant's proposed business.

[(9)][10] The Applicant has a supervisory system, including written supervisory procedures,

internal operating procedures (including operational and internal controls), and compliance procedures designed to prevent and detect, to the extent practicable, violations of the federal securities laws, the rules and regulations thereunder, and the Rules of the Association. In evaluating the adequacy of a supervisory system, the Department shall consider the overall nature and scope of the Applicant's intended business operations and shall consider whether:

(A) the number, location, experience, and qualifications of supervisory personnel are adequate in light of the number, location, experience, and qualifications of persons to be supervised; the [disciplinary history of such] Central Registration Depository record or other disciplinary history of supervisory personnel and persons to be supervised; [any criminal, civil, administrative, or arbitration actions or written customer complaints against such persons;] and the number and locations of the offices that the Applicant intends to open and the nature and scope of business to be conducted at each office;

(B) the Applicant has identified specific Associated Persons to supervise and discharge each of the functions in Applicant's business plan, and to supervise each of the Applicant's intended offices, whether or not such offices are required to be registered under the Rules of the Association;

(C) the Applicant has identified the functions to be performed by each Associated Person and has adopted procedures to assure the registration with the

Association and applicable states of all persons whose functions are subject to such registration requirements.

[(C)] (D) each Associated Person identified in the business plan to discharge a supervisory function [in the business plan] has at least one year of direct experience or two years of related experience in the subject area to be supervised;

[(D)] (E) the Applicant will solicit retail or institutional business;

[(E)] (F) the Applicant will recommend securities to customers;

[(F)] (G) the location or part-time status of a supervisor or principal will affect such person's ability to be an effective supervisor;

[(G)] (H) [the records of an Associated Person reflect: (i) disciplinary actions involving sales practice violations; (ii) customer complaints; or (iii) arbitrations that were resolved adversely to the Associated Person] the Applicant should be required to place one or more Associated Persons under heightened supervision pursuant to Notice to Members 97-19;

[(H)] (I) any remedial action, such as special training or continuing education requirements or heightened supervision, has been imposed on an Associated Person by a state or federal authority or self-regulatory organization; and

[(I)] (J) any other condition that will have a material impact on the Applicant's ability to detect

and prevent violations of the federal securities laws, the rules and regulations thereunder, and the Rules of the Association.

[(10)](11) The Applicant has a recordkeeping system that enables Applicant to comply with federal, state, and self-regulatory organization recordkeeping requirements and a staff that is sufficient in qualifications and number to prepare and preserve required records.

[(11)](12) The Applicant has completed a training needs assessment and has a written training plan that complies with the continuing education requirements imposed by the federal securities laws, the rules and regulations thereunder, and the Rules of the Association.

[(12)](13) The Association does not possess any information indicating that the Applicant may circumvent, evade, or otherwise avoid compliance with the federal securities laws, the rules and regulations thereunder, or the Rules of the Association.

[(13)](14) The application and all supporting documents otherwise are consistent with the federal securities laws, the rules and regulations thereunder, and the Rules of the Association.

(b) Granting or Denying Application

(1) If the Department determines that the Applicant meets each of the standards in paragraph (a), the Department shall grant the application for membership.

(2) If the Department determines that the Applicant does not meet

one or more of the standards in paragraph (a) in whole or in part, the Department [may] shall:

(A) grant the application subject to one or more restrictions reasonably designed to address a specific financial, operational, supervisory, disciplinary, investor protection, or other regulatory concern based on the standards for admission in Rule 1014(a); or

(B) deny the application.

[(c) Submission of Membership Agreement

If the Department grants an application, with or without restriction, the Applicant's approval for membership shall be contingent upon the Applicant's submission of a written membership agreement, satisfactory to the Department, undertaking to:

(1) engage only in the business set forth in the business plan and the membership agreement;

(2) abide by any restriction specified in the Department's decision;

(3) obtain the Department's prior approval of the removal or modification of such a restriction pursuant to Rule 1017; and

(4) notify and obtain the Department's approval of a change in ownership or control or a material change in business operations pursuant to Rule 1018.

The Applicant shall not waive the right to file a written request for review under Rule 1015 by executing a membership agreement under this paragraph.]

[(d)](c) Decision**(1) Time**

The Department shall [issue] serve a written decision on the membership application within 30 days after the conclusion of the membership interview or after the [submission] filing of additional information or documents, whichever is later.

(2) Content

If the Department denies the application, the decision shall explain in detail the reason for denial, referencing the applicable standard or standards in paragraph (a). If the Department grants the application subject to restrictions, the decision shall explain in detail the reason for each restriction, referencing the applicable standard or standards in paragraph (a) upon which the restriction is based and identify the specific financial, operational, supervisory, disciplinary, investor protection, or other regulatory concern that the restriction is designed to address and the manner in which the restriction is reasonably designed to address the concern.

(3) Failure to [Issue] Serve Decision

If the Department fails to [issue] serve a decision within 180 days after [receipt] the filing of an application or such later date as the Department and the Applicant have agreed in writing, the Applicant may file a written request with the NASD Board requesting that the NASD Board direct the Department to [issue] serve a decision. Within seven days after [receipt] the filing of such a request, the NASD Board shall direct the Department to serve its

written decision immediately or to show good cause for an extension of time. If the Department shows good cause for an extension of time, the NASD Board may extend the 180 day time limit by not more than 90 days.

(d) Submission of Membership Agreement

If the Department grants an application, with or without restriction, the Applicant's approval for membership shall be contingent upon the Applicant's filing of an executed written membership agreement, satisfactory to the Department, undertaking to:

(1) abide by any restriction specified in the Department's decision; and

(2) obtain the Department's approval of a change in ownership, control, or business operations pursuant to Rule 1017, including the modification or removal of a membership agreement restriction.

The Applicant shall not waive the right to file a written request for review under Rule 1015 by executing a membership agreement under this paragraph.

(e) Service and Effectiveness of Decision

The Department shall serve its decision and the membership agreement on the Applicant in accordance with Rule 1012. The decision shall become effective upon service and shall remain in effect during the pendency of any review until a decision constituting final action of the Association is issued under Rule 1015 or 1016, unless otherwise directed by the National Adjudicatory Council, the NASD Board, or the Commission.

(f) Effectiveness of Restriction

A restriction imposed under this Rule shall remain in effect and bind the Applicant and all successors to the ownership or control of the Applicant unless:

(1) removed or modified by [the Department under Rule 1017] a decision constituting final action of the Association issued under Rule 1015, 1016, or 1017;

[(2) removed or modified by a decision constituting final action of the Association issued under Rule 1015 or 1016;] or

[(3)](2) stayed by the National Adjudicatory Council, the NASD Board, or the Commission.

(g) Final Action

Unless the Applicant files a written request for a review under Rule 1015, the Department's decision shall constitute final action by the Association.

1015. Review by National Adjudicatory Council**(a) Initiation of Review by Applicant****[(1) Request by Applicant]**

Within 25 days after service of a decision under Rule 1014[,] or 1017 [or 1018], an Applicant may file a written request for review with the National Adjudicatory Council. A request for review shall state with specificity why the Applicant believes that the Department's decision is inconsistent with the membership standards set forth in Rule 1014, or otherwise should be set aside, and state whether a hearing is requested. The Applicant simultaneously shall [send] file by first-

class mail a copy of the request to the district office where the Applicant filed its [membership] application.

[(2) Notice by National Adjudicatory Council

A decision issued under Rule 1014, 1017, or 1018 shall be subject to a call for review by any member of the National Adjudicatory Council or the Review Subcommittee defined in Rule 9120 within 30 days after service of the decision. If the National Adjudicatory Council calls a decision for review, a written notice of review shall be served promptly on the Applicant by first-class mail. The written notice of review shall state the specific grounds for the review and whether a hearing is directed. If a decision is called for review by any member of the National Adjudicatory Council or the Review Subcommittee, the decision shall be reviewed by the National Adjudicatory Council. The National Adjudicatory Council simultaneously shall send by first-class mail a copy of the notice to the district office where the Applicant filed its membership application.]

(b) Transmission of Documents

Within ten days after [receipt] the filing of a request for [or notice of] review, the Department shall:

- (1) transmit to the National Adjudicatory Council copies of all documents that were considered in connection with the Department's decision and an index to the documents; and
- (2) serve on the Applicant a copy of such documents (other than those documents originally submitted by Applicant) and a copy of the index.

(c) Membership Application Docket

The Department shall promptly record in the Association's membership application docket each request for [or notice of] review filed with the National Adjudicatory Council under this Rule and each material subsequent event, filing, and change in the status of a membership proceeding.

(d) Appointment of Subcommittee

The National Adjudicatory Council or the Review Subcommittee defined in Rule 9120 shall appoint a Subcommittee to participate in the review. The Subcommittee shall be composed of at least two members. One member shall be a current member of the National Adjudicatory Council. The remaining member or members shall be current or past Directors or past Governors.

(e) Powers of Subcommittee

If a hearing is requested [or directed], the Subcommittee shall conduct the hearing. If a hearing is not requested, the Subcommittee may serve a notice directing that a hearing be held. If a hearing is not requested or directed, the Subcommittee shall conduct its review on the basis of the record developed before the Department and any written submissions made by the Applicant or the Department in connection with the request for review.

(f) Hearing

(1) Notice

If a hearing is requested or directed, the hearing shall be held within 45 days after the [receipt] filing of the request [or service of the notice by] with the National Adjudicatory Council or

service of the notice by the Subcommittee. The National Adjudicatory Council shall [send] serve written notice of the date and time of the hearing to the Applicant by facsimile or [commercial] overnight courier not later than 14 days before the hearing.

(2) Counsel

The Applicant and the Department may be represented by counsel at a hearing conducted pursuant to this Rule.

(3) Evidence

Formal rules of evidence shall not apply to a hearing under this Rule. Not later than five days before the hearing, the Applicant and the Department shall exchange copies of their proposed hearing exhibits and witness lists and provide copies of the same to the National Adjudicatory Council. If the Applicant or the Department fails to provide copies of its proposed hearing exhibits or witness list within such time, the Subcommittee shall exclude the evidence or witnesses from the proceeding, unless the Subcommittee determines that good cause is shown for failure to comply with the production date set forth in this subparagraph.

(4) Transcript

The hearing shall be recorded and a transcript prepared by a court reporter. A transcript of the hearing shall be available for purchase from the court reporter at prescribed rates. The Applicant, the Department, or a witness may seek to correct the transcript. A proposed correction of the transcript shall be submitted to the Subcommittee within a reasonable period of time pre-

scribed by the Subcommittee. Upon notice to the Applicant and the Department, the Subcommittee may direct the correction to the transcript as requested or sua sponte.

[(5) Failure to Appear at Hearing]

[If an Applicant fails to appear at a hearing for which it has notice, the National Adjudicatory Council may dismiss the request for review as abandoned, and the decision of the Department shall become the final action of the Association. Upon a showing of good cause, the National Adjudicatory Council may withdraw a dismissal entered pursuant to this subparagraph.]

(g) Additional Information, Briefs

At any time during its consideration, the Subcommittee or the National Adjudicatory Council may direct the Applicant or the Department to [submit] file additional information [and to file] or briefs. Any additional information or brief [submitted] filed shall be provided to all parties before the National Adjudicatory Council renders its decision.

(h) Abandonment of Request for Review

If an Applicant fails to specify the grounds for its request for review under Rule 1015(a)(1), appear at a hearing for which it has notice, or file information or briefs as directed, the National Adjudicatory Council or the Review Subcommittee may dismiss the request for review as abandoned, and the decision of the Department shall become the final action of the Association. Upon a showing of good cause, the National Adjudicatory Council or the Review Subcommittee may withdraw a dismissal entered pursuant

to this paragraph.

[(h)](i) Subcommittee Recommendation

The Subcommittee shall present a recommended decision in writing to the National Adjudicatory Council within 60 days after the date of the hearing held pursuant to paragraph (f), and not later than seven days before the meeting of the National Adjudicatory Council at which the membership proceeding shall be considered.

[(i)](j) Decision

(1) Proposed Written Decision

After considering all matters presented in the review and the Subcommittee's recommended written decision, the National Adjudicatory Council may affirm, modify, or reverse the Department's decision or remand the membership proceeding with instructions. The National Adjudicatory Council shall prepare a proposed written decision pursuant to subparagraph (2).

(2) Contents

The decision shall include:

- (A) a description of the Department's decision, including its rationale;
- (B) a description of the principal issues raised in the review;
- (C) a summary of the evidence on each issue; and
- (D) a statement whether the Department's decision is affirmed, modified, or reversed, and a rationale therefor that references the applicable standards in Rule 1014.

(3) Issuance of Decision After Expiration of Call for Review Periods

The National Adjudicatory Council shall provide its proposed written decision to the NASD Board. The NASD Board may call the membership proceeding for review pursuant to Rule 1016. If the NASD Board does not call the membership proceeding for review, the proposed written decision of the National Adjudicatory Council shall become final. The National Adjudicatory Council shall serve the Applicant with a written notice specifying the date on which the call for review period expired and stating that the final written decision will be served within 15 days after such date. The National Adjudicatory Council shall serve its final written decision within 15 days after the date on which the call for review period expired. The decision shall constitute the final action of the Association for purposes of SEC Rule 19d-3, unless the National Adjudicatory Council remands the membership proceeding.

(4) Failure to Issue Decision

If the National Adjudicatory Council fails to serve its final written decision within the time prescribed in subparagraph (3), the Applicant may file a written request with the NASD Board requesting that the NASD Board direct the National Adjudicatory Council to serve its decision immediately or to show good cause for an extension of time. Within seven days after [receipt] the filing of such a request, the NASD Board shall direct the National Adjudicatory Council to serve its written decision immediately or to show good cause for an extension of time. If the

National Adjudicatory Council shows good cause for an extension of time, the NASD Board may extend the 15 day time limit by not more than 15 days.

1016. Discretionary Review by NASD Board

(a) Call for Review by Governor

A Governor may call a membership proceeding for review by the NASD Board if the call for review is made within the period prescribed in [sub]paragraph [(2)] (b).

(b) 15 Day Period; Waiver

A Governor shall make his or her call for review at 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 National Adjudicatory Council. By unanimous vote of the NASD Board, the NASD Board may shorten the period to less than 15 days. By an affirmative vote of the majority of the NASD Board then in office, the NASD Board may, during the 15 day period, vote to extend the period to more than 15 days.

(c) Review At Next Meeting

If a Governor calls a membership proceeding for review within the time prescribed in paragraph (b), the NASD Board shall review the membership proceeding not later than the next meeting of the NASD Board. The NASD Board may order the Applicant and the Department to file briefs in connection with review proceedings pursuant to this paragraph.

(d) Decision of NASD Board, Including Remand

After review, the NASD Board may affirm, modify, or reverse the pro-

posed written decision of the National Adjudicatory Council. Alternatively, the NASD Board may remand the membership proceeding with instructions. The NASD Board shall prepare a written decision that includes all of the elements described in Rule 1015[(i)(2)] (j)(2).

(e) Issuance of Decision

The NASD Board shall serve its written decision on the Applicant within 15 days after the meeting at which it conducted its review. The decision shall constitute the final action of the Association for purposes of SEC Rule 19d-3, unless the NASD Board remands the membership proceeding.

1017. [Removal or Modification of Business Restriction] Application for Approval of Change in Ownership, Control, or Business Operations

(a) Events Requiring Application

[A member of the Association may seek modification or removal of a restriction on its business activities imposed pursuant to the Rule 1010 Series by filing a written application with the Department at the district office for the district in which the member's principal place of business is located. The application shall present facts showing that the circumstances that gave rise to the restriction have changed and state with specificity why the restriction should be modified or removed in light of the standards set forth in Rule 1014 and the articulated rationale for the imposition of the restriction. A copy of the decision and membership agreement pertaining to such restriction shall be appended to the application.]

A member shall file an application for approval of any of the following

changes to its ownership, control, or business operations:

(1) a merger of the member with another member, unless both are members of the New York Stock Exchange, Inc. or the surviving entity will continue to be a member of the New York Stock Exchange, Inc.;

(2) a direct or indirect acquisition by the member of another member, unless the acquiring member is a member of the New York Stock Exchange, Inc.;

(3) a direct or indirect acquisition of substantially all of the member's assets, unless the acquirer is a member of the New York Stock Exchange, Inc.;

(4) a change in the equity ownership or partnership capital of the member that results in one person or entity directly or indirectly owning or controlling 25 percent or more of the equity or partnership capital; or

(5) a material change in business operations as defined in Rule 1011(i).

(b) Filing and Content of Application

(1) The member shall file the application with the Department at the district office in the district in which the member's principal place of business is located. If the application involves a merger between members with principal places of business in two or more districts, the application shall be filed and processed by the district office wherein the surviving firm's principal place of business will be located.

(2) The application shall describe in detail the change in owner-

ship, control, or business operations and include a business plan, pro forma financials, an organizational chart, and written supervisory procedures reflecting the change.

(A) If the application requests approval of a change in ownership or control, the application also shall include the names of the new owners, their percentage of ownership, and the sources of their funding for the purchase and recapitalization of the member.

(B) If the application requests the removal or modification of a membership agreement restriction, the application also shall:

(i) present facts showing that the circumstances that gave rise to the restriction have changed; and

(ii) state with specificity why the restriction should be modified or removed in light of the standards set forth in Rule 1014 and the articulated rationale for the imposition of the restriction.

(C) If the application requests approval of an increase in Associated Persons involved in sales, offices, or markets made, the application shall set forth the increases in such areas during the preceding 12 months.

(c) Effecting Change and Imposition of Interim Restrictions

(1) A member shall file an application for approval of a change in ownership or control at least 30 days prior to such change. A member may effect a change in ownership or control prior to the conclusion of the proceeding, but

the Department may place new interim restrictions on the member based on the standards in Rule 1014, pending final Department action.

(2) A member may file an application to remove or modify a membership agreement restriction at any time. An existing restriction shall remain in effect during the pendency of the proceeding.

(3) A member may file an application for approval of a material change in business operations, other than the modification or removal of a restriction, at any time, but the member may not effect such change until the conclusion of the proceeding, unless the Department and the member otherwise agree.

(d) Rejection Of Application That Is Not Substantially Complete

If the Department determines within 30 days after the filing of an application that the application is not substantially complete, the Department may reject the application and deem it not to have been filed. In such case, within the 30 day period, the Department shall serve a written notice on the Applicant of the Department's determination and the reasons therefor. If the Applicant determines to continue to apply for approval of a change in ownership, control, or business operations, the Applicant shall submit a new application under this Rule.

[(b)](e) Request for Additional Documents and Information

Within 30 days after the [receipt] filing of an application [to remove or modify a restriction], the Department shall [determine whether the application is complete, and if not, shall] serve a request for any addi-

tional information or documents necessary to render a decision [under paragraph (e)] on the application. The Department may serve subsequent requests for additional information or documents at any time during the application process. Unless otherwise agreed by the Department and the Applicant, the Applicant shall file any additional information and documents with the Department within 30 days after service of a request.

[(c) Lapse]

[(1) Absent a showing of good cause, an application to modify or remove a restriction shall lapse if an Applicant fails to:

(A) respond fully within 30 days after a request for information or documents;

(B) appear at or otherwise participate in a scheduled membership interview pursuant to paragraph (d); or

(C) return an executed membership agreement under paragraph (e)(4) within 25 days after service of the agreement.

(2) The lapse of an application shall require the Applicant to submit a new application to modify or remove a restriction under paragraph (a).]

[(d)](f) Membership Interview

(1) The Department may require the Applicant to participate in a membership interview within 30 days after the [receipt] filing of the application, or if the Department requests additional information or documents, within 30 days after the filing of the additional information or documents by the Applicant.

(2) At least seven days before the membership interview, the Department shall serve on the Applicant a written notice that specifies the date and time of the interview and [the representative or representatives of the Applicant] persons who are required to participate in the interview. The Department shall serve the notice by facsimile or [commercial] overnight courier. The Applicant and the Department may agree to a shorter or longer period for notice or a different method of service.

(3) Unless the Department and the Applicant otherwise agree, the membership interview shall be conducted in the district office for the district in which the Applicant has its principal place of business.

(4) During the membership interview, the Department shall review the application and the considerations for the Department's decision set forth in paragraph [(e)(1)] (g)(1). The Department shall provide to the Applicant's representative or representatives any information or document that the Department has obtained from the Central Registration Depository or a source other than the Applicant and upon which the Department intends to base its decision under paragraph [(e)(g)]. If the Department receives such information or document after the membership interview or decides to base its decision on such information after the membership interview, the Department shall promptly serve the information or document and an explanation thereof on the Applicant.

[(e)(g) Department Decision

(1) [In evaluating an application submitted under paragraph (a)] The Department shall consider the application, the membership interview, other information and documents provided by the Applicant or obtained by the Department, the public interest, and the protection of investors.

(A) In rendering a decision on an application for approval of a change in ownership or control, or an application for approval of a material change in business operations that does not involve modification or removal of a membership agreement restriction, the Department shall determine if the Applicant would continue to meet the standards in Rule 1014(a) upon approval of the application.

(B) In rendering a decision on an application requesting the modification or removal of a membership agreement restriction, the Department shall consider whether maintenance of the restriction is appropriate in light of:

[(A)](i) the standards set forth in Rule 1014;

[(B)](ii) the circumstances that gave rise to the imposition of the restriction;

[(C)](iii) the Applicant's operations since the restriction was imposed;_

[(D)] (iv) [a] any change in ownership or control or supervisors and principals; and

[(E)](v) any new evidence submitted in connection with the application.

(2) The Department shall [issue] serve a written decision on the application within 30 days after the conclusion of the membership interview or the [submission] filing of additional information or documents, whichever is later. If the Department does not require the Applicant to participate in a membership interview or request additional information or documents, the Department shall [issue] serve a written decision within 45 days after the [receipt] filing of the application under paragraph (a). The decision shall state whether the application [to modify or remove the restriction] is granted or denied in whole or in part, and shall provide a rationale for the Department's decision, referencing the applicable standard in Rule 1014.

(3) If the Department fails to [issue] serve a decision within 180 days after [receipt] filing of an application or such later date as the Department and the Applicant have agreed in writing, the Applicant may file a written request with the NASD Board requesting that the NASD Board direct the Department to issue a decision. Within seven days after [receipt] the filing of such a request, the NASD Board shall direct the Department to issue a written decision immediately or to show good cause for an extension of time. If the Department shows good cause for an extension of time, the NASD Board may extend the time limit for issuing a decision by not more than 30 days.

(4) If the Department [modifies or removes a restriction on the Applicant's business activities, the] approves an application under this Rule in whole or part, the Department shall require an Applicant to file an executed

membership agreement [submitted under Rule 1014 shall be modified accordingly].

[(f)](h) Service and Effectiveness of Decision

The Department shall serve its decision on the Applicant in accordance with Rule 1012. The decision shall become effective upon service and shall remain in effect during the pendency of any review until a decision constituting final action of the Association is [issued] served under Rule 1015 or 1016, unless otherwise directed by the National Adjudicatory Council, the NASD Board, or the Commission.

[(g)](i) Request for Review; Final Action

An Applicant may file a written request for review of the Department's decision with the National Adjudicatory Council pursuant to Rule 1015. The procedures set forth in Rule 1015 shall apply to such review, and the National Adjudicatory Council's decision shall be subject to discretionary review by the NASD Board pursuant to Rule 1016. If the Applicant does not file a request for a review, the Department's decision shall constitute final action by the Association.

[(h)](j) Removal or Modification of Restriction on Department's Initiative

The Department shall modify or remove a restriction on its own initiative if the Department determines such action is appropriate in light of the considerations set forth in paragraph [(e)(1)](g)(1). The Department shall notify the member in writing of the Department's determination and inform the member that it may apply for further modification or removal of a restriction by filing an application under paragraph (a).

(k) Lapse or Denial of Application for Approval of Change in Ownership

If an application for approval of a change in ownership lapses, or is denied and all appeals are exhausted or waived, the member shall, no more than 60 days after the lapse or exhaustion or waiver of appeal:

- (1) submit a new application;
- (2) unwind the transaction; or
- (3) file a Form BDW.

For the protection of investors, the Department may shorten the 60-day period. For good cause shown by the member, the Department may lengthen the 60-day period. The Department shall serve written notice on the Applicant of any change in the 60-day period and the reasons therefor. During the 60-day or other imposed period, the Department may continue to place interim restrictions on the member for the protection of investors.

[1018. Change in Ownership, Control, or Operations]**[(a) Notice**

At least 30 days prior to the occurrence of any of the following changes in ownership, control, or operations, a member shall file a written notice and application for continuance in membership with the Department at the district office in the district in which the member's principal place of business is located:

- (1) a merger of the member with another member;
- (2) an acquisition by the member of another member;
- (3) an acquisition of substantially

all of the member's assets;

(4) a change in the equity ownership or partnership capital of the member that results in one person or entity owning or controlling 25 percent or more of the equity or partnership capital; or

(5) a material change in the member's business operations.]

[(b) Review and Imposition of Interim Restrictions

The Department shall review a change in ownership, control, or operations described in paragraph (a) prior to the change taking effect. The Department may maintain existing restrictions on the member's business activities and place new interim restrictions on the member based on the standards in Rule 1014, pending final Department action.]

[(c) Request for Information

Within 30 days after receipt of the notice and application under paragraph (a), the Department shall request any additional information or documents necessary to render a decision under paragraph (f). Unless otherwise agreed by the Department and the Applicant, the Applicant shall file such additional information or documents with the Department within 30 days after the Department's request. The Department may request additional information and documents at any time during the application process; unless the Applicant and the Department agree otherwise, the Applicant shall file such information or documents within 30 days after the Department's request.]

[(d) Lapse

(1) Absent a showing of good cause, an application for continu-

ance in membership shall lapse if an Applicant fails to:

(A) respond fully within 30 days after a request for information or documents;

(B) appear at or otherwise participate in a scheduled membership interview pursuant to paragraph (e); or

(C) return an executed membership agreement under paragraph (g) within 25 days after service of the agreement.

(2) The lapse of an application shall require the Applicant to submit a new application under paragraph (a).]

[(e) Membership Interview

(1) The Department may require the Applicant to participate in a membership interview. The membership interview shall be held within 30 days after the receipt of the application, or if the Department requests additional information or documents, within 30 days after the filing of such additional information or documents by the Applicant.

(2) At least seven days before the membership interview, the Department shall serve on the Applicant a written notice that specifies the date and time of the interview and the representative or representatives of the Applicant who are required to participate in the interview. The Department shall serve the notice by facsimile or commercial courier. The Applicant and the Department may agree to a shorter or longer period for notice or a different method of service.

(3) Unless the Department and the Applicant otherwise agree,

the membership interview shall be conducted in the district office for the district in which the Applicant has or intends to have its principal place of business.

(4) During the membership interview, the Department shall review the application and the considerations for the Department's decision set forth in paragraph (f). The Department shall provide to the Applicant's representative or representatives any information or document that the Department has obtained from the Central Registration Depository or a source other than the Applicant and upon which the Department intends to base its decision under paragraph (f). If the Department receives such information or document after the membership interview or decides to base its decision on such information after the membership interview, the Department shall promptly serve the information or document and an explanation thereof on the Applicant.]

[(f) Department Decision

(1) In evaluating an application submitted under paragraph (a), the Department shall consider whether the Applicant continues to meet the standards set forth in Rule 1014 in light of the change in ownership, control, or operations, and whether current restrictions, if any, or new restrictions are necessary for the Applicant to continue to meet such standards.

(2) The Department shall issue a written decision within 30 days after the membership interview or the submission of additional information or documents, whichever is later. If the Department does not require the Applicant to participate in a

membership interview or submit additional information or documents, the Department shall issue a written decision within 45 days after receipt of an application under paragraph (a). The decision shall state the terms for continuance in NASD membership, whether current restrictions, if any, are maintained or new restrictions are imposed, and shall provide a rationale for the Department's decision, referencing the applicable standard in Rule 1014.

(3) If the Department fails to issue a decision within 180 days after receipt of an application or such later date as the Department and the Applicant have agreed in writing, the Applicant may file a written request with the NASD Board requesting that the NASD Board direct the Department to issue a decision. Within seven days after receipt of such a request, the NASD Board shall direct the Department to issue a written decision immediately or to show good cause for an extension of time. If the Department shows good cause for an extension of time, the NASD Board may extend the time limit for issuing a decision by not more than 30 days.]

[(g) Submission of Membership Agreement

The Department may condition approval of an application for continuance in membership on the Applicant's submission of a new written membership agreement pursuant to Rule 1014(c).]

[(h) Service and Effectiveness of Decision

The Department shall serve its decision on the Applicant in accordance with Rule 1012. The decision

shall become effective upon service and shall remain in effect during the pendency of any review until a decision constituting final action of the Association is issued under Rule 1015 or 1016, unless otherwise directed by the National Adjudicatory Council, the NASD Board, or the Commission.]

[(i) Request for Review; Final Action

An Applicant may file a written request for review of the Department's decision with the National Adjudicatory Council pursuant to Rule 1015. The procedures set forth in Rule 1015 shall apply to such a review, and the National

Adjudicatory Council's decision shall be subject to discretionary review by the NASD Board pursuant to Rule 1016. If the Applicant does not file a request for review, the Department's action shall constitute the final action of the Association.]

1018. Reserved

1019. Application to Commission for Review

No change.

* * *

Rule 1140. Electronic Filing Rules

(a) Filing Requirement

Except as provided in Rule 1013(a)(2), all [All] forms required to be filed by the By-Laws shall be filed through an electronic process or such other process the Association may prescribe to the Central Registration Depository.

* * *

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INFORMATIONAL

District Elections

NASD Announces Election Results For District Committees And District Nominating Committees**SUGGESTED ROUTING**

The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.

- Legal & Compliance
- Operations
- Registration
- Senior Management

KEY TOPICS

- District Elections

Executive Summary

Through this *Notice*, the National Association of Securities Dealers, Inc. (NASD®) announces the election results for the District Committees and the District Nominating Committees. The newly elected District Committee members will serve until 2004.

The members of the District Committees and the District Nominating Committees are included in Attachment A.

Questions/Further Information

Questions concerning this *Notice* may be directed to the District Director noted or to Joan Conley, Senior Vice President and Corporate Secretary, NASD, at (202) 728-8381 or via e-mail at: joan.conley@nasd.com.

Attachment A

District Committee And District Nominating Committee Members

District 1

Elisabeth P. Owens, District Director
525 Market Street, Suite 300
San Francisco, CA 94105
(415) 882-1200

District 1 Committee

Committee Members

To Serve Until January 2001

Steven R. Aaron	Chase Securities Inc., San Francisco, CA
Janet W. Campbell	Protected Investors of America, Walnut Creek, CA
Douglas C. Heske	U.S. Bancorp Piper Jaffray, Inc., San Francisco, CA

To Serve Until January 2002

John H. Chung	First Security Van Kasper, San Francisco, CA
Steven D. Piper	Epoch Securities, Inc., San Francisco, CA

To Serve Until January 2003

Sally G. Aelion	Emmett A. Larkin Co., Inc., San Francisco, CA
David A. Baylor	Thomas Weisel Partners LLC, San Francisco, CA
Henry W. Carter	E*Trade Securities, Inc., Menlo Park, CA

To Serve Until January 2004 (newly elected members)

Carol Van Bruggen	Securities Service Network, Inc., Sacramento, CA
Susan K. Campbell	Protected Investors of America, San Francisco, CA
William C. Pack	Salomon Smith Barney Inc., San Francisco, CA

District 1 Nominating Committee

Committee Members

Steven R. Aaron	Chase Securities Inc., San Francisco, CA
Stephen R. Adams	First Security Van Kasper, San Francisco, CA
Nicholas C. Cochran	American Investors Company, Dublin, CA
John C. Helmer	Caldwell Securities, Inc., Danville, CA
William A. Svoboda	Morgan Stanley Dean Witter Reynolds, San Jose, CA

District Committee And District Nominating Committee Members

District 2

Lani M. Sen Woltmann, District Director
300 South Grand Avenue, Suite 1600
Los Angeles, CA 90071
(213) 627-2122

District 2 Committee

Committee Members

To Serve Until January 2001

James B. Guillou, Sr.	Sutro & Co., Incorporated, La Jolla, CA
Andrew E. Haas	Bear Stearns & Co., Inc., Los Angeles, CA
Richard E. Wiseley	CIBC Oppenheimer & Co., Inc., Los Angeles, CA
Richard P. Woltman	Spelman & Co., Inc., San Diego, CA

To Serve Until January 2002

Margaret M. Black	Morgan Stanley Dean Witter, Beverly Hills, CA
Diane P. Blakeslee	Blakeslee and Blakeslee, Inc., San Luis Obispo, CA
Jack R. Handy, Jr.	Financial Network Investment Corporation, Torrance, CA
Dean A. Holmes	American General Financial Group, Anaheim, CA

To Serve Until January 2003

Kellen M. Flanigan	Dabney Flanigan, LLC, Los Angeles, CA
William H. Howard, Jr.	Hagerty, Stewart & Associates, Irvine, CA
James R. Kruger	Dreyfus Brokerage Services, Inc., Beverly Hills, CA
Stephen P. Maguire	Maguire Investments, Inc., Santa Maria, CA

To Serve Until January 2004 (newly elected members)

James E. Biddle	The Securities Center Incorporated, Chula Vista, CA
Chris M. Kanoff	Jefferies & Company, Inc., Los Angeles, CA
Steven K. McGinnis	National Planning Corporation, Santa Monica, CA
Neal E. Nakagiri	Associated Securities Corporation, Los Angeles, CA

District 2 Nominating Committee

Committee Members

Murray L. Finebaum	Trading Edge, Inc., Santa Monica, CA
Jerry M. Gluck	Jefferies & Company, Inc., Los Angeles, CA
James B. Guillou	Sutro & Co., Incorporated, La Jolla, CA
Joan B. Seidel	Morton Seidel & Company, Inc., Beverly Hills, CA
Kaye M. Woltman	Girard Securities, Inc., San Diego, CA

District Committee And District Nominating Committee Members

District 3

Frank J. Birgfeld, District Director
Republic Plaza Building
370 17th Street, Suite 2900
Denver, CO 80202-5629
(303) 446-3100

James G. Dawson, District Director
Two Union Square
601 Union Street, Suite 1616
Seattle, WA 98101-2327
(206) 624-0790

District 3 Committee

Committee Members

To Serve Until January 2001

Thomas R. Hislop	Peacock, Hislop, Staley & Given, Inc., Phoenix, AZ
Gerald Meyer	D. A. Davidson & Co., Great Falls, MT
John Morton	Morton Clarke Fu & Metcalf, Inc., Seattle, WA
Terry Lee Richards	PaineWebber, Inc., Salt Lake City, UT

To Serve Until January 2002

James Barnyak	Salomon Smith Barney Inc., Seattle, WA
David Griswold	Frank Russell Securities, Inc., Tacoma, WA
James E. Stark	Charles Schwab & Co., Phoenix, AZ

To Serve Until January 2003

J. Pamela Dawson	WM Financial Services, Inc., Seattle, WA
Steven M. Fishbein	American Fronteer Financial Corporation, Denver, CO
Bruce Kramer	Prudential Securities Incorporated, Seattle, WA

To Serve Until January 2004 (newly elected members)

Richard B. Bequette	CUE, Phoenix, AZ
George Diachok	Multi-Financial Securities Corp., Denver, CO
John M. Rose	Seattle-Northwest Securities Corp., Seattle, WA
Kathryn A. Supko	Robert W. Baird & Co., Inc., Boise, ID

District 3 Nominating Committee

Committee Members

J. Wendell Garrett	J.W. Garrett & Company, Phoenix, AZ
Thomas R. Hislop	Peacock, Hislop, Staley & Given, Inc., Phoenix, AZ
John Morton	Morton Clarke Fu & Metcalf, Inc., Seattle, WA
Thomas Petrie	Petrie Parkman & Co., Inc., Denver, CO
Douglas Strand	Strand, Atkinson, Williams & York, Inc., Portland, OR

District Committee And District Nominating Committee Members**District 4**

Thomas D. Clough, District Director
120 W. 12th Street, Suite 900
Kansas City, MO 64105
(816) 421-5700

District 4 Committee

Committee Members**To Serve Until January 2001**

Antonio J. Cecin	U.S. Bancorp Piper Jaffray, Inc., Minneapolis, MN
Cheryl Cook-Schneider	Edward Jones, St. Louis, MO
Brent M. Weisenborn	Security Investment Company of Kansas City, Kansas City, MO
Vacancy	

To Serve Until January 2002

Robert M. Chambers	Robert W. Baird & Co. Incorporated, Des Moines, IA
John R. Lepley	Princor Financial Services Corporation, Des Moines, IA
William M. Lyons	American Century Investment Services, Inc., Kansas City, MO

To Serve Until January 2003

E. John Moloney	Moloney Securities Co., Inc., St. Louis, MO
Rodger O. Riney	Scottsdale Securities, Inc., St. Louis, MO
Jeffrey A. Schuh	Marquette Financial Group, Inc., Minneapolis, MN
Gail Werner-Robertson	GWR Investments, Inc., Omaha, NE

To Serve Until January 2004 (newly elected members)

Gene M. Diedrich	A.G. Edwards & Sons, Inc., Overland Park, KS
Jonathan M. Harris	Dain Rauscher, Inc., Minneapolis, MN
Timothy J. Lyle	Trusted Securities Advisors Corp., Minnetonka, MN
Pamela Kay Reinitz Ziermann	Dougherty & Company, Minneapolis, MN

District 4 Nominating Committee

Committee Members

Antonio J. Cecin	U.S. Bancorp Piper Jaffray Inc., Minneapolis, MN
John D. Cleland	Security Distributors, Inc., Topeka, KS
Cheryl Cook-Schneider	Edward Jones, St. Louis, MO
Wayne H. Peterson	Cap Pro Brokerage Services, Inc., Minneapolis, MN
Brent Weisenborn	Security Investment Company of Kansas City, Kansas City, MO

District Committee And District Nominating Committee Members

District 5

Warren A. Butler, Jr., District Director
1100 Poydras Street
Energy Centre, Suite 850
New Orleans, LA 70163-0802
(504) 522-6527

District 5 Committee

Committee Members

To Serve Until January 2001

Benjamin D. Capshaw, III	Morgan Stanley Dean Witter, New Orleans, LA
James S. Jones	Crews & Associates, Inc., Little Rock, AR
Dene R. Shipp	SunTrust Equitable Securities, Nashville, TN
John C. West	First Union Securities, Inc., Memphis, TN

To Serve Until January 2002

James D. Hudgins	SouthTrust Securities, Inc., Birmingham, AL
LeRoy H. Paris, II	Invest Linc Securities, Inc., Jackson, MS
Duncan F. Williams	Duncan-Williams, Inc., Memphis, TN

To Serve Until January 2003

David A. Daugherty	James Baker & Associates, A Limited Partnership, Oklahoma City, OK
James M. Rogers	J.J.B. Hilliard, W.L. Lyons, Inc., Louisville, KY
W. Lucas Simons	PaineWebber Incorporated, Nashville, TN

To Serve Until January 2004 (newly elected members)

Norman Frager	Capital West Securities, Inc., Oklahoma City, OK
David A. Knight	Stephens Inc., Little Rock, AR
Lawrence J. Sisung	Sisung Securities Corporation, New Orleans, LA
David W. Wiley, III	Wiley Bros., Aintree Capital, LLC, Nashville, TN

District 5 Nominating Committee

Committee Members

Benjamin D. Capshaw, III	Morgan Stanley Dean Witter, New Orleans, LA
V. Hugo Marx, III	Hugo Marx & Co., Inc., Birmingham, AL
Colin A. P. McNease	PaineWebber Incorporated, Jackson, MS
Jerry Roberts	Sterne, Agee & Leach, Inc., Little Rock, AR
Dene R. Shipp	SunTrust Equitable Securities, Inc., Nashville, TN

District Committee And District Nominating Committee Members

District 6

Bernerd Young, District Director
12801 N. Central Expressway, Suite 1050
Dallas, TX 75243
(972) 701-8554

District 6 Committee

Committee Members

To Serve Until January 2001

Daniel C. Dooley	Maplewood Investment Advisors, Inc., Dallas, TX
Ronald J. Gard	Salomon Smith Barney, Inc., Dallas, TX
Jim G. Rhodes	Rhodes Securities, Inc., Ft. Worth, TX

To Serve Until January 2002

Frederick W. McGinnis	PaineWebber Inc., Houston, TX
Sue H. Peden	SWS Financial Services, Inc., Dallas, TX
Joseph H. Storthz	Transamerica Financial Resources, Houston, TX

To Serve Until January 2003

G. Clyde Buck	Sanders Morris Harris, Inc., Houston, TX
Bryan T. Forman	First Financial Investment Securities, Inc., Austin, TX
Richard L. Sandow	Southlake Capital, L.L.C., Southlake, TX

To Serve Until January 2004 (newly elected members)

Christopher R. Allison	M.E. Allison & Co., Inc., San Antonio, TX
David W. Turner	First Union Securities Inc., Fort Worth, TX
R. Dwayne Whitehead	Coastal Securities, L.P., Houston, TX

District 6 Nominating Committee

Committee Members

Jane E. Bates	The Variable Annuity Marketing Company, Houston, TX
William D. Connally	Greenman Parker Connally Greenman, Inc., Fort Worth, TX
Malcolm L. Cooper	Dain Rauscher, Inc., Austin, TX
Daniel C. Dooley	Maplewood Investment Advisors, Inc., Dallas, TX
William H. Lowell	Lowell & Company, Inc., Lubbock, TX

District Committee And District Nominating Committee Members

District 7

Alan M. Wolper, District Director
One Securities Centre, Suite 500
3490 Piedmont Road, NE
Atlanta, GA 30305
(404) 239-6100

District 7 Committee

Committee Members

To Serve Until January 2001

Robert M. Balentine	Balentine & Company, Atlanta, GA
James J. Buddle	Capital Brokerage Corporation, Richmond, VA
M. Anthony Greene	Raymond James Financial Services, Inc., Atlanta, GA
J. Lee Keiger, III	Davenport & Company, LLC, Richmond, VA
Raymond W. Snow	Deutsch Banc Alex. Brown, Palm Beach, FL

To Serve Until January 2002

James W. Hamilton, Jr.	Morgan Keegan & Co., Atlanta, GA
Edward R. Hipp, III	Centura Securities, Inc., Rocky Mount, NC
Roark A. Young	Young, Stovall and Company, Miami, FL

To Serve Until January 2003

Michael D. Hearn, Esq.	Wachovia Securities, Inc., Charlotte, NC
Collie W. Lehn	A. G. Edwards & Sons, Inc., Laurens, SC
Charles E. Scarlett, Esq.	J. W. Genesis Securities, Inc., Boca Raton, FL
John W. Waechter	William R. Hough & Co., St. Petersburg, FL

To Serve Until January 2004 (newly elected members)

Kenneth W. McGrath	Popular Securities, Inc., Hato Rey, PR
Sharon K. Milligan	Morgan Stanley Dean Witter, Tampa, FL
C. John O'Bryant, III	Legg Mason Wood Walker, Inc., Raleigh, NC
Charles R. Roberts	Branch, Cabell & Co., Inc., Richmond, VA

District 7 Nominating Committee

Committee Members

Robert M. Balentine	Balentine & Co., Atlanta, GA
Robert J. Brietz	Marion Bass Securities Corp., Charlotte, NC
M. Anthony Greene	Raymond James Financial Services, Inc., Atlanta, GA
R. Charles Shufeldt	SunTrust Banks, Inc., Atlanta, GA
Raymond W. Snow	Merrill Lynch, Palm Beach, FL

District Committee And District Nominating Committee Members

District 8

Carlotta A. Romano, District Director
10 South LaSalle, 20th Floor
Chicago, IL 60603-1002
(312) 899-4400

William H. Jackson, Jr., District Director
Renaissance on Playhouse Square
1350 Euclid Avenue, Suite 650
Cleveland, OH 44115
(216) 694-4545

District 8 Committee

Committee Members

To Serve Until January 2001

William C. Alsover	Centennial Securities Company, Inc., Grand Rapids, MI
Wallen L. Crane	Salomon Smith Barney, Inc., Ann Arbor, MI
Alan H. Newman	J.J.B. Hilliard, W.L. Lyons, Inc., Evansville, IN
Bruce J. Young	Mesirow Financial, Inc., Chicago, IL

To Serve Until January 2002

R. Jack Conley	VESTAX Securities Corporation, Hudson, OH
Mary D. Esser	Cressman Esser Securities, Inc., Naperville, IL
Glen Hackmann	Robert W. Baird & Co., Inc., Milwaukee, WI
Robert A. Perrier	Butler, Wick & Co., Inc., Cleveland, OH
Kathleen A. Wieland	William Blair & Company, LLC, Chicago, IL

To Serve Until January 2003

Carol Podesta Foley	Podesta & Company, Chicago, IL
Renee M. Rombaut	Sage, Rutty & Co., Inc., Rochester, NY

To Serve Until January 2004 (newly elected members)

George E. Bates	Bates Securities, Inc., Rockford, IL
Gregory W. Goelzer	Goelzer Investment Management, Inc., Indianapolis, IN
John A. Hawke	Howe Barnes Investments, Inc., Chicago, IL
Jay B. MacKenzie	Prudential Securities Incorporated, Kalamazoo, MI

District 8 Nominating Committee

Committee Members

Leonard L. Anderson	Stifel Nicolaus & Company, Incorporated, Grand Haven, MI
David L. Baker	Baker & Company, Inc., Cleveland, OH
Thomas Harenburg	Carl M. Hennig, Inc., Oshkosh, WI
David Slavik	Pershing Division of Donaldson, Lufkin & Jenrette Securities Corporation, Oak Brook, IL
G. Donald Steel	Planned Investment Co., Inc., Indianapolis, IN

District Committee And District Nominating Committee Members**District 9**

John P. Nocella, District Director
11 Penn Center
1835 Market Street, Suite 1900
Philadelphia, PA 19103
(215) 665-1180

Gary K. Liebowitz, District Director
581 Main Street, 7th floor
Woodbridge, NJ 07095
(732) 596-2000

District 9 Committee

Committee Members***To Serve Until January 2001***

Victor M. Frye	Calvert Distributors, Inc., Bethesda, MD
Jerome J. Murphy	Janney Montgomery Scott LLC, Philadelphia, PA
Vacancy	
Vacancy	

To Serve Until January 2002

A. Louis Denton	Philadelphia Corporation for Investment Services, Philadelphia, PA
Thomas W. Neumann	Sherwood Securities Corp., Jersey City, NJ
Joseph S. Rizzello	Vanguard Marketing Corporation, Valley Forge, PA
Gregory R. Zappala	RRZ Public Markets, Inc., Cranberry Township, PA

To Serve Until January 2003

James D. Lamke	Spear, Leeds & Kellogg Capital Markets, Inc., Jersey City, NJ
John P. Meegan	Parker/Hunter Incorporated, Pittsburgh, PA
Lance A. Reihl	1717 Capital Management Co., Newark, DE
Lenda P. Washington	GRW Capital Corporation, Washington, DC

To Serve Until January 2004 (newly elected members)

Jerry V. Duhovic	Datek Online Brokerage Services LLC, Iselin, NJ
Kimberly Tillotson Fleming	Hefren-Tillotson, Inc., Pittsburgh, PA
Howard B. Scherer	Janney Montgomery Scott LLC, Philadelphia, PA
Mark Thomas Whaley	Gibraltar Securities Co., a division of Tucker Anthony Incorporated, Florham Park, NJ

District 9 Nominating Committee

Committee Members

Philip S. Cottone	Rutherford, Brown & Catherwood, LLC, Philadelphia, PA
Victor M. Frye	Calvert Distributors, Inc., Bethesda, MD
Allen S. Jacobson	Gibraltar Securities Co., a division of Tucker Anthony Incorporated, Florham Park, NJ
James J. Malespina	Herzog, Heine, Geduld, Inc., Jersey City, NJ
Jerome J. Murphy	Janney Montgomery Scott LLC, Philadelphia, PA

District Committee And District Nominating Committee Members**District 10**

David A. Leibowitz, District Director
NASD Financial Center
33 Whitehall Street
New York, NY 10004
(212) 858-4000

David A. Leibowitz, District Director
Two Jericho Plaza
Jericho, NY 11753
(516) 949-4200

District 10 Committee

Committee Members***To Serve Until January 2001***

Arthur S. Ainsberg	Brahman Securities Inc., New York, NY
William P. Behrens	Investec Ernst & Co., New York, NY
Laurence H. Bertan	Sanford C. Bernstein & Co. Inc., New York, NY
Mark D. Madoff	Bernard L. Madoff Investment Securities, New York, NY
Stuart L. Sindell	Datek On-Line Brokerage Services Corp., New York, NY

To Serve Until January 2002

John Iachello	ING Baring Furman Selz, New York, NY
Philip V. Oppenheimer	Oppenheimer & Close Inc., New York, NY
Gary Salamone	Schroder & Co. Inc., New York, NY
Eugene A. Schlanger	Nomura Securities International Inc., New York, NY
Tom M. Wirtshafter	Nathan & Lewis Securities Inc., New York, NY

To Serve Until January 2003

Kevin J. Browne	Banc of America Securities, New York, NY
Judith R. MacDonald	Rothschild, Inc., New York, NY
Stephen C. Strombelline	Barclays Capital Inc., New York, NY

To Serve Until January 2004 (newly elected members)

Constantine Gus Economos	Sandler O'Neill & Partners LP, New York, NY
Ruth S. Goodstein	Paine Webber Inc., New York, NY
Patrick Remmert	Credit Suisse First Boston Corporation, New York, NY
Charles V. Senatore	Merrill Lynch Pierce Fenner & Smith Inc., New York, NY
Jeffrey Zuckerman	Salomon Smith Barney Inc., New York, NY

District 10 Nominating Committee

Committee Members

Arthur S. Ainsberg	Brahman Securities, Inc., New York, NY
Laurence H. Bertan	Sanford C. Bernstein & Co. Inc., New York, NY
Frank F. DiGregorio	Credit Suisse First Boston Corporation, New York, NY
Vicki Z. Holleman	Loeb Partners Corporation, New York, NY
Harold G. Ognelodh	Salomon Smith Barney Inc., New York, NY

District Committee And District Nominating Committee Members**District 11**

Fred McDonald, District Director
260 Franklin Street, 16th Floor
Boston, MA 02110
(617) 261-0800

District 11 Committee

Committee Members**To Serve Until January 2001**

Michael J. Dell'Olio	Investment Management and Research, Inc., South Portland, ME
Frank V. Knox, Jr.	Fidelity Distributors Corporation, Boston, MA
Laurie Lennox	SunLife of Canada (U.S.) Distributors, Inc., Boston, MA
Kenneth Unger	Boston Capital Services, Inc., Boston, MA

To Serve Until January 2002

Stephen O. Buff	Fleetboston Robertson Stephens Inc., Boston, MA
Dennis R. Surprenant	Cantella & Co., Inc., Boston, MA

To Serve Until January 2003

Elena Dasaro	H.C. Wainwright & Co., Inc., Boston, MA
John D. Lane	Mercer Partners Incorporated, Westport, CT
Deborah G. Ullman	American Skandia Marketing, Inc., Shelton, CT
Peter T. Wheeler	Commonwealth Financial Network, Waltham, MA

To Serve Until January 2004 (newly elected members)

Stephen Anikewich, Jr.	Warburg Dillon Read LLC, Stamford, CT
John I. Fitzgerald	American General Funds Distributors, Inc., Boston, MA
Robert V. Rodia	People's Securities, Inc., Bridgeport, CT
Gregory D. Teese	Equity Services Inc., Montpelier, VT

District 11 Nominating Committee

Committee Members

Harry H. Branning	Advest, Inc., Hartford, CT
Stephanie Brown	Linsco/Private Ledger Corp., Boston, MA
Sheldon Fechter	Fechter, Detwiler & Co., Inc., Boston, MA
Arthur F. Grant	Cadaret, Grant & Co., Inc., Syracuse, NY
Frank V. Knox, Jr.	Fidelity Distributors Corporation, Boston, MA

INFORMATIONAL

Continuing Education

Industry/Regulatory Council On Continuing Education Issues *Firm Element Advisory*

SUGGESTED ROUTING

The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.

- Continuing Education Testing/Qualifications
- Legal & Compliance
- Senior Management

KEY TOPICS

- Continuing Education
- Firm Element

Executive Summary

The Securities Industry/Regulatory Council on Continuing Education (Council) has issued a *Firm Element Advisory*, a guide for firms to use when developing their Continuing Education Firm Element training plans. The attached *Firm Element Advisory* lists topics that the Council considers to be particularly relevant to the industry at this time. The list is based on a review of recent regulatory events, as well as advisories issued by industry self-regulatory organizations (SROs) since the last *Firm Element Advisory* of September 1999.

Firms should review the training topics listed in the *Firm Element Advisory* in conjunction with their annual Firm Element Needs Analysis in which firms identify training issues to be addressed by their written Firm Element Training Plan(s). The Council is providing this advisory so that Firm Element Continuing Education may be as pertinent and enriching as possible to financial professionals in the securities industry.

Questions/Further Information

Questions about this *Notice* may be directed to John Linnehan, Director, Continuing Education, NASD Regulation, Inc. (NASD RegulationSM), at (240) 386-4684; or Daniel Sibears, Senior Vice President, Member Regulation, NASD Regulation, at (202) 728-6911.

Background

The Council includes 13 members representing a cross-section of securities firms and six SROs.¹ Both the Securities and Exchange Commission (SEC) and the North American Securities Administrators Association (NASAA) have appointed liaisons to the Council.

The Council facilitates industry/regulatory coordination of the administration and future development of the Continuing Education Program. Council duties include recommending and helping to develop specific content and questions for the Regulatory Element programs and minimum core curricula for the Firm Element. One responsibility of the Council is to identify and recommend pertinent regulation and sales practice issues for inclusion in Firm Element training plans.

Endnote

¹The American Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Municipal Securities Rulemaking Board, the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

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The Securities Industry Continuing Education Program

The Securities Industry Continuing Education Program

Firm Element Advisory

Each year the Securities Industry/Regulatory Council on Continuing Education (Council) identifies and recommends to firms pertinent regulation and sales practice issues for possible inclusion in Firm Element training plans. Included in this *Firm Element Advisory* are topics which the Council considers to be particularly relevant to the industry at this time. The list is based on a review of recent regulatory events, as well as advisories issued by industry self-regulatory organizations (SROs) since the last *Firm Element Advisory* of September 1999.

The Council recommends using the *Firm Element Advisory* when

undertaking your annual Firm Element Needs Analysis to identify training topics. Select the training topics from the *Firm Element Advisory* that are relevant to your firm's business and use the related training point and reference material (available on the SRO Web Sites) as part of the training specified in your written Firm Element training plan. Other training topics may be prompted by a review of previous issues of the *Firm Element Advisory*, new rules, customer complaints, regulatory examination findings, or new products or services your firm plans to offer to investors. Remember that the topics included in your written training plan should be relevant to your firm's unique

situation including any supervisory needs you identify. Training programs should be appropriate to your firm's size and structure.

The Council will periodically highlight additional relevant regulatory areas to assist the industry and it invites your assistance. Please direct your comments, suggestions or questions about this and future issues of the *Firm Element Advisory* to either Roni Meikle, Continuing Education Manager, the New York Stock Exchange (NYSE), at (212) 656-2156; or John Linnehan, Director, Continuing Education, NASD Regulation, Inc. (NASD RegulationSM), at (240) 386-4684.

Decimalization

The securities industry is preparing to convert to decimal pricing. The industry began conversion on a pilot basis in August 2000, consistent with the timetable set by Securities and Exchange Commission (SEC) order.

Decimal trading will ultimately increase the number of possible trading increments within a dollar from 16 to 100.

Decimal pricing should make prices more easily understood by individual investors. Spreads in highly liquid stocks may tighten, thereby providing potential savings for investors, particularly if the minimum price variation is reduced to a penny. Decimalization may also improve the competitiveness of U.S. markets on a global basis.

See SEC Release No. 34-42914, "Order Directing the Exchanges and the National Association of Securities Dealers, Inc. to Submit a Phase-In Plan to Implement Decimal Pricing in Equity Securities and Options Pursuant to Section 11 (a)(3)(B) of the Securities Exchange Act of 1934," dated June 8, 2000.

Also see these Web Sites: NASD Regulation (www.nasdr.com); New York Stock Exchange (www.nyse.com/decimalization); Securities Industry Association (www.sia.com/decimalization)

Foreign Jurisdictions

Sales Practices

It has come to the attention of the SROs that persons associated with broker/dealers may be soliciting business in the regulators' jurisdictions in violation of local foreign laws. Members considering soliciting business in foreign jurisdictions should ensure that such activities comply with all applicable laws. The consequences of breaching applicable foreign laws can be far-reaching, and broker/dealers in violation of particular foreign laws may be committing a criminal offense and be liable to prosecution.

See NASD Notice to Members 00-02, NASD Alerts Members To Their Obligations Concerning Soliciting Business In Foreign Jurisdictions, January 2000.

Investment Banking

Securities Offerings Under SEC Rule 504
And Intra-State Offerings

SEC Rule 504 provides an exemption from registration under Section 5 of the Securities Act of 1933 (Securities Act) for offerings of up to \$1 million of securities. The SEC amended Rule 504 in early 1992 to provide that securities sold under Rule 504 will be deemed “restricted securities” under SEC Rule 144, and general solicitation and advertising will be prohibited unless the offering is:

- 1) registered in at least one state that requires public filing and delivery of a disclosure document before sale; or
- 2) offered exclusively in states that provide exemptions from registration and permit general solicitation and advertising, but that require that sales be made only to “accredited investors.”

Securities deemed to be “restricted securities” under SEC Rule 144 may only be sold into the public market in compliance with the holding period, manner of sale, and volume restrictions of that rule.

The NASD has amended its rules to clarify that Rule 504 offerings that are public offerings of unrestricted securities are required to be filed with NASD Regulation for review of underwriting terms and arrangements under NASD Rules 2710 and 2810, and compliance with the requirements of NASD Rule 2720.

See NASD Notice to Members 00-12, Amendments Adopted To Clarify The Application Of NASD Rules To Offerings Under SEC Rule 504 And Intra-State-Only Offerings, February 2000.

Margin

Options

Changes to Option Margin Rules – Effective January 20, 2000, the SEC approved changes to the margin rules of the Chicago Board Options Exchange (CBOE) and NYSE. Some of the changes include, but are not limited to, loan value on long-term options (LEAPS); reduced maintenance requirements for stock hedged with options; certain spreads, if comprised of European style index options, can be carried in a cash account.

Training Topic	Relevant Training Point(s) and Reference(s)
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Margin

Options *(continued)*

- The significant changes are summarized below:
- The types of option strategies eligible for cash accounts have been expanded;
 - The amendments establish reduced maintenance margin requirements for certain hedged option strategies;
 - The amendments also allow for loan value on certain LEAPS;
 - The minimum margin requirement on short, uncovered puts is now based on the exercise price of the option; and
 - New definitions of butterfly spreads and box spreads have been added.

See *CBOE Regulatory Circular RG00-22, Option Margin Rule Changes*, and *NYSE Information Memo No. 99-59, "Amendments to Rule 431("Margin Requirements") Regarding Options", December 31, 1999.*

Municipal Securities

Consultants

Municipal Securities Rulemaking Board (MSRB) Rule G-38 defines a consultant as any person used by a dealer to obtain or retain municipal securities business through direct or indirect communication by such person with an issuer on the dealer's behalf where the communication is undertaken by such person in exchange for, or with the understanding of receiving, payment from the dealer or any other person. Dealers must disclose to issuers certain information about their consultants and report certain information about their consultants to the MSRB on Form G-37/G-38, including certain of their consultants' political contributions to issuer officials and payments to state and local political parties.

See MSRB Rule G-38: Consultants, *MSRB Rule Book*.

Municipal Securities

Delivery Of Official Statements And Advance Refunding Documents To The MSRB

Managing underwriters are required to deliver to the MSRB, among other things, copies of final official statements for most primary offerings of municipal securities, if such documents are prepared by or on behalf of the municipal securities issuer. For refunding issues, dealers must send to the MSRB two copies of the refunding escrow agreement, or its equivalent, if prepared by or on behalf of the municipal securities issuer. Dealers must send these documents to the MSRB using the appropriate form—Form G-36(OS) to be sent with official statements and Form G-36(ARD) to be sent with advance refunding documents.

See MSRB Rule G-36: Delivery of Official Statements, Advance Refunding Documents and Forms G-36(OS) and G-36(ARD) to Board or its Designee, *MSRB Rule Book*. See also *Form G-36 Manual* published by the MSRB.

Municipal Securities

Delivery Of Official Statements To Customers And Other Dealers

During the underwriting period, a dealer is prohibited from selling new issue municipal securities (other than commercial paper) to a customer unless the dealer delivers to the customer by settlement of the transaction a copy of the final official statement if one is prepared by or on behalf of the issuer. If a municipal securities issuer will prepare only a preliminary official statement and not a final official statement, a dealer must deliver the preliminary version along with a written notice to customers that no final official statement will be prepared.

See MSRB Rule G-32: Disclosures in Connection with New Issues, *MSRB Rule Book*.

Municipal Securities

Political Contributions And Prohibitions On Municipal Securities Business

Dealers are prohibited from engaging in municipal securities business with a municipal securities issuer within two years after any contribution to an official of such issuer made by the dealer, any municipal finance professional associated with such dealer, or any political action committee controlled by the dealer or any municipal finance professional. The only exception to this absolute prohibition on municipal securities business is for certain contributions made to issuer officials by municipal finance professionals, but only if the municipal finance professional is entitled to

Training Topic**Relevant Training Point(s) and Reference(s)****Municipal Securities**

Political Contributions And Prohibitions On Municipal Securities Business (*continued*)

vote for such official and provided any contributions by such municipal finance professional do not exceed, in total, \$250 to each official, per election. Dealers must report certain information about political contributions, political party payments, municipal securities business, and consultants to the MSRB on Form G-37/G-38 or, if appropriate, dealers may file a Form G-37x with the MSRB.

See MSRB Rule G-37: Political Contributions and Prohibitions on Municipal Securities Business, *MSRB Rule Book*.

Mutual Funds

Advertising Recent Performance

Broker/dealers have a responsibility to present fund performance information in a fair and balanced manner and not to create unrealistic investor expectations with regard to future fund performance. Recent unusually strong equity market performance helped some mutual funds, particularly those that are heavily invested in technology stocks, to achieve extraordinary total return figures during the last year (or shorter period). Some members are using advertisements that promote this total return information to attract new investors. Broker/dealers have a responsibility to base their communications on principles of fair dealing and good faith and to avoid statements that are exaggerated, unwarranted, or misleading.

See *NASD Notice to Members 00-21*, NASD Regulation Reminds Members Of Their Responsibilities When Advertising Recent Mutual Fund Performance, *April 2000*. [This *Notice* cautions NASD members that if they choose to present extraordinary recent fund performance information, they should do so in a manner designed to lessen the possibility that investors will have unreasonable expectations concerning the future performance of these mutual funds.]

Mutual Funds

Bond Fund Volatility Ratings

Bond mutual fund volatility ratings describe the sensitivity of bond mutual fund portfolios to changing market conditions. Previously, NASD Regulation interpreted its rules to prohibit members from using bond mutual fund volatility ratings in supplemental sales literature. New NASD Rule IM-2210-5 permits members and associated persons to include bond mutual fund volatility ratings in supplemental sales literature for an 18-month pilot period. The pilot program expires August 31, 2001, unless extended or permanently approved by the NASD at or before such date.

See NASD Notice to Members 00-23, SEC Approves New Rules Relating To Bond Mutual Fund Volatility Ratings, April 2000.

Mutual Funds

Sales Charges Of Investment Companies And Variable Contracts

On October 20, 1999, the SEC approved amendments to NASD Rules 2820 (Variable Contracts Rule) and 2830 (Investment Company Rule) that regulate the sales charges imposed by investment companies and variable annuity contracts sold by broker/dealers. Generally, the amendments revise the Investment Company Rule to:

- provide maximum aggregate sales charge limits for fund-of-funds arrangements;
- permit mutual funds to charge installment loads;
- prohibit loads on reinvested dividends;
- impose redemption order requirements for shares subject to contingent deferred sales loads (CDSLs); and
- eliminate duplicate prospectus disclosure.

The amendments revise the Variable Contracts Rule to eliminate the specific sales charge limitations in the rule and a filing requirement relating to changes in sales charges.

See NASD Notice to Members 99-103, SEC Approves Rule Change Relating To Sales Charges For Investment Companies And Variable Contracts; Effective Date: April 1, 2000. December 1999.

Training Topic**Relevant Training Point(s) and Reference(s)****Options**

Communications With The Public

Options Worksheets – On February 1, 2000, the SEC approved a rule change permitting the use of worksheets that are not standardized throughout a member organization provided such worksheets meet the requirements applicable to sale literature. This change gives broker/dealers or their associated persons the ability to tailor worksheets to specific prospective or existing clients, to utilize worksheets that may be commercially available, or to use industry developed worksheets.

See *CBOE Regulatory Circular RG00-43* “Communications to Customers.”

Options

Order Entry

Access to Retail Automatic Execution System (RAES)

It is a violation of CBOE rules to enter, at or about the same time and for the same account (or for accounts with any common ownership), multiple RAES orders in the same or similar options series for the purpose of circumventing the limitation on RAES order size. It is also a violation of CBOE rules to enter a limit order for placement on the Exchange’s limit order book, or on the book of a competing exchange, for the purpose of effecting the execution price of a RAES transaction. If a member grants a non-member direct access to the Exchange’s limit order book or to RAES through the member’s order routing systems, it is a violation for such member either to knowingly facilitate the non-member’s violation of Exchange rules through such systems and/or to fail to establish procedures reasonably designed to prevent the non-member’s access to such systems from being used to effect such violations.

See *CBOE Regulatory Circular RG00-27* “Access to Retail Automatic Execution System (RAES).”

Options

Sales Practices

Day Trades Exceeding Account Approval Level — The CBOE has issued guidelines that its member organizations are required to follow with respect to proper identification of options day trades that exceed an account’s approved strategy level. As part of a member organization’s supervisory program, member organizations are required to establish and maintain reasonable procedures to identify, on at least a post-trade date basis, options day trades in customer accounts that exceed an account’s approved strategy level.

Training Topic	Relevant Training Point(s) and Reference(s)
<p>Options</p> <p>Sales Practices (<i>continued</i>)</p>	<p>See CBOE Regulatory Circular RG00-08 “Options Day Trades Exceeding Account Approval Level.”</p>
<p>Short Selling</p>	<p>A long-standing position of NASD Regulation and Nasdaq® states that broker/dealers must comply with the rules concerning short sales regardless of how a short-sale order is received, e.g., through the telephone, an electronic transmission, the Internet, or otherwise. Accordingly, firms must comply with the bid test, make affirmative determinations, and identify short sales in the Automated Confirmation Transaction ServiceSM (ACTSM) for all proprietary and customer short-sale orders that are received electronically through proprietary electronic order routing systems, the Internet, or otherwise.</p> <p>See NASD Notice to Members 99-98, NASD Regulation Reiterates That Members Must Comply With All Short Sale Rules When Receiving Orders Through Electronic Order Systems Or The Internet And Reiterates The Operation Of The Affirmative Determination Rule, <i>December 1999</i>.</p>
<p>Suitability & Disclosure Of Risk</p> <p>Callable Common Stock</p>	<p>Suitability and disclosure of risk are relevant topics for all Firm Element training plans. Applicable SRO rules are NASD Conduct Rule 2310 — Recommendations to Customers (Suitability) and NYSE 405 — Diligence as to Accounts. The specific training topics listed in this <i>Firm Element Advisory</i> should also be considered.</p> <p>An investor purchasing callable common stock is subject to unique risks not typically associated with ownership of common stock, even when such stock is called away at a premium. Moreover, the ability of an issuer’s common stock to be called away from a shareholder generally will be a material fact to an investor. Accordingly, high standards of commercial honor and just and equitable principles of trade require that any member that provides a written confirmation for a transaction involving callable common stock must disclose on the confirmation that the security is callable and that the customer may contact the member for more information.</p> <p>Interpretive Material (IM-2110-6) states that a member that provides a confirmation pursuant to SEC Rule 10b-10 in connection with any transaction in callable common stock shall disclose on such confirmation</p>

Training Topic	Relevant Training Point(s) and Reference(s)
<p>Suitability & Disclosure Of Risk</p> <p>Callable Common Stock <i>(continued)</i></p>	<p>that the security is callable and that the customer may wish to contact the member for more information regarding the security. Disclosure of the call feature on the confirmation in no way relieves a member of its obligation to consider the callable nature of the security when complying with any applicable suitability obligations.</p> <p><i>See NASD Notice to Members 00-33, NASD Regulation Adopts New Rule Interpretation To Require Confirmation Disclosure Of Callable Common Stock, May 2000.</i></p>
<p>Suitability & Disclosure Of Risk</p> <p>Certificates Of Deposit</p>	<p>Broker/dealers that offer brokered certificates of deposit to investors have an obligation to disclose all relevant features of these investments, such as variable rates, call features, early withdrawal penalties, liquidity, etc.</p> <p><i>See "Certificates of Deposit: Tips for Investors," SEC Web Site at www.sec.gov/consumer/certific.htm, and NASD Regulation Regulatory & Compliance Alert, "Regulatory Short Takes — Investment Instruments Offered By CD Brokers," Summer 2000.</i></p>
<p>Suitability & Disclosure Of Risk</p> <p>Extended Hours Disclosures</p>	<p>Broker/dealers have an obligation under just and equitable principles of trade and the advertising rule to disclose to customers the material risks of extended hours trading.</p> <p><i>See NASD Notice to Members 00-07, Disclosure To Customers Engaging In Extended Hours Trading, January 2000. [A model disclosure statement is included with this Notice.]</i></p>
<p>Suitability & Disclosure Of Risk</p> <p>Joint Regulatory Advisory On Margin Debt</p>	<p>The NYSE and NASD issued a Joint Statement concerning the continuing growth of investor margin debt. The Joint Statement asked NYSE and NASD members to review their maintenance margin policies for any necessary changes and to take the following steps relative to the extension of margin credit:</p> <ul style="list-style-type: none"> • Continue to advise individual investors about the risk of investing on margin.

Training Topic**Relevant Training Point(s) and Reference(s)****Suitability & Disclosure Of Risk**

Joint Regulatory Advisory On Margin Debt (*continued*)

- Advise sales managers and account executives of the appropriate steps to be taken when and if individual investors significantly change their levels of margin borrowings.
- Carefully review and curtail any account executive incentive programs that would promote the solicitation of margin accounts, if appropriate.

See *NYSE Information Memo No. 00-5*, "Joint Statement by NYSE and NASD on the Continuing Growth in Investor Margin Debt," dated February 28, 2000.

Supervision

Municipal Securities

Review And Retention Of Correspondence With The Public

Each dealer is required to develop written policies and procedures for review of correspondence with the public relating to its municipal securities activities, and tailored to its structure and the nature and size of its business and customers.

See MSRB Rule G-27: Supervision, and related recordkeeping requirements in rules G-8(a)(xx) and G-9(b)(xiv), *MSRB Rule Book*.

Supervision

Research Reports That Are Independently Prepared

Many independent research firms publish reports that analyze and provide information about a wide variety of investment companies, including their performance, fees, and expenses, and a description and narrative analysis of their investment strategies and portfolio management style.

Broker/dealers use these independently prepared research reports in a number of ways. For example, a member may make an independent research firm's entire research service available to customers at a branch office. A member may also distribute or make available an independently prepared research report concerning a particular investment company as part of its selling process.

Amendments to NASD Rule 2210, which governs member communications with the public, exempt from Rule 2210's filing requirements certain types of

Training Topic**Relevant Training Point(s) and Reference(s)****Supervision**

Research Reports That Are Independently Prepared
(continued)

independently prepared research reports concerning investment companies.

See *NASD Notice to Members 00-15, SEC Approves Rule Change Relating To Filing Requirements For Independently Prepared Research Reports, March 2000.*

Supervision

Risk Management Practices

The SEC, NASD Regulation, and the NYSE issued a joint statement regarding broker/dealer risk management practices. Risk management is the identification, management, measurement, and oversight of various business risks and is part of a firm's internal control structure. These risks typically arise in such areas as proprietary trading, credit, liquidity, and new products.

The examination staffs from these organizations formed a task force several years ago to assess risk management practices. Among the goals of the task force was to assess the industry's awareness of the need for stringent risk management supervisory systems, and compile a compendium of sound practices and weaknesses noted during task force members' review of risk management systems.

The task force's statement emphasizes the importance of maintaining an appropriate risk management system. The statement also provides examples of weaknesses and strengths in various broker/dealers' risk management policies and practices.

See *NASD Notice to Members 99-92, and NYSE Information Memo 99-42, SEC, NASD Regulation, And NYSE Issue Joint Statement On Broker/Dealer Risk Management Practices, November 1999.*

Training Topic**Relevant Training Point(s) and Reference(s)****Trade Reporting**

Municipal Securities

Reports Of Sales Or Purchases

MSRB Rule G-14 requires dealers to report all transactions in municipal securities to the MSRB by midnight of trade date. The dealer must obtain and use an NASD-assigned symbol to identify itself in reporting its transactions. Dealers report their transactions with other dealers as a consequence of their submission of trade information to the automated comparison system operated by National Securities Clearing Corporation (NSCC). Dealers report their transactions with customers to the MSRB using file formats designed solely for customer trade data. While dealers may employ an agent or use a clearing/introducing broker arrangement to report transactions, the primary responsibility for timely and accurate submission of data remains with the dealer that effected the transaction.

See MSRB Rule G-14: Reports of Sales or Purchases, and associated procedures, *MSRB Rule Book; User's Manual for Customer Transaction Reporting* and various notices on the MSRB Web Site (www.msrb.org) and *NASD Notice to Members 00-08, NASD Reminds Members Of Their Obligations Regarding Municipal Securities Transaction Reporting, January 2000.*

Trade ReportingOrder Audit Trail (OATSSM) Information

When recording and reporting information on certain customer orders, members must indicate whether the customer provided instructions concerning the display or non-display of limit orders. It has come to the attention of NASD Regulation staff that several broker/dealers consistently misreport this information to the NASD's OATS.

See *NASD Notice to Members 00-26, NASD Regulation Reiterates Requirement That Members Correctly Report Order Audit Trail Information, May 2000.*

Trade Reporting

Riskless Principal Transactions

On March 24, 1999, the SEC approved amendments to NASD rules regarding trade reporting of riskless principal transactions by market makers. The rule change permits market makers in Nasdaq and other over-the-counter securities to report trades under the current riskless principal rules that exist for non-market makers. The effect of the change is that

Training Topic	Relevant Training Point(s) and Reference(s)
<p>Trade Reporting</p> <p>Riskless Principal Transactions (<i>continued</i>)</p>	<p>instead of reporting both “legs” of a riskless principal transaction, market makers (like non-market makers currently) now will only report one portion of the transaction if it meets the definition of riskless principal. The rule defines riskless principal as a trade in which a member, after having received an order to buy (sell) a security, buys (sells) the security at the same price, as principal, in order to satisfy the order to buy (sell).</p> <p><i>See NASD Notice to Members 99-65, SEC Approves Rule Changes To NASD Trade-Reporting Rules For Riskless Principal Transactions In Nasdaq And OTC Securities, August 1999.</i></p>
<p>Trading</p> <p>Trading Collars And Circuit Breakers</p>	<p>NYSE Rule 80A (Index Arbitrage Trading Restrictions) addresses the change in the Dow Jones Industrial Average (DJIA) that triggers the Rule’s tick restrictions.</p> <p>NYSE Rule 80B (Trading Halts Due to Extraordinary Market Volatility) addresses halt provisions and circuit breakers levels.</p> <p>The NYSE changes the trading collars and circuit breaker levels on a quarterly basis.</p> <p><i>See NYSE Information Memo Nos. 00-1, 00-7, and 00-17, “New Rule 80A collars and Rule 80B Circuit Breaker Levels,” dated January 3, 2000, April 3, 2000, and July 3, 2000.</i></p>
<p>Trading/Markets</p> <p>Blank Check Companies</p>	<p>In most, if not all, cases, the resale of securities of blank check companies¹ is restricted and such securities can only be resold through registration under the Securities Act. In addition, Rule 144 is not available to promoters or affiliates of blank check companies or to their transferees either before or after a business combination with an operating company or other person.</p>

¹A blank check company is a development stage company that has no specific business plan or purpose or has indicated its business plan is to engage in a merger acquisition with an unidentified company or companies, or other entity or person.

Training Topic**Relevant Training Point(s) and Reference(s)****Trading/Markets**Blank Check Companies *(continued)*

NASD Regulation staff requires a market maker, when seeking NASD Regulation clearance pursuant to NASD Rule 6740 to initiate or resume quotation of a security of a blank check company, to provide an independent opinion from its own counsel detailing why the sale of such securities would not violate the registration requirements of the Securities Act. NASD Regulation staff will continue to scrutinize closely such filings and will vigorously pursue disciplinary action and/or refer the staff's findings to the SEC for further action.

See NASD Notice to Members 00-49, SEC Issues Staff Interpretation On The "Free Trading" Status Of Blank Check Company Securities Under Certain Scenarios, July 2000.

Trading/Markets

Limit Order Display Obligations

The NASD, after consultation with the staff of the SEC, is reiterating the limit order display obligations imposed on members under SEC Rule 11Ac1-4 (Display Rule). One of the primary purposes of this *Notice* is to reiterate that the 30-second requirement to display limit orders does not operate as a safe harbor.

See NASD Notice to Members 99-99, NASD Reiterates Obligations To Display Customer Limit Orders Pursuant To SEC Rule 11Ac1-4, December 1999.

Trading/Markets

Locked And Crossed Markets

On February 7, 2000, the SEC approved changes to NASD Rule 4613(e), which relates to the entering of locking and crossing quotes by Nasdaq market participants (market makers and electronic communications networks (ECNs)). The rule change alters market participants' obligations regarding the entry of locking/crossing quotes prior to the opening of the Nasdaq market at 9:30 a.m. Eastern Time (ET), and sets out specific obligations for parties to a lock/cross, which are determined based on the time the locked/crossed market occurs.

See NASD Notice to Members 00-29, SEC Approves Changes To Nasdaq Locked/Crossed Markets Rule; Effective Date: June 5, 2000, May 2000, and Special NASD Notice to Members 00-42, NASD Regulation, Inc. Reiterates The Obligation Of Member Firms To Comply With Trading Rules, Particularly Immediately Prior To The Close On Expiration Fridays And Index Rebalancing Days, June 2000.

Training Topic**Relevant Training Point(s) and Reference(s)****Trading/Markets**

Records Of Orders

NYSE Rule 410 requires that, before an order is executed on the Floor, the name or designation of the account for which the order is to be executed must be placed upon the record of the order. Similarly, SEC Rule 17a-3(a)(6) requires a record of each order to be prepared at the time of the transaction and that it include the account name.

It has come to the SROs' attention that member organization employees are, in some instances, delaying entry of account designation on order tickets. Broker/dealers must ensure that each order is documented prior to, or simultaneous with, the order's entry. Records must include account designations as well as the number of shares to be allocated per account.

See NYSE Information Memo No. 00-19, Timely Designation and Allocation of Account Information – Record of Orders, dated July 21, 2000.

Variable Contracts

Sales Of Variable Life Insurance

Variable life insurance and variable annuity contracts (Variable Contracts) are securities, and accordingly, their distribution is subject to NASD rules. Of particular importance are:

- Rule 3010 (Supervision), which requires each member to establish and maintain systems to supervise the activities of each registered representative and associated person in order to achieve compliance with the securities laws, regulations, and NASD rules; and
- Rule 2310 (Suitability), which requires that a member, when recommending the purchase, sale, or exchange of any security to a customer, have reasonable grounds for believing that the recommendation is suitable for the customer upon the basis of the facts disclosed by the customer.

See NASD Notice to Members 00-44, The NASD Reminds Members Of Their Responsibilities Regarding The Sale Of Variable Life Insurance, July 2000. [This Notice focuses on retail sales of variable life insurance, including both scheduled premium and flexible premium products, and provides a set of guidelines to assist members in developing sales-related supervisory procedures.]

Variable Contracts

Variable Annuities

Guidelines intended to assist broker/dealers in developing appropriate procedures relating to variable annuity sales to customers. The guidelines identify areas of concern such as customer information, product information, liquidity and earnings accrual, customer's income and net worth, contract size thresholds, investments in tax-qualified accounts, and variable annuity replacements expected to be addressed in the procedures of broker/dealers that offer and sell variable annuities.

See NASD Notice to Members 99-35, The NASD Reminds Members Of Their Responsibilities Regarding The Sales Of Variable Annuities, May 1999.

*See also "Variable Annuities: What You Should Know," SEC Web Site at:
www.sec.gov/consumer/varannty.htm*

To Obtain More Information

For more information about publications, contact the SROs at these addresses:

American Stock Exchange

NASD MediaSource
P.O. Box 9403
Gaithersburg, MD 20898-9403
(301) 590-6142
www.nasd.com

National Association of Securities Dealers

NASD MediaSource
P.O. Box 9403
Gaithersburg, MD 20898-9403
(301) 590-6142
www.nasd.com

Chicago Board Options Exchange

Investor Services
Chicago Board Options Exchange
400 S. LaSalle Street
Chicago, IL 60605
(800) OPTIONS
www.cboe.com

New York Stock Exchange

Publications Department
11 Wall Street
18th Floor
New York, NY 10005
(212) 656-5273, or (212) 656-2089
www.nyse.com

Municipal Securities Rulemaking Board

Publications Department
1640 King Street
Suite 300
Alexandria, VA 22314
(202) 223-9503
www.msrb.org

Philadelphia Stock Exchange

Marketing Department
1900 Market Street
Philadelphia, PA 19103
(800) THE PHLX, or (215) 496-5158
www.phlx.com
or info@phlx.com

NASD Notice to Members 00-76

INFORMATIONAL

FIPS Changes

Fixed Income Pricing
System Additions,
Deletions, And Changes
As Of September 22,
2000

SUGGESTED ROUTING

The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.

- Corporate Finance
- Legal & Compliance
- Municipal/Government Securities
- Operations
- Senior Management
- Trading & Market Making

KEY TOPIC

- FIPS

As of September 22, 2000, the following bonds were added to the Fixed Income Pricing SystemSM (FIPS[®]).

Symbol	Name	Coupon	Maturity
ADLA.GQ	Adelphia Communications Corp.	10.875	10/01/10
ADLT.GA	Advanced Lighting Tech	8.000	03/15/08
AESO.GA	AES Corp.	9.375	09/15/10
BRWI.GA	Broadwing Communications Inc.	12.500	08/15/09
BYOP.GA	Bradley Oper Ltd Partnership	7.000	11/15/04
BYOP.GB	Bradley Oper Ltd Partnership	7.200	01/15/08
BYOP.GC	Bradley Oper Ltd Partnership	8.875	03/15/06
CKE.GA	Carmike Cinemas Inc.	9.375	02/01/09
DHI.GE	D.R. Horton Inc.	9.750	09/15/10
EHWT.GA	Earthwatch Inc.	13.000	07/15/07
GAP.GC	Great Atlantic & Pac Tea Inc.	7.700	01/15/04
HCA.GA	The Healthcare Co.	8.750	09/10/10
HVDM.GA	Hvide Marine Inc.	12.500	06/30/07
IPCS.GA	IPCS Inc.	14.00	07/15/10
LEVI.GA	Levi Strauss & Co.	6.800	11/01/03
MVRM.GA	Madison River Cap LLC/ Mad River Finl	13.250	03/01/10
NXTP.GB	Nextel Partners Inc.	11.000	03/15/10
PPE.GC	Park Place Entertainment Corp.	8.875	09/15/08
RYL.GE	Ryland Group Inc.	9.750	09/01/10
SPF.GE	Standard Pacific Corp.	9.500	09/15/10
TKPX.GC	Tekni-Plex Inc.	12.750	06/15/10
TNPE.GA	TNP Enterprises Inc.	10.250	04/10/10
TTE.GB	Autotote Corp.	12.500	08/15/10
WCG.GC	Williams Communications Group Inc.	11.700	08/01/08
WCG.GD	Williams Communications Group Inc.	11.875	08/01/10

NASD Notice to Members 00-76

As of September 22, 2000, the following bonds were deleted from FIPS.

Symbol	Name	Coupon	Maturity
CALA.GA	Contl Airlines Inc.	9.500	12/15/01
CKE.GA	Carmike Cinemas Inc.	9.375	02/01/09
CNDS.GA	Cellnet Data Systems Inc.	13.000	06/15/05
CNDS.GB	Cellnet Data Systems Inc.	14.000	10/01/07
CUIA.GA	Casino Magic Louisiana Corp.	13.000	08/15/03
DEEP.GA	Deeptech Intl	12.000	12/15/00
GBCH.GA	Global Crossing Hldg Ltd	9.625	05/15/08
GPTK.GA	Geotek Communications Inc.	15.000	07/15/05
IRUC.GA	Intramericas Comm Corp.	14.000	10/27/07
MDM.GB	Med Partners Inc.	6.875	09/06/00
OLYM.GC	Olympic Finl Ltd	10.125	03/15/01
PENN.GA	Penn National Gaming Inc.	10.625	12/15/04
PSRI.GA	Phase Metrics Inc.	10.750	02/01/05
QWST.GA	Quest Communications Intl Inc.	9.470	10/15/07
QWST.GB	Quest Communications Intl Inc.	10.875	04/01/07
QWST.GC	Quest Communications Intl Inc.	8.290	02/01/08
QWST.GD	Quest Communications Intl Inc.	7.500	11/01/08
QWST.GF	Quest Communications Intl Inc.	7.250	11/01/08
RGRO.GD	Ralphs Grocery Co New	11.000	06/15/05
SVRN.GB	Sovereign Bancorp Inc.	6.750	09/01/00
SWEC.GB	Sweetheart Cup Inc.	9.625	09/01/00
TCOM.GB	Tele-Commun Inc Ser E	10.250	09/30/00
TEXN.GG	Texas New Mexico Power Co.	10.750	09/15/03

As of September 22, 2000, changes were made to the symbols of the following FIPS bonds.

New Symbol	Old Symbol	Name	Coupon	Maturity
BBX.GA	BANC.GA	Bankatlantic Bancorp Inc.	9.000	10/01/05
CALA.GB	CAI.GB	Contl Airlines Inc.	8.000	12/15/05
CBH.GA	COBA.GA	Commerce Bancorp Inc. NJ	8.375	07/15/03
FCEA.GA	FRCE.GA	Forest City Enterprises Inc.	8.500	03/15/08
HDR.GA	HPSC.GA	HPSC Inc.	11.000	04/01/07
ICY.GA	ICED.GA	Packaged Ice Inc.	9.750	02/01/05
MPWR.GA	MGCN.GA	MGC Communications Inc.	13.000	10/01/04
NXTP.GA	NXPS.GA	Nextel Partners Inc.	14.000	02/01/09
PACW.GA	PWCM.GA	Pac-West Telecomm Inc.	13.500	02/01/09
UNWR.GA	USUW.GA	US Unwired Inc.	13.375	11/01/09

All bonds listed above are subject to trade-reporting requirements. Questions pertaining to FIPS trade-reporting rules should be directed to Patricia Casimates, Market Regulation, NASD RegulationSM, at (301) 590-6447.

Any questions regarding the FIPS master file should be directed to Cheryl Glowacki, Nasdaq[®] Market Operations, at (203) 385-6310.

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INFORMATIONAL

**Trade Date—
Settlement Date**

**Thanksgiving Day: Trade
Date—Settlement Date
Schedule****SUGGESTED ROUTING**

The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.

- Internal Audit
- Legal & Compliance
- Municipal/Government Securities
- Operations
- Trading & Market Making

KEY TOPIC

- Holiday Trade Date—Settlement Date Schedule

Thanksgiving Day: Trade Date—Settlement Date Schedule

The Nasdaq Stock Market® and the securities exchanges will be closed on Thursday, November 23, 2000, in observance of Thanksgiving Day. “Regular way” transactions made on the business days noted below will be subject to the following schedule:

<u>Trade Date</u>	<u>Settlement Date</u>	<u>Reg. T Date*</u>
Nov. 17	Nov. 22	Nov. 27
20	24	28
21	27	29
22	28	30
23	Markets Closed	—
24	29	Dec. 1

*Pursuant to Sections 220.8(b)(1) and (4) of Regulation T of the Federal Reserve Board, a broker/dealer must promptly cancel or otherwise liquidate a customer purchase transaction in a cash account if full payment is not received within five business days of the date of purchase or, pursuant to Section 220.8(d)(1), make application to extend the time period specified. The date by which members must take such action is shown in the column titled “Reg. T Date.”

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At this event, you will learn about and discuss the latest developments in the securities industry. Also you will hear from industry experts and NASD Regulation leadership, explore regulatory issues, and much more.

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www.nasdr.com



San Francisco, CA

**2000 NASD Regulation
Fall Securities
Conference**

November 15-17, 2000
Sheraton Palace Hotel



Disciplinary Actions

Disciplinary Actions Reported For October

NASD Regulation, Inc. (NASD RegulationSM) has taken disciplinary actions against the following firms and individuals for violations of National Association of Securities Dealers, Inc. (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 September 25, 2000.

Firms Fined, Individuals Sanctioned

Capital Alliance Investments, Inc., n.k.a. JRL Capital Corporation (CRD #10225, Irvine, California), Dennis Raymond Konczal (CRD #1045392, Registered Principal, Mill Valley, California) and Larry Richard Law (CRD #1273118, Registered Principal, Newport Beach, California) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$50,000, jointly and severally, and the firm was ordered to offer rescission to investors. In addition, Konczal was suspended from association with any NASD member in any principal or supervisory capacity for one year. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Konczal and Law, participated in contingency offerings of securities and failed to transmit investor funds raised in the offerings to a proper escrow account. Furthermore, the NASD found that the firm, acting through Konczal and Law, withdrew investor funds from the bank account into which they were deposited before the minimum offering amount was raised and failed to reimburse investor funds

when the minimum contingency amount for the offerings was not raised.

Konczal's suspension began September 5, 2000, and will conclude at the close of business on September 4, 2001. **(NASD Case #C02000045)**

Network Capital Corporation (CRD #1389, Salt Lake City, Utah), David Leland Sagers (CRD #1013621, Registered Principal, Sandy, Utah) and Richard Leroy Parker (CRD #356740, Registered Principal, Salt Lake City, Utah) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$10,000, jointly and severally. In addition, the firm and Sagers were fined \$5,000, jointly and severally, and Sagers was suspended from association with any NASD member in the capacity of a financial and operations principal for five business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Sagers and Parker, conducted a securities business while failing to maintain the required minimum net capital. The findings also stated that the firm, acting through Sagers, filed FOCUS Part II Reports with the NASD that materially misstated the firm's net capital.

Sagers' suspension began September 18, 2000, and concluded at the close of business on September 22, 2000. **(NASD Case #C3A000029)**

Firms And Individuals Fined
American Investment Services, Inc. (CRD #21111, East Peoria, Illinois) and Jeffrey Joseph Hiser (CRD #2750883, Registered

Principal, Perkin, Illinois)

submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$10,000, jointly and severally; the firm was fined an additional \$7,500, jointly and severally, with an individual. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Hiser, effected transactions in securities when it failed to maintain its minimum required net capital. The findings also stated that the firm, acting through Hiser, prepared inaccurate trial balances and net capital computations, and filed an inaccurate FOCUS Part IIA Report with the NASD. Furthermore, the NASD found that the firm failed to report statistical and summary information relating to customer complaints to the NASD. **(NASD Case #C8A000043)**

J.P.R. Capital Corporation (CRD #38056, Roslyn, New York) and Paul Jeffrey Umansky (CRD #1615489, Registered Principal, Rockville Centre, New York)

submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$10,000, jointly and severally. The firm was also required to disgorge \$3,826.50 to the NASD. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Umansky, failed to file statistical and summary information regarding customer complaints with the NASD in a timely manner. The findings also stated that the firm, acting through Umansky, permitted an individual associated with the firm to act in a capacity that required registration while his registration was inactive due to his failure to complete the Regulatory Element of the NASD's Continuing

Education Requirement. In addition, the NASD found that the firm, acting through Umansky, failed to conduct a training needs analysis and to prepare a written training plan as required by the Firm Element of the NASD's Continuing Education Requirement. **(NASD Case #C10000150)**

M G Securities Group, Inc. (CRD #42991, Dallas, Texas) and

Michael Paul Anderson (CRD #1625289, Registered Principal, Richardson, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$13,000, jointly and severally, including a disgorgement of \$9,000 in commissions. The firm was fined an additional \$1,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Anderson, permitted an unregistered individual to serve as a general securities representative and thereby engage in the investment banking or securities business of the firm. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures that were reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules, in that the firm's procedures failed to adequately address NASD rules governing registration of personnel. **(NASD Case #C06000016)**

Ryan, Beck & Co., Inc. (CRD #3248, Livingston, New Jersey) and

Leonard J. Stanley (CRD #2564540, Registered Principal, Pompton Lakes, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$12,500, jointly and severally. The firm was fined an additional \$14,500. Without

admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Stanley, maintained an insufficient balance in its special reserve bank account for the exclusive benefit of customers and made withdrawals from the account without making concurrent calculations to determine that necessary funds were on deposit as required by the SEC. The findings also stated that the firm, acting through Stanley, failed to make and keep current a ledger reflecting funds it owed to customers in connection with municipal bond coupons; the firm also failed to make and keep current ledger accounts itemizing separately for each customer account, receipts and deliveries of municipal bond coupons as well as credits to such customer accounts. In addition, the NASD found that the firm, acting through Stanley, failed to maintain sufficient net capital while conducting a securities business. Moreover, the firm failed to execute customer limit orders in Nasdaq[®] securities contemporaneously after it traded each subject security for its own market-making account at a price that would have satisfied each customer's limit order. The NASD also found that the firm failed to display customer limit orders in Nasdaq securities in its public quotation when each order was at a price that would have improved the firm's bid or offer in each security and failed to update the size of a limit order in a Nasdaq security that represented the firm's best offer for that security. Further, the findings stated that the firm failed to exclude either the markup or markdown from the reported price for principal transactions in The Nasdaq SmallCap MarketSM securities reported to Automated Confirmation Transaction ServiceSM (ACTSM). In

addition, the firm, while acting as principal, failed to disclose the markup/markdown and/or reported trade price on customer confirmations and failed to accept or decline trades within 20 minutes of execution in its capacity as an ACT order entry firm. **(NASD Case #C10000154)**

Firms Fined

Carlin Equities Corp. (CRD #31295, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed customer short-sale orders in securities and failed to annotate an affirmative determination for each of these orders. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonable designed to achieve compliance with the applicable short-sale rules of the NASD. **(NASD Case #CMS000180)**

Centex Securities, Incorporated (CRD #18493, La Jolla, California) 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. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to execute orders and thereby failed to honor its published quotation when presented to the firm at its published bid or published offer in an amount up to its published quotation size. 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 and regulations concerning the SEC and NASD firm quote rules. **(NASD Case #CMS000171)**

CIBC World Markets Corp. (CRD #630, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$26,000, and ordered to pay \$4,259.25, plus interest, in restitution to investors. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to contemporaneously or partially execute customer limit orders in Nasdaq securities after the firm traded each security for its own market-making account at a price that would have satisfied each customer's limit order. The NASD also found that the firm failed to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy or sell in such markets so that the resultant price to its customer was as favorable as possible under prevailing market conditions. The findings also stated that the firm executed short-sale orders in certain securities, failed to make an affirmative determination prior to executing transactions, and improperly reported transactions to ACT that it was not required to report. Furthermore, the findings stated that the firm failed to immediately display customer limit orders in Nasdaq securities in its public quotation when each order was at a price that would have improved the firm's bid or offer or when the order was priced equal to its bid or offer and the national bid or offer for each security, and the size of the order represented more than a *de minimis* change in relation to the size associated with the firm's bid or offer in each security. **(NASD Case #CMS000183)**

Comprehensive Capital Corp. (CRD #6215, Westbury, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it engaged in a pattern or practice of late transaction reporting without exceptional circumstances by failing to report last sale reports and transactions in ACT-eligible OTC equity, Nasdaq National Market[®] (NNM), and Nasdaq SmallCap securities to ACT within 90 seconds after execution, and failed to designate such transactions to ACT as late. **(NASD Case #CMS000156)**

Fleet Securities, Inc. (CRD #13071, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$41,000, and required to revise its written supervisory procedures within 60 days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to contemporaneously or partially execute customer limit orders in Nasdaq securities after it traded each security for its own market-making account at a price that would have satisfied each customer's limit order. The findings also stated that the firm failed to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions. Furthermore, the NASD found that the firm failed to immediately display customer limit orders in Nasdaq securities in its public quotation when each order was at a price that would have improved the

firm's bid or offer in each security or when each order was priced equal to the firm's bid or offer and the national best bid or offer for each security, and the size of the order represented more than a *de minimis* change in relation to the size associated with the firm's bid or offer in each security. In addition, the NASD determined that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable NASD rules regarding best execution, ACT compliance, limit order protection, SEC order execution rules, trade reporting, Small Order Execution SystemSM (SOESSM), locked and crossed markets, books and records, and anti-competitive practices. **(NASD Case #CMS000189)**

Herzog, Heine and Geduld (CRD #2186, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it improperly designated transactions in an NNM security as late to ACT and failed to preserve the memorandum of brokerage orders. **(NASD Case #CMS000191)**

JW Genesis Clearing Corp. (CRD #6631, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report trades in Fixed Income Pricing SystemSM (FIPS[®]) listed securities to the NASD. The findings also stated that the firm failed to update its quotes

or send a SelectNetSM message within 30 seconds of the receipt of limit orders. The NASD also found that the firm failed to establish, maintain, and enforce adequate written supervisory procedures that were reasonably designed to achieve compliance with trade reporting obligations; ACT reporting requirements; FIPS reporting obligations; and SEC order handling rules, including the limit order display and quote rule.

(NASD Case #C07000057)

Lehman Brothers, Inc. (CRD #7506, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$37,000, required to revise its written supervisory procedures, and ordered to pay \$2,131.25, plus interest, in restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to contemporaneously, or partially, execute customer limit orders in Nasdaq securities after it traded each security for its own market-making account at a price that would have satisfied each customer's limit order. The findings also stated that the firm failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to its customer was as favorable as possible under prevailing market conditions. In addition, the NASD determined that the firm failed to execute market orders fully and promptly, and failed to immediately display customer limit orders in Nasdaq securities in its public quotation when each order was at a price that would have improved the firm's bid or offer in each security or when the order was priced equal to the firm's bid or

offer and the national best bid or offer for each security and the size of the order represented more than a *de minimis* change in relation to the size associated with the firm's bid or offer in each security. Furthermore, the NASD determined that the firm executed short-sale orders in certain securities and failed to make an affirmative determination prior to executing such transactions, and the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations. **(NASD Case #CMS000158)**

Miller, Tabak, Hirsch & Company (CRD #10384, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to 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 engaged in a pattern or practice of late transaction reporting without exceptional circumstances in that it failed to report transactions in FIPS within five minutes after execution. **(NASD Case #CMS000169)**

Paragon Capital Corporation (CRD #18555, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$52,500, and ordered to pay \$93.75, plus interest, in restitution to investors. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to contemporaneously execute customer limit orders in Nasdaq securities after it traded each of the securities related to those orders for its own market-making account at a price that would have satisfied each

of those orders. The findings also stated that the firm failed to use reasonable diligence to ascertain the best prevailing inter-dealer market and failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions. Furthermore, the findings stated that the firm failed to immediately display customer limit orders in Nasdaq securities in its public quotation when the orders were at a price that would have improved its bid or offer in each security related to those orders, or when the full size of the orders was priced equal to the firm's bid or offer and the national best bid or offer and the orders represented more than a *de minimis* change in relation to the size associated with the firm's bid or offer in each security. In addition, the findings stated that the firm failed to establish, maintain, and enforce adequate written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules regarding ACT compliance, annual review/internal audit, best execution, limit order handling—display and quote rules, registration of traders and supervisors, trade reporting, SOES (proprietary trading) and 21(a) Report issues. **(NASD Case #CMS000192)**

Prudential Securities Incorporated (CRD #7471, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to immediately display customer limit orders in Nasdaq securities in its public quotation when each order was at a price that would have

improved its bid or offer in each security, or when each order was priced equal to the firm's bid or offer and the national best bid or offer for each security, and the size of the order represented more than a *de minimis* change in relation to the size associated with its bid or offer in each security. The findings also stated that the firm failed to transmit transactions in NNM, Nasdaq SmallCap, and OTC equity securities through ACT within 90 seconds after execution, and failed to designate such last sale reports as late to ACT. **(NASD Case #CMS000194)**

Royal Alliance Associates, Inc. (CRD #23131, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$20,000, and ordered to disgorge \$31,035.92 in commissions. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it allowed individuals associated with the firm to act in the capacity of registered persons while their registrations with the NASD were inactive due to their failure to complete the Regulatory Element of NASD's Continuing Education Requirement. **(NASD Case #C10000146)**

Sand Brothers & Co., Ltd. (CRD #26816, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported short-sale transactions to ACT without properly designating them as short sales by using the ".S" modifier. The findings also stated that the firm failed to reflect the customers'

limit price in the firm's quotations subject to the SEC order handling rules. **(NASD Case #C10000162)**

Scott & Stringfellow, Inc. (CRD #6255, Richmond, Virginia) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$11,000, required to revise its written supervisory procedures relating to best execution within 60 days, and ordered to pay \$2,910.63, plus interest, in restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to its customer was as favorable as possible under prevailing market conditions. 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 and regulations concerning best execution. **(NASD Case #CMS000181)**

Wheat First Union (CRD #6124, Richmond, Virginia) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$19,500, and required to revise its written supervisory procedures relating to order handling within 60 days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to contemporaneously execute protected customer limit orders after it traded each security for its own market-making account at a price that was equal to, or better than, each such customer limit order. The NASD also found that, in

connection with customer orders, the firm failed to use reasonable diligence to ascertain the best inter-dealer market so that the resultant price to its customers was as favorable as possible under prevailing market conditions. The findings also stated that the firm failed to immediately display customer limit orders when the orders were at a price that would have improved its bid or offer in each security related to those orders, or when the full size of the orders were priced equal to its bid or offer and the national best bid or offer and the orders represented more than a *de minimis* change in relation to the size associated with the firm's bid or offer in each security. Furthermore, the NASD found that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and applicable NASD rules concerning the SEC order handling rules. **(NASD Case #CMS000184)**

Individuals Barred Or Suspended

For individuals who have been both barred and suspended, only the date that the bar became effective is included.

Richard Allen Adams (CRD #2733333, Registered Representative, Fort Worth, Texas) 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, Adams consented to the described sanction and to the entry of findings that he signed the names of public customers to Shareowner Services Reports without their authorization, knowledge, or consent, thereby

becoming the agent of record for the customers. Adams also failed to respond to NASD requests for information. **(NASD Case #C06000019)**

Jose Ayala (CRD #3041101, Associated Person, Copiague, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$15,000 and suspended from association with any NASD member in any capacity for six months. Payment of the fine shall be a prerequisite for any application for reentry into the securities industry. Without admitting or denying the allegations, Ayala consented to the described sanctions and to the entry of findings that he willfully failed to disclose his criminal history on a Form U-4.

Ayala's suspension began September 18, 2000, and will conclude at the close of business on March 16, 2001. **(NASD Case #C10000153)**

Jonathan Wan Bae (CRD #1796368, Registered Representative, Bellerose Terrace, 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, Bae consented to the described sanction and to the entry of findings that he made improper use of customer checks totaling \$110,000. **(NASD Case #C10000155)**

Matthew I. Balk (CRD #1302167, Registered Principal, New York, New York) submitted an Offer of Settlement in which he was fined \$65,000, suspended from association with any NASD member in any capacity for 45 days, and suspended from

association with any NASD member as a general securities principal for 120 days. Without admitting or denying the allegations, Balk consented to the described sanctions and to the entry of findings that he engaged in a course of conduct that constituted, and which he knew or should have known would constitute, unfair dealings with customers. The NASD found that Balk induced customer purchases of a security for the benefit of his member firm when he knew that the transactions were unlikely to benefit the customers and were not in the customers' best interest. The findings also stated that Balk failed to disclose: (1) the special sales credits to the customers even though he knew, or should have known, that special sales credit was intended encourage the solicitations and that a reasonable investor would consider knowledge of the incentive compensation to be material; (2) the entire firm was engaged in a massive retail sales effort of the security; and (3) the recent poor performance of the stock and the company.

Balk's suspension in any capacity began October 2, 2000, and will conclude at the close of business on November 15, 2000. His suspension as a general securities principal also began on October 2, 2000, and will conclude on January 28, 2001. **(NASD Case #C3A990071)**

James Smith Bancroft (CRD #1123153, Registered Principal, Los Angeles, California) submitted an Offer of Settlement in which he was fined \$50,000 and suspended from association with any NASD member in any principal capacity for one year. The payment of the fine shall be a prerequisite for reentry into the securities industry. Without admitting or denying the

allegations, Bancroft consented to the described sanctions and to the entry of findings that, on behalf of a member firm, he participated as sole placement agent in a private offering of limited partnership interests, and that he either directly caused, was responsible for, or failed to prevent violations by his member firm of Section 15(c) of the Exchange Act and Rule 15c2-4. The findings also stated that a member firm, acting through Bancroft, participated in an all-or-none contingency offering, continued to receive investor funds, and failed to return investor funds when the terms of the contingency were not met.

Bancroft's suspension began October 2, 2000, and will conclude at the close of business on October 1, 2001. **(NASD Case #C02000004)**

Darren Scott Bankston (CRD #2083711, Registered Representative, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Bankston consented to the described sanctions and to the entry of findings that he recommended to a public customer securities that were not suitable in view of the customer's age, financial situation, and investment objectives.

Bankston's suspension began August 28, 2000, and concluded at the close of business on September 1, 2000. **(NASD Case #C07000054)**

Brenda Joyce Bell (CRD #3082032, Associated Person,

San Francisco, California) 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, Bell consented to the described sanction and to the entry of findings that she submitted a Form U-4 in which she willfully misrepresented her background and failed to disclose material facts by falsely answering some questions. **(NASD Case #C01000007)**

Erdem Bessim (CRD #2746643, Registered Representative, Thiells, New York) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bessim consented to the described sanction and to the entry of findings that he converted customer cashier's checks totaling \$23,921.30 for his own use or benefit. The findings also stated that Bessim failed to respond to NASD requests for information. **(NASD Case #C10000105)**

Michael Samuel Bifalco (CRD #1613705, Registered Principal, Middle Island, New York) 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 \$106,012.42 in restitution. Without admitting or denying the allegations, Bifalco consented to the described sanctions and to the entry of findings that he received cash and checks totaling \$106,012.42 from public customers and used the money for his personal benefit without the customers' authorization and contrary to their instructions. **(NASD Case #C10000157)**

Gerard Arthur Boucher (CRD #1236064, Registered Principal, Corona Del Mar, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any principal capacity for 30 business days. Without admitting or denying the allegations, Boucher consented to the described sanctions and to the entry of findings that he failed to establish and maintain a supervisory system that was reasonably designed to achieve compliance with certain NASD rules regarding unauthorized trading.

Boucher's suspension began September 18, 2000, and will conclude at the close of business on October 27, 2000. **(NASD Case #C02000054)**

Tiffany Nicole Bratton (CRD #3203225, Associated Person, Greensboro, North Carolina) was barred from association with any NASD member in any capacity. The sanction was based on findings that Bratton falsified copies of her test results for the Series 7, 63, and 65 exams. Bratton also failed to respond to an NASD request for information. **(NASD Case #C07000012)**

Philip Miles Bresnahan (CRD #2741609, Registered Principal, Tampa, 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, Bresnahan consented to the described sanction and to the entry of findings that he engaged in outside business activities without prior written notice to, or approval from, his member firm. The findings also stated that Bresnahan failed to

respond to NASD requests for information. **(NASD Case #C05000038)**

Joe Burgio a.k.a Joseph Burgio (CRD #2746971, Registered Representative, Brooklyn, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Burgio failed to respond to NASD requests to appear for an on-the-record interview. **(NASD Case #C10000035)**

Eric David Carson (CRD #2507789, Registered Representative, Chicago, Illinois) was barred from association with any NASD member in any capacity. The sanction was based on findings that Carson failed to respond to NASD requests for information. **(NASD Case #C8A000020)**

James Marion Cates, Jr. (CRD #2010633, Registered Representative, Charlotte, North Carolina) was barred from association with any NASD member in any capacity. The sanction was based on findings that Cates failed to respond to NASD requests for information. **(NASD Case #C07000014)**

Anthony Jorge Choquehuanca (CRD #1437629, Registered Representative, Laguna Niguel, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before reassociating with a member firm following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Choquehuanca consented to the described sanctions and to the entry of findings that he effected

unauthorized transactions on behalf of individual pension plan participants by placing them in a variable annuity product that was not authorized by a pension plan agreement between a member firm and the employer of the participants.

Choquehuanca's suspension began October 2, 2000, and will conclude at the close of business on October 1, 2002. **(NASD Case #C02000053)**

Michael Jason Constantinou (CRD #1140607, Registered Representative, Syosset, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Constantinou filed a false Form U-4 with the NASD when he became employed with a member firm. **(NASD Case #C10000040)**

Damiano Salvatore Coraci (CRD #2289946, Registered Principal, Brooklyn, New York) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. In light of Coraci's financial status, no monetary sanctions have been imposed. Without admitting or denying the allegations, Coraci consented to the described sanction and to the entry of findings that, in connection with its underwriting activities, a member firm, acting through Coraci, employed a device, scheme, contrivance, and/or artifice to defraud; made untrue statements of material facts and/or omitted to state material facts necessary to make statements not misleading; and engaged in acts, practices, or courses of business that operated as a fraud or deceit upon public investors.

The NASD found that Coraci, on behalf of a firm, engaged the firm's

registered representatives in a concentrated sales drive through the operation of a boiler room. The findings also stated that the firm, acting through Coraci, encouraged the firm's associated persons to utilize baseless price and performance predictions and other misleading statements in connection with solicitations of interest in an initial public offering (IPO). In addition, a member firm, acting through Coraci, reopened the IPO distribution while the firm acted as a market maker, entered bids in The Nasdaq Stock Market, Inc. on a continuous basis, and caused the purchase of warrants in the account of a customer while the securities were a "hot issue." The NASD also found that Coraci engaged in activities that required registration as a principal with the NASD even though he was not registered as such and permitted an associated person to act in a capacity that required registration even though the associated person was not registered as a representative. Moreover, the NASD found that Coraci failed to respond truthfully during an on-the-record interview and falsified information on new account forms prepared for a customer at member firms. **(NASD Case #C10000029)**

Carl Cunzio (CRD #2664090, Registered Principal, Boca Raton, 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 45 days. Without admitting or denying the allegations, Cunzio consented to the described sanctions and to the entry of findings that he recommended and effected excessive and unsuitable transactions in the account of a public customer.

Cunzio's suspension began September 5, 2000, and will conclude at the close of business on October 19, 2000. **(NASD Case #C07000051)**

Dominick Joseph Dawson (CRD #2474364, Registered Representative, W. Babylon, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Dawson failed to respond to NASD requests for information. **(NASD Case #C9B000003)**

Barry Michael Donald (CRD #2534882, Registered Representative, Morton, Illinois) and **Mary Jane Johnson (CRD #1147428, Registered Principal, Groveland, Illinois)** submitted Offers of Settlement in which Donald was fined \$5,000 and suspended from association with any NASD member in any capacity for 90 days. Johnson was fined \$5,000 and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Donald and Johnson consented to the described sanctions and to the entry of findings that they engaged in private securities transactions and failed to provide prior written notice to, or receive prior written authorization from, their member firm of their participation in such transactions.

Donald's suspension will begin on November 6, 2000, and will conclude at the close of business on February 2, 2001. Johnson's suspension will begin on October 16, 2000, and will conclude at the close of business on November 3, 2000. **(NASD Case #C8A000019)**

Michael Patrick Dreitlein (CRD #1525680, Registered

Representative, Dix Hills, 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, Dreitlein consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. **(NASD Case #C10000149)**

Michael James Dzurko (CRD #2340848, Registered Representative, Howard Beach, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Dzurko arranged for an impostor to take the Series 7 exam on his behalf. The findings also stated that Dzurko failed to respond to NASD requests to appear for an on-the-record interview. **(NASD Case #C10000063)**

Valentin Fernandez (CRD #1965809, Registered Principal, Palm Beach Gardens, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Fernandez failed to respond to an NASD request for information. **(NASD Case #C07000019)**

Philip James Flynn (CRD #1370914, Registered Principal, Plymouth, Minnesota) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and required to demonstrate that he has paid \$24,640 to the trustee in bankruptcy of a company prior to any request for relief from the bar. Without admitting or denying the allegations, Flynn consented to the described sanction and to the entry of findings that he engaged in

private securities transactions without prior written notification to, or approval from, his member firm. The findings also stated that Flynn effected securities transactions for the accounts of others without him, or the firm he operated, being registered as a broker/dealer. **(NASD Case #C3A000034)**

Matthew Scott Freed (CRD #2788276, Registered Representative, Forest Hills, New York) was fined \$10,000 and suspended from association with any NASD member in any capacity for one year for settling a customer complaint. Freed was also barred from association with any NASD member in any capacity for failure to respond. The fine is due and payable prior to reentry into the securities industry. The sanctions are based on findings that Freed paid a public customer \$850 to settle the customer's complaint against him without his member firm's knowledge and consent. Freed also failed to respond to NASD requests for information.

Freed's bar became effective August 16, 2000. **(NASD Case #C10000030)**

Alan Lawrence Goldstein (CRD #2852203, Registered Representative, Huntington, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$17,500 and suspended from association with any NASD member in any capacity for three months. In addition, Goldstein must pay \$12,817.25, plus interest, in restitution to member firms. Without admitting or denying the allegations, Goldstein consented to the described sanctions and to the entry of findings that prior to his association with a member firm, he exercised discretionary trading authority over customer accounts and maintained

a securities account at a member firm and failed to notify, in writing, the executing firms of his association with a member firm, and failed to notify the member firm of the existence of such accounts. The findings also stated that Goldstein exercised discretionary trading authority over customer accounts without written authorization from the customers. Furthermore, the findings stated that Goldstein entered orders at prices that he knew would improve the national best bid or offer in such securities in that the full price and size of the orders would be reflected in the public quotation stream as the best prices and sizes at which a market participant was willing to buy or sell the securities. Moreover, the findings stated that after having entered such orders, Goldstein knowingly and intentionally entered, over the Internet and via the executing firms' touch-tone telephone systems, orders to buy and sell shares of securities on behalf of customers when he knew they would be routed to market makers whose execution systems were programmed to buy or sell securities on an automated basis at prices equal to the national best bid or offer. By knowing and intentionally engaging in this course of conduct, the NASD found that Goldstein bought and sold shares of securities at prices that were lower or higher than he would otherwise have been able to buy or sell shares of these securities, and within seconds after receiving the executions of the orders he had entered on behalf of these accounts, Goldstein canceled the priced limit orders that he had placed, thereby securing profits of approximately \$12,817.25.

Goldstein's suspension began October 2, 2000, and will conclude at the close of business on

December 29, 2000. **(NASD Case #CMS000131)**

Vincent Grieco (CRD #1568462, Registered Principal, W. Islip, New York) was fined \$500,000, barred from association with any NASD member in any capacity, and ordered to pay \$589,466.88, plus interest, in restitution to public customers. The sanctions were based on findings that Grieco directed a boiler room operation at the branch which he co-owned and enforced fraudulent sales practices, unauthorized transactions, and a refusal policy to effect customer sell orders. **(NASD Case #CAF990008)**

Mark Lund Griffis (CRD #2767069, Registered Representative, West Palm Beach, Florida) was fined \$7,500, barred from association with any NASD member in any capacity, and ordered to pay \$5,190, plus interest, in restitution to a public customer. The fine must be paid before any application for reentry into the securities industry will be considered. The sanctions were based on findings that Griffis effected unauthorized transactions in the account of a public customer and exercised discretion in the account of a public customer without written authority and without having the account approved as a discretionary account by his member firm. Griffis also failed to respond to an NASD request for information. **(NASD Case #C07000004)**

Ann Aykanush Grigoryan (CRD #4029336, Associated Person, Glendale, California) submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Grigoryan consented to the described sanction and to the

entry of findings that she submitted a Form U-4 to her member firm in which she falsely responded "no" to questions asking whether she had ever been charged with, or convicted of, a misdemeanor involving wrongful taking of property. **(NASD Case #C02000050)**

William James Guy (CRD #2504429, Registered Representative, Columbia, Maryland) submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for six months. In light of the financial status of the respondent, no monetary sanction has been imposed. Without admitting or denying the allegations, Guy consented to the described sanction and to the entry of findings that he engaged in securities transactions for compensation outside of the normal course or scope of his association with his member firm and failed to provide prior written notice of the transactions to his firm.

Guy's suspension began October 2, 2000, and will conclude April 1, 2001. **(NASD Case #C9A000019)**

Ronald Victor Hatfield (CRD #1504641, Registered Representative, Philadelphia, Pennsylvania) was barred from association with any NASD member in any capacity. The sanction was based on findings that Hatfield failed to respond to NASD requests for information. **(NASD Case #C9A000010)**

Clarence James Henderson (CRD #1001119, Registered Representative, Boone, 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, Henderson consented to the described sanction and to the entry of findings that he made improper use of funds belonging to a public customer. The findings also stated that Henderson failed to respond to an NASD request to provide documents and information. **(NASD Case #C07000060)**

Alex Holloman, III (CRD #2910051, Registered Representative, Charlotte, North Carolina) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Holloman consented to the described sanction and to the entry of findings that he submitted check redemption request forms to his member firm on behalf of a public customer to withdraw funds from the customer's mutual fund account without the customer's authorization. The findings also stated that Holloman caused \$13,000 to be withdrawn from the customer's account and converted these funds to his own use and benefit without the customer's knowledge or consent. **(NASD Case #C05000047)**

Lucas Allen Hutzell (CRD #2841394, Registered Representative, Greensburg, 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, Hutzell consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. **(NASD Case #C9A000030)**

Douglass Keigley (CRD #1437162, Registered Representative, Adel, Iowa) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$25,000, which includes disgorgement of \$18,550 in commissions, and suspended from association with any NASD member in any capacity for one year. The fine and disgorgement must be paid before reassociating with a member firm following the suspension or before requesting relief from statutory disqualification. Without admitting or denying the allegations, Keigley consented to the described sanctions and to the entry of findings that he engaged in an outside business activity, and received compensation for his activity, without providing prompt written notice to his member firm.

Keigley's suspension began October 2, 2000, and will conclude at the close of business on October 1, 2001. **(NASD Case #C04000031)**

Dennis Raphael Keruly (CRD #1027090, Registered Principal, Reistertown, Maryland) 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, Keruly consented to the described sanction and to the entry of findings that he failed to respond to an NASD request for information. **(NASD Case #C9A000032)**

Richard Marvin Koch (CRD #1126316, Registered Representative, Fair Oaks Ranch, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Koch

consented to the described sanctions and to the entry of findings that he signed a public customer's name on insurance policy takeover request forms and submitted the forms to his member firm without the authorization of the customer.

Koch's suspension began October 2, 2000, and will conclude at the close of business on March 30, 2001. **(NASD Case #C06000018)**

Charles Nicholas Letizia, Jr. (CRD #1902063, Registered Representative, Charlotte, North Carolina) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity and order to pay \$10,000, plus interest, in restitution to a public customer. Proof of restitution, with interest, shall be a prerequisite to any application or request for relief from any statutory disqualification. Without admitting or denying the allegations, Letizia consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing notice to, or obtaining permission from, his member firm. Letizia also failed to respond to NASD requests for information. **(NASD Case #C07000005)**

Dwight Alexander Longest (CRD #1913096, Registered Representative, New Albany, Indiana) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Longest consented to the described sanction and to the entry of findings that he participated in private securities transactions and failed to provide prior written notice to, or obtain permission from,

his member firm to engage in private securities transactions. **(NASD Case #C8A000052)**

Frank Joseph Maggio (CRD #2238463, Registered Representative, Lake Ronkonkoma, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Maggio persuaded a public customer to invest \$8,973 with him by representing that he would invest and manage her funds through his investment advisory business. Maggio misrepresented to the customer that his business was affiliated with a member firm; provided the customer with a false account number; sent the customer periodic statements showing the purported current market value of the stocks, when in fact, the stock was sold; and failed to transfer the customer's stock to an account the customer established at a member firm. Furthermore, despite his assurances to the customer that he would purchase the blue-chip stocks for the customer's benefit, Maggio purchased the shares in his name and held them for just a few months before selling them for \$8,700, without the customer's consent, and retained the proceeds of the sale for his own use. Maggio also failed to respond to NASD requests for information. **(NASD Case #C9B990034)**

Martin Eugene Mangarelli, Jr. (CRD #318597, Registered Representative, Phoenix, Arizona) submitted a Letter of Acceptance, Waiver, and Consent in which he was censured, fined \$6,000, suspended from association with any NASD member in any capacity for 18 months, and required to disgorge \$18,885. The fine must be paid and proof of disgorgement must be provided to the NASD prior to

reassociation with a member firm following the suspension or prior to any request for relief from statutory disqualification. Without admitting or denying the allegations, Mangarelli consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firm of his intention to participate in the transactions.

Mangarelli's suspension began September 18, 2000, and will conclude March 17, 2002. **(NASD Case #C3A000031)**

Calvin Walter Mathis (CRD #2997937, Registered Representative, Far Rockaway, 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, Mathis consented to the described sanction and to the entry of findings that he failed to disclose on his Form U-4 that he had been charged and convicted under a general court martial order. The findings also stated that Mathis failed to respond to NASD requests for documents and a written statement regarding his failure to disclose on a Form U-4 his general court martial charge and conviction. **(NASD Case #C10000148)**

Guy Ashley Neau (CRD #2232933, Registered Representative, Mauston, Wisconsin) 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, Neau consented to the described sanction and to the entry of findings that he participated in private securities transactions and

failed to provide written notice to, or obtain written authorization from, his member firm prior to engaging in such transactions. **(NASD Case #C8A000038)**

Salvatore Joseph Pollina (CRD #2478289, Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Pollina consented to the described sanctions and to the entry of findings that he participated in a securities transaction away from his member firm and failed to provide prior written notice to, or receive written approval from, his firm.

Pollina's suspension began September 18, 2000, and will conclude at the close of business on October 17, 2000. **(NASD Case #C10000156)**

Raymond John Reifenrath, III (CRD #2751309, Registered Representative, South Sioux City, Nebraska) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. The fine must be paid before any application for reentry into the securities industry will be considered. Without admitting or denying the allegations, Reifenrath consented to the described sanctions and to the entry of findings that he affixed the signatures of public customers on a health care waiver application without the customers' knowledge and consent.

Reifenrath's suspension began September 18, 2000, and will

conclude at the close of business on November 16, 2000. **(NASD Case #C04000030)**

Benjamin Dennis Roberts (CRD #2013405, Registered Principal, Columbus, Georgia) 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, Roberts consented to the described sanction and to the entry of findings that he forged the initials of public customers on new account forms and submitted them to a member firm. Roberts also failed to respond to NASD requests for information. **(NASD Case #C07000042)**

Joao Pedro Santos (CRD #2894841, Registered Representative, Philadelphia, 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, Santos consented to the described sanction and to the entry of findings that he defrauded public customers by making unauthorized transfers of funds and securities from their accounts at his member firm to an account that he controlled and then converting the funds and securities for his own purposes. **(NASD Case #C9A000031)**

Craig Patrick Scanlon (CRD #2201128, Registered Representative, Bratenahl, Ohio) was barred from association with any NASD member in any capacity. The sanction was based on findings that Scanlon failed to respond to NASD requests for information. **(NASD Case #C8B000004)**

Timothy Martin Scannell (CRD #1552763, Registered Principal,

Valparaiso, Indiana) 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 principal or supervisory capacity for 30 days. Without admitting or denying the allegations, Scannell consented to the described sanctions and to the entry of findings that he caused a member firm's clearing firm to bulk transfer customer accounts from the member firm to a firm he owned and at which he was soon to become registered without authorization from the member firm or the account holders and contrary to the interests of the member firm.

Scannell's suspension began September 18, 2000, and will conclude at the close of business on October 17, 2000. **(NASD Case #C8A000048)**

Karl Duane Scheumann (CRD #1582505, Registered Representative, Fort Wayne, Indiana) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before any application for reentry into the securities industry will be considered. Without admitting or denying the allegations, Scheumann consented to the described sanctions and to the entry of findings that he altered life insurance forms to indicate that policy premiums should be increased resulting in additional commissions to him totaling \$100.

Scheumann's suspension began October 2, 2000, and will conclude at the close of business on April 1, 2001. **(NASD Case #C8A000051)**

Michael Robert Schiller (CRD #1531515, Registered

Representative, New York, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Schiller received an \$8,109.34 check from a public customer to purchase a variable annuity, failed to purchase the annuity, and converted the funds to his own use and benefit without the customer's knowledge or consent. **(NASD Case #C10000039)**

Thomas Walter Schlenk (CRD #3090571, Registered Representative, Florissant, Missouri) was barred from association with any NASD member in any capacity. The sanction was based on findings that Schlenk failed to respond to NASD requests for information. **(NASD Case #C04000018)**

Ivan Darnell Self (CRD #1982527, Registered Representative, Dallas, Texas) was barred from association with any NASD member in any capacity. The sanction was based on findings that Self failed to appear for on-the-record interviews. **(NASD Case #C06000007)**

John Michael Thole (CRD #3176605, Registered Representative, Davenport, Iowa) 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 any application for reentry into the securities industry will be considered. Without admitting or denying the allegations, Thole consented to the described sanctions and to the entry of findings that he affixed the signature of a public customer on a variable life insurance application without the customer's knowledge or consent.

Thole's suspension began October 2, 2000, and will conclude at the close of business on April 1, 2001. **(NASD Case #C8A000049)**

David Dean Townsend (CRD #2163643, Registered Representative, Kent, Washington) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$29,443.84, which includes the disgorgement of commissions earned in the amount of \$14,443.84, and suspended from association with any NASD member in any capacity for two years. The fine must be paid before reassociating with a member firm following the suspension or before requesting relief from statutory disqualification. Without admitting or denying the allegations, Townsend consented to the described sanctions and to the entry of findings that he engaged in outside business transactions and failed to provide prior written notice to his member firm describing the proposed transactions, his proposed role, and his selling compensation.

Townsend's suspension began September 18, 2000, and will conclude at the close of business on September 17, 2002. **(NASD Case #C3B000014)**

Scott Lynn Vanderbeek (CRD #2069603, Registered Representative, O'Neill, Nebraska) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$90,000, which includes disgorgement of commissions earned of \$86,000, and suspended from association with any NASD member in any capacity for one year. The fine and disgorgement must be paid either before reassociating with a member firm following the suspension or

before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Vanderbeek consented to the described sanctions and to the entry of findings that he engaged in an outside business activity without providing prompt written notice to his member firm.

Vanderbeek's suspension began September 18, 2000, and will conclude at the close of business on September 18, 2001. **(NASD Case #C04000029)**

Alessandro Zaramella (CRD #1265864, Registered Representative, Balerna, Switzerland) was barred from association with any NASD member in any capacity. The sanction was based on findings that Zaramella falsified monthly customer account statements issued for a public customer. **(NASD Case #C05000009)**

Decisions Issued

The following decisions have been issued by the District Business Conduct Committee (DBCC) or the Office of Hearing Officers and have been called for review by the National Adjudicatory Council (NAC) as of September 8, 2000. The findings and sanctions imposed in the decisions may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notices to Members*.

Freedom Investors Corp. (CRD #23714, Pewaukee, Wisconsin) and **James Russell Fay (CRD #1003069, Registered Principal, Oconomowoc, Wisconsin)** were censured and fined \$30,000, jointly and severally. Fay was also

suspended from association with any NASD member in any principal capacity for 90 days and required to requalify by exam before serving in any principal capacity. The sanctions were based on findings that the firm, acting through Fay, conducted a securities business while failing to maintain the minimum required net capital, prepared inaccurate books and records, and prepared and filed inaccurate FOCUS Part IIA Reports. Also, the firm and Fay failed to submit timely responses to NASD requests for information.

The firm and Fay have appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C8A990071)**

Protective Group Securities Corporation (CRD #6757, Minneapolis, Minnesota) and **Michael Frederick Flannigan (CRD #1135700, Registered Principal, Excelsior, Minnesota)** were fined \$25,000, jointly and severally, and Flannigan was barred from association with any NASD member in any supervisory capacity. The sanctions were based on findings that the firm, acting through Flannigan, allowed unregistered individuals to engage in the firm's securities business, exercised discretionary authority for customer accounts in the aftermarket, and relied on information from a former member firm to execute transactions without obtaining written customer approval for such reliance.

The firm and Flannigan have appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C8A980097)**

Complaints Filed

The following complaints were issued by the NASD. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by the 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.

Ricardo Brown (CRD #845315, Registered Representative, Newport News, Virginia) was named as a respondent in an NASD complaint alleging that he received insurance disbursement checks totaling \$8,510.82 sent by his member firm for delivery to insurance customers, forged the endorsements on the checks, and deposited them into his personal bank account. The complaint further alleges Brown completed and submitted to his member firm an unauthorized application for a \$12,000 withdrawal on behalf of a public customer, received a \$12,000 disbursement check from his member firm, forged the customer's endorsement on the check, and deposited it into his personal bank account. The complaint also alleges that Brown submitted loan applications on behalf of public customers without their authorization, received checks totaling \$10,500, forged the endorsements of the customers on the disbursement checks, and deposited them into his personal bank account. Furthermore, the complaint alleges that Brown failed to respond to NASD requests for information. **(NASD Case #C07000064)**

Lawrence Dean Burke, Jr. (CRD #2255621, Registered Representative, Fresh Meadow, New York) was named as a respondent in an NASD complaint alleging that he received \$3,000 from a public customer to arrange the sale of the customer's investment without providing prior written notice to, or receiving approval from, his member firm. The complaint also alleges that Burke failed to execute the sale of the customer's investment and deposited the customer's payment into his personal checking account, thereby converting and/or improperly using the funds. The complaint further alleges that Burke failed to respond to NASD requests for information. **(NASD Case #C10000160)**

Joseph Carmello Cerna, Jr. (CRD #2652602, Registered Representative, Manalapan, New Jersey) was named as a respondent in an NASD complaint alleging that he engaged in excessive and unauthorized trading in the accounts of public customers. The complaint also alleges that Cerna exercised discretion in the account of a public customer without prior written authorization from the customer or prior written approval from his member firm. In addition, the complaint alleges that Cerna willfully failed to disclose bankruptcy information on a Form U-4. **(NASD Case #C3A000033)**

Marcial Fernando Chiong, Jr. (CRD #1548382, Registered Principal, New York, New York) was named as a respondent in an NASD complaint alleging that he effected transactions in the accounts of public customers without their prior knowledge, authorization, or consent. The complaint also alleges that Chiong failed to execute customer sell orders. **(NASD Case #C10000159)**

Michael Ying Deng (CRD #2338954, Registered Representative, Flushing, New York) was named as a respondent in an NASD complaint alleging that he converted, misappropriated, or improperly used a public customer's monies by depositing a \$1,000 insurance refund check into his personal bank account without the customer's knowledge, authorization, or consent. **(NASD Case #C10000152)**

Michael DiFrancesca (CRD #2315616, Registered Representative, East Northport, New York) was named as a respondent in an NASD complaint alleging that he engaged in, and/or induced others to engage in, fraudulent conduct that included unauthorized trading in public customer accounts; failed to disclose material facts that a prudent customer would have wanted disclosed and that DiFrancesca had a duty to disclose; and made specific price predictions about speculative securities without an adequate, accurate, or reasonable basis in fact. The complaint also alleges that DiFrancesca effected transactions in, or effected the purchase or sale of, securities by means of manipulative, deceptive, or other fraudulent devices and contrivances. **(NASD Case #CAF000038)**

Nicholas John Kirk (CRD #2004783, Registered Representative, Rocklin, California) was named as a respondent in an NASD complaint alleging that he made improper use of a public customer's funds by using the funds purportedly for start-up costs for a business totaling \$78,500 and, instead, used the funds for his personal use and benefit. Furthermore, the complaint alleges that Kirk failed to provide

the customer with any instrument documenting the duration and the terms of the loans, including the principal borrowed from the customer or the interest, if any, she would earn on that principal and Kirk knew or should have known that in taking the loans, he subjected the customer to the total loss of her principal. The complaint also alleges that Kirk failed to accurately and truthfully provide requested information to the NASD concerning his handling of loan proceeds, and amended a Form U-4 through which he made false and misleading representations. **(NASD Case #C02000055)**

Kenneth Thomas Lambright (CRD #1124567, Registered Representative, Baltimore, Maryland) was named as a respondent in an NASD complaint alleging that he guaranteed a public customer against loss and that he failed to respond to NASD requests for information and documentation. **(NASD Case #C9A000033)**

Susan Jennifer Loetell (CRD #1372725, Registered Principal, Cockeysville, Maryland) was named as a respondent in an NASD complaint alleging that she withdrew approximately \$41,000 from various proprietary accounts belonging to her member firm and converted these funds to her own use and benefit without the firm's knowledge or consent. The complaint also alleges that Loetell failed to respond to NASD requests for information and documentation and failed to appear for an NASD on-the-record interview. **(NASD Case #C9A000034)**

Gregory Vincent Morgan (CRD #2334270, Registered Representative, Baldwin, New York) was named as a respondent in an NASD complaint alleging that Morgan, while exercising control

over a customer's account, recommended, or implicitly recommended, numerous purchases and sale transactions in various securities without having reasonable grounds for believing that such transactions were suitable for the customer in view of the size and frequency of the transactions, the nature of the account, and the customer's financial situation and needs. The complaint further alleges that Morgan executed unauthorized transactions in a public customer's account without the customer's prior knowledge, authorization, or consent, and failed to respond to NASD requests for information. **(NASD Case #C9B000024)**

Mark S. Pacelli (CRD #2344494, Registered Representative, Trenton, New Jersey) was named as a respondent in an NASD complaint alleging that he solicited a public customer to invest approximately \$40,000 in bearer bonds and failed to invest the funds as instructed and, instead, used the funds for his own use. The complaint further alleges that Pacelli failed to respond to NASD requests for information. **(NASD Case #C07000063)**

Vito Gerard Padulo (CRD #2370645, Registered Representative, Englishtown, New Jersey) was named as a respondent in an NASD complaint alleging that he effected transactions in the account of a public customer without the customer's prior knowledge, authorization, or consent. The complaint also alleges that Padulo failed to respond to NASD requests for information. **(NASD Case #C10000166)**

Cery Bradley Perle (CRD #2306492, Registered Principal, Corona Del Mar, California) and

Joseph Gaetano Gerace (CRD #1060223, Registered Principal, South Laguna, California) were named as respondents in an NASD complaint alleging that a member firm, acting through Perle, received funds from public customers to purchase common stock when the registration statement for its IPO became effective in contravention of Section 5 of the Securities Act of 1933. In addition, the complaint alleges that Perle, acting on behalf of a member firm, participated as underwriter in an IPO of common stock that traded at a premium in the secondary market and failed to make a bona fide distribution of the stock at the public offering price when the secondary market began. The complaint also alleges that a member firm, acting through Gerace, effected transactions in securities while failing to maintain its minimum net capital. **(NASD Case #C01000020)**

Ridgewood Associates, Inc. (CRD #16727, Paramus, New Jersey), Lewis Nathan Howard (CRD #251275, Registered Principal, Hawthorne, New Jersey) and **Philip Patrick Marino (CRD #319926, Registered Principal, Paramus, New Jersey)** were named as respondents in an NASD complaint alleging that Howard, while exercising effective control over public customers' accounts, used discretion and recommended to the customers numerous purchases and sale transactions in various securities without having reasonable grounds for believing that such transactions were suitable for the customers in view of the size and frequency of the transactions, the nature of the accounts, and their financial situation and needs. The complaint also alleges that the firm, acting through Marino, failed to exercise its supervisory responsibilities and failed to supervise adequately and

properly Howard's trading activities in customers' accounts to ensure compliance with the securities laws and applicable NASD rules. The complaint further alleges that the firm, acting through Marino, failed to prevent transactions in the customers' accounts that were excessive in size or frequency in light of the financial resources and character of these accounts.

(NASD Case #C9B000018)

Robert Jay Voges (CRD #2565539, Registered Representative, Ormond Beach, Florida) was named as a respondent in an NASD complaint alleging that he received \$5,000 in cash from a public customer to be deposited into her checking account, failed to deposit the cash, and converted it to his own use and benefit. The complaint also alleges that Voges transferred \$5,000 from the customer's account at the firm to her checking account to conceal his actions and later transferred \$5,065 from his personal checking account to the customer's firm account to repay the funds he had converted. In addition, the complaint alleges that Voges failed to respond to NASD requests for information. **(NASD Case #C07000053)**

Firms Suspended

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 actions were based on the provisions of NASD Rule 8210 and Article VII, Section 2 of the NASD By-Laws. 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.

Century Capital Corp. of South Carolina, Greenville, South Carolina (September 6, 2000)

Phoenix Financial Services Corp., New York, New York (September 6, 2000)

United Property Investments Corp., Phoenix, Arizona (August 14, 2000)

Suspensions Lifted

The NASD has lifted the suspensions from membership on the date shown for the following firms because they have complied with formal written requests to submit financial information.

American Investment Bankers, Inc., San Diego, California (August 24, 2000)

Intra Network Securities, Inc., Rancho Santa Fe, California (August 17, 2000)

NASD Regulation Hearing Panel Expels Premier Capital Management and Fines and Suspends Firm President and Broker for Stock Touting and Fraudulent Advertising

NASD Regulation announced that an NASD Regulation Hearing Panel expelled Premier Capital Management, Inc., Dallas, TX, for placing materially misleading advertisements in national publications to tout Continental Investment Corporation (OTCBB:CICGQ), failing to disclose compensation received from Continental, and other violations. The firm's president and owner, Bryan James O'Leary, was suspended for 325 days and fined \$62,500, while Ryan Mark Reynolds, a former registered representative, was suspended for 720 days and fined \$155,000. In addition, O'Leary and Reynolds were ordered to buy back shares from, or to make restitution to, customers who purchased Continental stock based on one of Premier's advertisements. O'Leary and Reynolds were also ordered to requalify and prove payment was made to customers prior to associating with a member firm. If they seek to reenter the industry, they will be subject to pre-use filing requirements for future proposed advertisements and other communications with the public.

The Hearing Panel found that O'Leary and Reynolds had placed a materially misleading eight-page insert advertisement touting Continental in the September 1997 issue of *Mutual Funds Magazine*. The advertisement, which purported to be a research report, was distributed to more than 625,000 individuals. In addition, single-page advertisements, which described Continental as "A Stock Whose Time Has Come," and

invited readers to contact Premier for a copy of “our research report,” appeared in issues of *Town & Country*, *Individual Investor*, *Estates Internationale*, and *Leading Estates of the World*. Continental is a Dallas, TX corporation, which owned a large parcel of land near Atlanta, GA, which it believed had a possible future as a waste management facility.

The Hearing Panel found that the advertisement contained in *Mutual Funds Magazine* failed to provide an accurate and balanced picture of the risks and benefits of the investment, projected returns without a reasonable basis, and contained exaggerated claims. The following were among the fraudulent statements contained in the advertisement:

- “[U]nless Bill Gates or the Japanese dig a Grand Canyon hole 9 miles from downtown Atlanta, the value of [Continental’s] property has no place to go but up.”
- “Even if 99% of all stocks are dragged down with the overall

market, in our opinion, [Continental] will be an extremely profitable exception.”

- “[W]e expect to see a tremendous upside ‘run’ in [Continental’s] stock price all the way up to, at least, the mid-fifties.”
- “Continental presents a ‘textbook case’ ... wherein a small company holding an insurmountable strategic advantage can potentially achieve complete predominance over significantly larger competitors.”

In addition, the Hearing Panel found that Premier, O’Leary, and Reynolds failed to disclose the compensation they received from Continental for touting its stock. Premier received more than \$200,000 to cover the costs it incurred for printing and publishing the research report and the single-page advertisements. The Panel also found that Reynolds received 10,000 shares of Continental stock, then worth over \$200,000, as compensation for Reynolds’s

services on behalf of Continental. Premier and O’Leary also failed to file the report with the NASD Regulation Advertising Regulation Department.

The NASD Regulation Enforcement Department wishes to acknowledge the assistance provided in this matter by the Securities and Exchange Commission’s Fort Worth District Office, NASD Dallas District Office, and NASD Regulation Advertising Regulation.

Unless the matter is appealed to the NAC, or called for review by the NAC, the hearing panel’s decision becomes final after 45 days. The sanctions imposed by the hearing panel are not effective during this period. If the decision is appealed or called for review, the sanctions may be increased, decreased, modified, or reversed. Each individual may choose to appeal the decision.

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