# Notices to Members March 2000

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ACTION REQUIRED BY APRIL 30, 2000

# Member Contact Information Update

NASD Members Must Update Firm Contact Information Via The NASD Regulation Web Site By **April 30, 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
- · Senior Management

# **KEY TOPICS**

• Members/Contact Information

# **Executive Summary**

National Association of Securities Dealers, Inc. (NASD®) member firms must update their Member Firm Contact Questionnaire (NMFCQ or Contact Questionnaire) located on the NASD Regulation Web Site (www.nasdr.com) to include the name and e-mail address of the member firm's Executive Representative by April 30, 2000. Members that have updated the Contact Questionnaire since January 1, 2000, do not need to complete this mandatory update. However, members that don't have any changes to their 1999 Contact Questionnaires must still complete this update by verifying that information through the NASDR Web Site.

#### **Questions/Further Information**

Additional information on the NMFCQ is located on the NASD Regulation, Inc. (NASD Regulation⁵™) Web Site at www.nasdr.com/2695.htm.

Questions concerning this Notice may be directed to the CRD/PD Gateway Call Center, at (301) 869-6699; or to Bruce Spates, Assistant Director, Internet and Investor Education, NASD Regulation, at (301) 721-1149.

# **Background**

As published in NASD Notice to Members 98-77 (September 1998), amendments to Article IV, Section 3 of the NASD By-Laws, which took effect January 1, 1999, require members to: (1) obtain an Internet e-mail account and Internet access for their Executive Representative; and (2) update their firm's contact information via the NASD Regulation Web Site (www.nasdr.com) to include the Executive Representative's e-mail address.

Also discussed in Notice to Members 98-77 were changes to the distribution of key NASD Regulation publications. Effective January 1, 1999, the primary means of distribution of NASD Notices to Members and the Regulatory & Compliance Alert is in electronic form via the NASD Regulation Web Site. Members are advised that the schedule for posting the monthly NASD Notices to Members to the Web Site will be on or about the 10th of each month. Once Executive Representatives have updated their Contact Questionnaire to include their Internet e-mail address. NASD Regulation will provide e-mail notification of new Notices and other updates posted to the Web

Since the complimentary print distribution of these publications terminated in January 1999, member firms that wish to continue to receive the printed versions may subscribe by contacting NASD MediaSource<sup>™</sup> at (301) 590-6142. Each Executive Representative will be eligible for one subscription to *Notices to Members* and/or the *Regulatory & Compliance Alert* at cost, *i.e.*, \$15 per year.

While members may choose to rely on the printed NASD Notices to Members, it does not relieve them of the requirement for the Executive Representative to maintain an Internet e-mail account on behalf of the firm, and to update the firm's Contact Questionnaire via the NASD Regulation Web Site by April 30, 2000.

# **Updating Procedures**

Members that previously updated the Contact Questionnaire should utilize their existing NMFCQ User ID and Password to access and update the Questionnaire. New

members should receive a User ID and Password as a result of completing the membership application process. Members that may have forgotten or misplaced their NMFCQ access information should request assistance by sending an e-mail to wnmfcq@nasd.comwhich includes the name of the person entitled to access the Contact Questionnaire, firm name, and Broker/Dealer CRD Number. As mentioned above,

members that have updated the Contact Questionnaire since January 1, 2000, do not need to complete this mandatory update. However, members that don't have any changes to their 1999 Contact Questionnaires must still complete this update by verifying that information through the NASDR Web Site.

Members are reminded that the Chief Executive Officer and

designated firm NASD Executive Representative must be members of senior management and registered principals with the specific member for which the update is being made.

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#### INFORMATIONAL

# Independent Research Reports

SEC Approves Rule Change Relating To Filing Requirements For Independently Prepared Research Reports

#### 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
- Mutual Fund
- · Registered Representatives
- Senior Management

# **KEY TOPICS**

- Advertising And Sales Literature
- NASD Rule 2210
- · Research Reports

# **Executive Summary**

On January 13, 2000, the Securities and Exchange Commission (SEC) approved amendments to National Association of Securities Dealers, Inc. (NASD®) Rule 2210, which governs member communications with the public.¹ The amendments exempt from Rule 2210's filing requirements certain types of independently prepared research reports concerning investment companies. The amendments become effective on April 1, 2000.

Questions concerning this *Notice* may be directed to Thomas M.
Selman, Vice President, Investment Companies/Corporate Financing,
NASD Regulation, Inc. (NASD
Regulation<sup>SM</sup>) at (202) 728-8068;
Thomas A. Pappas, Director,
Advertising/Investment Companies
Regulation, NASD Regulation, at (202) 728-8453; or Joseph P.
Savage, Counsel,
Advertising/Investment Companies
Regulation, NASD Regulation, at (202) 728-8233.

Attachment A includes the text of Rule 2210's amendments.

# **Background**

NASD Rule 2210 requires that any "advertisement" or "sales literature" concerning a registered investment company be filed with NASD Regulation's Advertising/Investment

Companies Regulation Department (Department) and meet the content standards of Rule 2210 and any applicable SEC rules. Rule 2210 defines "sales literature" to include research reports. Consequently, a member that uses a research report as sales material must file it with the Department, even if the member did not commission the research contained in the report, and an independent, third party research firm prepared the report.

As the investment company industry has grown in recent years, so has the coverage of the industry by independent research firms. Many 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.

NASD members 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.

# Description Of Filing Exemption

The amendments provide that certain types of independently prepared research reports concerning registered investment companies do not have to be filed with the Department if they are used as sales literature. Pursuant to new Rule 2210(c)(6)(G), all research reports-including customized reports prepared at the request of an investment company, its affiliates, or a member firmmust meet five requirements to qualify for the filing exemption. Customized reports also must meet a sixth requirement.

- The report must be prepared by an entity that is independent of the investment company, its affiliates, and the member using the report.
- 2) The member using the report may not materially alter the report's contents, except to the extent necessary to make it consistent with applicable regulatory standards. In this regard, for example, the Department would allow a member to add performance information necessary for the report to meet SEC Rule 482's currentness standards.2 Additionally, a member may correct any factual errors or clarify terms or other information in the report. In general, the investment company, its affiliates, or the member using the report would make these alterations.
- The research firm must prepare and distribute reports based on similar research with respect to a substantial number of investment companies.

- 4) The research firm must update and distribute reports based on its research of the investment company with reasonable regularity in the normal course of the research firm's business (e.g., semi-annually).
- 5) Neither the investment company, its affiliates, nor the member using the research report may commission the research used by the research firm in preparing the report. While these entities may not commission the research used in preparing the report, this requirement does not preclude a member from paying fees to independent research firms for research services subscriptions, reproducing and distributing its reports, or preparing customized reports.
  - If a customized report is prepared at the request of the investment company, its affiliate, or a member, the report may include only information that the research firm has already compiled and published in another noncustomized report that meets the requirements of Rule 2210(c)(6)(G). Additionally, the customized report may not omit information necessary to make it fair and balanced. As discussed above, members may alter customized reports to the extent necessary to make the report consistent with applicable regulatory standards. Additionally, a member may rely on the filing exemption for a customized report meeting the requirements of paragraph (G)(vi) even if the member did not request preparation of the customized report.

The amendments also make clear that, although research reports meeting these requirements are excluded from the NASD's filing requirements, they will be deemed filed with the NASD for purposes of Section 24(b) of the Investment Company Act of 1940 and SEC Rule 24b-3 thereunder. Section 24(b) of the Investment Company Act requires sales material for open-end investment companies, unit investment trusts, and faceamount certificate companies to be filed with the SEC within 10 days of distribution to investors. Rule 24b-3 provides that sales material filed with a self-regulatory organization will be deemed filed with the SEC for purposes of Section 24(b). The purpose of this provision is to make clear that members will not be required to file such reports with the SEC simply because they did not file them with the Department.

Except for the filing requirements, independently prepared research reports will continue to be regarded as sales literature for purposes of Rule 2210. These reports will remain subject to Rule 2210's content requirements (including the ranking guidelines, when applicable), spot-check procedures, and recordkeeping requirements, and a registered principal of the member must approve them prior to use.

The amendments apply to independently prepared research reports that are contained in software or that are electronically communicated, as well as printed reports.

# Effective Date Of Amendments

The amendments are effective on April 1, 2000.

### ATTACHMENT A

# Text Of Amendments To Rule 2210

(Note: New text is underlined.)

Paragraph (c)(6) of Rule 2210 is amended by adding new paragraph (G) as follows:

(6) The following types of material are excluded from the foregoing filing requirements and (except for research reports under paragraph (G)) the foregoing spot-check procedures:

\* \* \*

- (G) any research report concerning an investment company registered under the Investment Company Act of 1940, provided that:
  - (i) the report is prepared by an entity that is independent of the investment company, its affiliates, and the member using the report (the "research firm");
  - (ii) the report's contents have not been materially altered by the member using the report (except as necessary to make the report consistent with

<u>applicable regulatory</u> <u>standards);</u>

- (iii) the research firm prepares and distributes reports based on similar research with respect to a substantial number of investment companies;
- (iv) the research firm updates and distributes reports based on its research of the investment company with reasonable regularity in the normal course of the research firm's business;
- (v) neither the investment company, its affiliates nor the member using the research report has commissioned the research used by the research firm in preparing the report; and
- (vi) if a customized report was prepared at the request of the investment company, its affiliate or a member, then the report includes only information that the research firm has already compiled and published in another report, and does not omit information in that report necessary to make the customized report fair and balanced.

Although research reports
meeting the above
requirements are excluded from
the foregoing filing
requirements, they shall be
deemed to be filed with the
Association for purposes of
Section 24(b) of the Investment
Company Act of 1940 and Rule
24b-3 of the Securities and
Exchange Commission
thereunder.

#### **Endnotes**

<sup>1</sup>See Securities and Exchange Release No. 34-42340 (Jan. 13, 2000), 65 Fed. Reg. 3510 (Jan. 21, 2000).

<sup>2</sup>The Department has had a longstanding informal policy of allowing members to distribute a research report that does not meet the currentness standards of Rule 482, provided that: (i) it is the most recent version of the report, and (ii) it is accompanied by information that satisfies the currentness standards and is at least equally prominent to any non-current performance information contained in the report.

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# NASD

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### **INFORMATIONAL**

# Public Disclosure Program

SEC Approves Changes To NASD Public Disclosure Program (Interpretive Material 8310-2)

# **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
- · Registered Representatives
- Senior Management

# **KEY TOPICS**

- Forms U-4 And U-5
- IM-8310-2
- Public Disclosure Program

# **Executive Summary**

On February 7, 2000, the Securities and Exchange Commission (SEC) approved proposed changes to National Association of Securities Dealers, Inc. (NASD®) Interpretive Material 8310-2 (IM-8310-2), the provision that governs the NASD's Public Disclosure Program (Program).

In summary, the approved changes clarify that the NASD: (1) will release information about persons formerly associated with a member only for a two-year period following the termination of their registration with the NASD; (2) will release information about terminated persons and firms that is provided on the Form U-6 (the form regulators use to report regulatory actions), if such matters would be required to be reported on the Form U-4 or Form BD; and (3) will begin using automated disclosure reports, which will include verbatim information submitted by filers on uniform forms.

Under this Program, the NASD discloses to the public certain information regarding the employment history, other business experience, and disclosure information1 of NASD members and their associated persons. The primary purpose of the Program is to help investors make informed choices about the individuals and firms with whom they may wish to do business. The changes approved by the SEC are intended to ensure that the NASD's disclosure practices are clearer and fairer to NASD members, associated persons, and the public.

#### **Questions/Further Information**

For more information about this *Notice*, please contact the following NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) staff: Ann Bushey,

Assistant Director, CRD/Public Disclosure, at (301) 590-6389; or Rick Pullano, Associate Director and Counsel, CRD/Public Disclosure, at (301) 212-3789.

# **Background**

The NASD established the Program in 1988 to provide investors with important information about the professional background, business practices, and conduct of NASD members and their associated persons. Recognizing the Program's value to investors, Congress passed legislation in 1990 requiring the NASD to establish and maintain a toll-free telephone number to receive inquiries regarding its members and their associated persons. In 1998, NASD Regulation began providing administrative information (i.e., employment history, registration statuses) online via the NASD Regulation Web Site (www.nasdr.com). In 1999, NASD Regulation responded to nearly 1,000,000 inquiries through the Program.

The changes to the Program recently approved by the SEC do not include the display of disclosure information via the NASD Regulation Web Site. Disclosure reports will continue to be provided by e-mail and regular mail. The NASD, however, continues to work with the SEC and Congress to seek legislation that it believes is necessary in order to provide for the display of all disclosure information via the NASD Regulation Web Site.

The changes approved by the SEC are intended to ensure that the NASD's disclosure practices are clearer and fairer to NASD members, associated persons, and the public. In particular, the changes clarify which persons are

subject to the Program and what types of information are disclosed through the Program. NASD Regulation also is changing the manner in which it provides disclosure reports about persons who are subject to the Program. Specifically, NASD Regulation will no longer prepare manual summaries of information to be disclosed pursuant to the Program. Instead, NASD Regulation will generate reports under the Program by drawing information directly from the Web CRD<sup>™</sup> database. As discussed in more detail in the next section, this change means that Public Disclosure Reports will include verbatim descriptions of events and comments that have been provided by registered representatives and firms on their respective uniform forms. Member firms should be cognizant of this change and should take appropriate steps to ensure that such forms do not contain confidential client information or offensive or potentially defamatory language. NASD Regulation reiterated in the rule filing, approved by the SEC, its current policy of not releasing Social Security numbers, home addresses, or physical description information through the Program. The proposed changes to the Program are summarized in the next section.

# Key Changes To IM-8310-2 Persons Subject To Disclosure Through The Program

NASD Regulation will release information regarding:

- current and former NASD member firms;
- (2) persons currently associated with an NASD member; and

(3) persons who have been associated with an NASD member within the preceding two years. The two-year period coincides with the period in which an individual can return to the industry without being required to requalify by examination and the initial period in which an individual remains subject to the NASD's jurisdiction.

# Release Of Information Provided Via Form U-6

Before the rule change, NASD Regulation would not disclose information with respect to a firm or individual if it was filed after the termination of an individual or firm because once the individual or firm had been terminated, there was no longer a requirement to report the information. The rule change clarifies that NASD Regulation will release information provided on Form U-6, the form used by regulators to report disciplinary matters, if such matters would be required to be reported on the Form U-4 or Form BD, even if the individual or member firm is no longer registered. NASD Regulation believes that information reported on the Form U-6 is highly reliable because it is filed by federal and state securities regulators or selfregulatory organizations. NASD Regulation further believes that this information serves an important investor protection purpose; therefore, it will disclose such information about individuals and firms under the Program. Disclosure of such information about individuals will be subject to the two-year limitation discussed above, however.

#### Automated Disclosure Reports

NASD Regulation will generate reports from its Web CRD database beginning in March 2000. These reports will be sent to requesters by regular or electronic mail. The automated reports will draw information from specified fields on the Web CRD database that parallel fields on the Forms U-4 and U-6. The automated reports will allow for more consistent disclosure of the information as it is reported to NASD Regulation and also will allow NASD Regulation to provide reports to investors more quickly. In addition, the automated reports allow the inclusion of comments submitted on the uniform forms (e.g., comments submitted by registered representatives on the Form U-4).

Members should understand that. under this new approach, information submitted on uniform forms, including the Form U-4, will be disclosed verbatim in the Public Disclosure Reports. Member firms and/or registered persons responsible for submitting confidential client information or offensive or potentially defamatory language on such forms may be subject to civil liability or NASD regulatory sanctions. NASD Regulation recognizes that it may receive complaints or objections to information or language that has been submitted on a uniform form. Upon receipt of such a complaint or objection, NASD Regulation intends to notify the filer of the objection or complaint, and provide the filer with an opportunity to amend the filing to remove the language in controversy. If the filer determines not to amend, NASD Regulation will apply a balancing test to weigh the value of the language in controversy for investor protection and completeness of disclosure of the reported information against the objector's asserted privacy rights, concerns regarding offensive language, and/or defamation claims. Based on the outcome of this test, NASD Regulation may

determine to redact information in question from a disclosure report. In such cases, NASD Regulation will inform a requester of a report that has had information redacted of the reasons for the redaction.

NASD Regulation believes these changes enhance the Public Disclosure Program by clarifying

NASD Regulation's disclosure policies and by making information available to investors in a more timely manner. The release approving the rule changes (SEC Release No. 34-42402; File No. SR-NASD-99-45) may be viewed on the SEC Web Site at www.sec.gov/rules/sroindx.htm.

### **Endnote**

<sup>1</sup>Disclosure information includes certain criminal, regulatory, customer complaint, and other information that is required to be reported on the Uniform Form U-4 or Form BD.

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# Bound To Be Noticed.



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# ACTION REQUESTED BY APRIL 10, 2000

# Proposed Recordkeeping And Reporting Requirements Of Certain Quotations

NASD Regulation
Requests Comment On
Proposed Recordkeeping
And Reporting
Requirements For
Quotations On Certain
Automated, Inter-Dealer
Quotation Systems;
Comment Period
Expires April 10, 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 and Market Making

# **KEY TOPICS**

- OTC Securities
- Recording And Reporting Quotation Data
- Market Making

# **Executive Summary**

NASD Regulation, Inc. (NASD Regulation<sup>sm</sup>) requests comment from members, investors, and other interested parties on a rule proposal that would require members to record and maintain their proprietary quotations displayed in certain automated. inter-dealer quotation systems, such as the Electronic Pink Sheets (EPS), and to report such data to NASD Regulation upon request. Access to this quotation data is an integral part of NASD Regulation's efforts to surveil for member compliance with applicable rules and regulations. In addition, with respect to allegations of fraud or certain types of unusual trading activity, quotation data is necessary to reconstruct the market in order to obtain an accurate and complete representation of the cause of the potentially fraudulent or unusual activity.

The proposed rule would permit a member to use a reporting agent to provide the quotation data to NASD Regulation, with the member being ultimately responsible for provision of the data. NASD Regulation believes that most, if not all, members will use the services of a reporting agent, which will likely be the operator of the system, such as the National Quotation Bureau (NQB) with respect to the EPS. However, if a member knows or has reason to believe that it or its reporting agent is not complying with the requirements of the proposed rule, the member would be required immediately to withdraw its proprietary quotations until such time that the member is satisfied that the quotation data is being properly maintained and reported.

Included with this *Notice to Members* are Attachment A (the text of the proposed rule) and

Attachment B (specific questions that NASDR requests comments on from members and interested parties).

# **Request For Comment**

NASD Regulation is seeking comment on a rule proposal relating to recordkeeping and reporting requirements of quotations on certain automated, inter-dealer quotation systems. NASD Regulation encourages all members, investors and interested parties to comment on the proposed rule. For your convenience, we have provided a checklist (see Attachment B) so that in a minimum amount of time you can provide NASD Regulation with your general comments. Comments must be received by April 10, 2000.

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

- 1) mailing in the checklist (Attachment B)
- 2) mailing in written comments
- 3) e-mailing written comments to: pubcom@nasd.com
- submitting comments online at the NASDR 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 NASD Regulation 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 Comments* may be directed to the Legal Section, Market Regulation Department, at (301) 590-6410; or Stephanie M. Dumont, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8176.

# **Background**

In September 1999, the EPS service, which is operated by the NQB, began displaying real-time, online stock quotations for approximately 5,000 securities. Some members may now enter quotations in the EPS, which are displayed over the Internet at the EPS Web Site on a real-time basis. Prior to the availability of EPS, the "pink sheets" consisted of weekly lists of quotes printed in hard copy by NQB. NQB updated these nonbinding quotations by means of a daily facsimile to subscribers. Market participants could access intra-day quotations only by telephone or similar means of communication to Market Makers in the security.1

Because the EPS now displays quotations on a real-time basis, NASD Regulation staff requires access to this quotation data to surveil adequately for member compliance with applicable rules and regulations and, when necessary, to reconstruct market activity. For example, member activities in the EPS are subject to NASD Rule 3320, "Offers at Stated Prices," which requires that a member's quotations be "firm." i.e.. the member is expected to buy or sell at least a normal unit of trading in the quoted stock at its then prevailing quotations, unless clearly designated otherwise. In addition, NASD Rule 6750 provides that every member firm that functions as a Market Maker in over-the-counter (OTC) equity securities on an interdealer quotation system that permits quotation updates on a real-time basis must honor those quotations for the minimum size applicable to the Market Maker's firm bid or ask. Although complete trade report data would be available through existing trade reporting requirements and systems. NASD Regulation staff does not otherwise have access to historical quotation activity at the time of trades.2 Therefore, NASD Regulation is proposing that members that participate in automated quotation systems such as the EPS be required to record and maintain their proprietary quotation data.

## **Proposed Rule**

Under the proposal, members that publish quotations on the EPS (or any similar automated quotation system) would be required to record and maintain proprietary quotation data on a daily basis and to report such quotation data to NASD Regulation upon its request. The proposed rule would require that members record their quotation activity by the end of each business day and preserve such records in accordance with Rule 17a-4(a) under the Securities Exchange Act of 1934 (Exchange Act).

Specifically, under Rule 17a-4, members would be required to preserve these records for a period of not less than six years, the first two years in an accessible place.

The proposed rule would not apply to quotations provided on an interdealer quotation system that is qualified pursuant to Section 17B of the Exchange Act, because by definition, such a system would be sponsored and regulated by a registered securities association or national securities exchange, and quotation information would be available from the system directly. This includes, for example, the OTC Bulletin Board®, which is sponsored and regulated by the NASD. In addition, the proposed rule would not apply to an interdealer quotation system that is operated by a member of the NASD because the NASD would obtain quotation data (or in many cases, the display of limit orders) directly from the member that operates the system.

The proposed rule would permit a member to use a reporting agent to provide the quotation data to NASD Regulation. NASD Regulation believes that most, if not all, firms would use the services of a reporting agent, which would likely be the operator of the system, such as NQB. In this regard, we anticipate that the operator of the system will provide NASD Regulation all relevant quotation data directly on a daily or ongoing basis. The member, however, would remain ultimately responsible for complying with all requirements of the proposed rule, notwithstanding the use of a reporting agent. If a member knows or has reason to believe that it or its reporting agent is not complying with the requirements of the rule, the member would be required immediately to withdraw its

proprietary quotations until such time that the member is satisfied that the quotation data is being properly maintained and reported. In this regard, the NASD would expect a member to periodically review or monitor the reporting agent's activities to ensure continued compliance.

The proposed rule would require members to record and report the time of the quotation displayed, the bid and bid quotation size, the offer and offer quotation size, and the prevailing inside bid and offer at the time of the quotation. The member would need to record this information for all updates in quotations or quotation size.

### **Endnotes**

<sup>1</sup>NASD Rule 2320(g) requires that a member executing a customer order in these securities obtain quotations from at least three dealers (or all dealers if three or less) to determine the best inter-dealer market prior to executing a trade.

<sup>2</sup>While quotation data generally is provided directly by the exchange or system on which it is displayed, in this instance, the operator of the system, NQB, is not a registered broker/dealer, a member of the NASD, or a national securities exchange.

# **ATTACHMENT A**

# Text Of Proposed Rule Rule 6630. Recording of Quotation Information

# (a) Quotation Recording Requirements

- (1) Subject to the terms and conditions contained herein, each member that displays in an automated quotation medium proprietary quotations or indications of interest in OTC Equity Securities shall record each item of information described in paragraph (b) of this Rule. This quote activity record must reflect all changes in an OTC Market Maker's proprietary quotation or quotation size displayed, and the time each such change was made.
- (2) Members shall, by the end of each business day, record each item of information required to be recorded under this Rule in such form as is prescribed by the Association from time to time.
- (3) Maintaining and Preserving Records
- (A) Each member shall maintain and preserve records of the information required to be recorded under this Rule for the period of time and accessibility specified in SEC Rule 17a-4(a).
- (B) The records required to be maintained and preserved under this Rule may be immediately produced or reproduced on "micrographic media" as defined in SEC Rule 17a-4(f)(1)(i) or by means of

"electronic storage media" as defined in SEC Rule 17a-4(f)(1)(ii) that meet the conditions set forth in SEC Rule 17a-4(f) and be maintained and preserved for the required time in that form.

# (b) Information to be Recorded

The quote activity record required pursuant to paragraph (a) of this Rule shall contain, at a minimum, the following information for every proprietary quotation displayed throughout the trading day:

- (1) Submitting Firm;
- (2) Inter-dealer quotation medium;
- (3) Trade Date;
- (4) Time Quotation Displayed (expressed in hours, minutes and seconds);
- (5) Security Name and Symbol;
- (6) Bid and Bid Quotation Size;
- (7) Offer and Offer Quotation Size;
- (8) Prevailing Inside Bid; and
- (9) Prevailing Inside Offer

If no updates were entered to an OTC Market Maker's proprietary quotation or quotation size for any given trading day, the member must record the information in subparagraphs (b)(1) through (7).

# (c) Quotations Not Required To Be Recorded

The recording requirements contained in paragraphs (a) and (b)

of this Rule shall not apply to quotations of OTC Equity Securities that are displayed on an interdealer quotation system that is:

- (1) qualified pursuant to Section17B of the Act: or
- (2) operated by a member of the Association.

# (d) Reporting Requirements

(1) General Requirement

Members shall report information required to be recorded under this Rule to the Association upon its request.

(2) Method of Transmitting Data

Members shall transmit this information in the form prescribed by the Association.

## (e) Reporting Agent Agreements

- (1) "Reporting Agent" shall mean a third party that enters into any agreement with a member pursuant to which such third party agrees to fulfill such member's obligations under this Rule.
- (2) Any member may enter into an agreement with a Reporting Agent pursuant to which the Reporting Agent agrees to fulfill the obligations of such member under this Rule. Any such agreement shall be evidenced in writing, which shall specify the respective functions and responsibilities of each party to the agreement that are required to effect full compliance with the requirements of this Rule.

- (3) All written documents evidencing an agreement described in paragraph (e)(2) shall be maintained by each party to the agreement.
- (4) Each member remains responsible for compliance with the requirements of this Rule, notwithstanding the existence of an agreement described in this

paragraph. If a member knows or has reason to believe that its Reporting Agent is not complying with the requirements of this Rule, the member must immediately withdraw its proprietary quotations until such time that the member is satisfied that the quotation data is being properly maintained and reported.

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# **ATTACHMENT B**

# 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 **April 10, 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 Recordkeeping And Reporting Requirements Of Certain Quotations	Contact Information
1. Do you support the proposed rule described in the <i>Notice</i> ?	Name:
<ul> <li>Yes □ No □ See my attached written comments</li> <li>2. Is the specific information that would be required to be recorded and reported under the proposed rule appropriate?</li> <li>□ Yes □ No □ See my attached written comments</li> <li>3. Are the use of "Reporting Agent" agreements appropriate for compliance with the proposed requirements?</li> </ul>	Phone:
☐ Yes ☐ No ☐ See my attached written comments	

#### INFORMATIONAL

# NASD Examinations

NASD Regulation Issues Statement Of Policy Regarding Recordation By Members Of NASD Examinations

#### **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**

 Recording NASD Field Examinations

# **Executive Summary**

In response to a request by a member firm, NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) recently clarified its long-standing practice of not permitting members to record by video or audio tape conversations between NASD Regulation field examiners and National Association of Securities Dealers, Inc. (NASD®) member firm officers or other staff during the opening and exit interviews that are routinely requested by NASD Regulation staff during field examinations, as well as any other aspects of examinations. By this Notice, the NASD adopts this longstanding practice as its policy regarding audio or video taping of examinations by members.

#### **Questions/Further Information**

Questions or comments concerning this *Notice* may be directed to Alden S. Adkins, Senior Vice President and General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8332; or Dan Sibears, Senior Vice President, Member Regulation, at (202) 728-8221; or Robert J. Smith, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8451.

# **Discussion**

Recently, an NASD member firm requested clarification of NASD Regulation policy regarding whether members are permitted to video or audio tape conversations between NASD Regulation field examiners and member firm officers or their staff during the opening and exit interviews that are routinely requested by NASD Regulation staff during a field examination.

Conducting examinations of NASD member firms is fundamental to the regulatory responsibilities of NASD Regulation. The member's request raised concerns about whether certain actions by members, if permitted, could compromise the confidentiality and integrity of the procedures and methodology employed by field examiners to conduct field examinations. In addition, a unilateral or undisclosed recordation by video or audio tape of NASD examinations could, among other things, result in evidentiary complications involving the authenticity and reliability of such recordings.

NASD Regulation carries out its examination and other regulatory responsibilities in a manner designed to ensure the integrity, professionalism, and confidentiality of this business process. NASD Rule 82101 and supporting case law make it clear that NASD Regulation has the authority to define the conditions under which examinations and investigations occur. In this regard, the longstanding practice of NASD Regulation is to conduct examinations without video or audio taping by members. By this Notice, the NASD adopts this long-standing practice as its policy regarding audio or video taping of examinations by members. It would be contrary to NASD rules, and potentially contrary to state law, for a member to record by video or audio tape any portion of the examination without the express written permission of NASD Regulation. Moreover, based on the rationale above, NASD Regulation would rarely, if ever, permit a member to video or audio tape any aspect of an examination.

### **Endnote**

<sup>1</sup>The authority under which NASD Regulation conducts investigations and examinations of member firms is embodied in Rule 8210. Rule 8210, in part, permits the NASD, for the purpose of an investigation, complaint, examination, or proceeding authorized by the NASD, to inspect books, records, and accounts of members, and to

require members to provide other information and testify under oath. Rule 8210 further provides that members must comply with the requirements to provide such testimony, information, books, and records. Implicit in Rule 8210 is the idea that the NASD establishes and controls the conditions under which the information is provided and the examinations are conducted.

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# **INFORMATIONAL**

# **FIPS Changes**

Fixed Income Pricing System Additions, Changes, And Deletions As Of January 24, 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 January 24, 2000, the following bonds were added to the Fixed Income Pricing System<sup>SM</sup> (FIPS<sup>®</sup>).

Symbol	Name	Coupon	Maturity
A CD\ / C A	Advanta Cara	7.400	40/00/00
ACPV.GA AEII.GA	Advanta Corp. AEI Resources Inc.	7.100 10.500	10/23/00 12/15/05
ALIL.GB	Alliance Laundry System LLC/Cor	•	02/16/00
APCS.GA	Alamosa PCS Hldgs Inc. American Tissue Inc.	12.875	02/15/10
ATSS.GA	Allied Waste North Amer Inc.	12.500	07/15/06
AWAS.GE		10.000	08/01/09
BBC.GA	Bergen Brunswig Corp.	7.250	06/01/05
BBC.GB	Bergen Brunswig Corp.	7.375	01/15/03
BRRY.GB	Berry Plastics Corp.	12.250	04/15/04
BRYP.GA	Compass Aerospace Corp.	10.125	04/15/05
BRYP.GB	Compass Aerospace Corp.	10.125	04/15/05
CBTC.GA	Cincinnati Bell Tell Co.	6.300	12/01/28
CNBE.GB	Cincinnati Bell Inc.	4.375	08/01/02
CNOC.GA	Concentra Operating Corp.	13.000	08/15/09
CTDC.GA	Consolidated Container Co. LLC	10.125	07/15/09
GCGP.GA	Globalnet Communications	40.000	07/45/07
	Group Ltd	13.000	07/15/07
HCHM.GA	Huntsman ICI Chemicals LLC	10.125	07/01/09
HLPF.GA	Holley Performance Prods Inc.	12.250	09/15/07
LMRM.GD	Lamar Media Corp.	11.000	05/15/03
MTCM.GA	Metricom Inc/Metricom Fin Inc.	13.000	02/15/10
PSCH.GA	Petro Stop'g Hldg LP	15.000	08/01/08
RCNC.GE	RCN Corp.	11.125	10/15/07
SFAC.GA	SFAC New Holdings Inc.	13.000	06/15/08
SFNH.GA	SFAC New Holdings Inc.	12.125	10/01/02
SRCL.GA	Stericycle Inc.	12.375	11/15/09
TEK.GA	Tektronix Inc.	7.500	08/01/03
TEK.GB	Tektronix Inc.	7.625	08/15/02
TMAR.GD	Trico Marine Services Inc.	8.500	08/01/05
URI.GE	United Rentals Inc.	9.000	04/01/09
USU.GA	USEC Inc.	6.625	01/20/06
USU.GB	USEC Inc.	6.750	01/20/09
VHT.GC	Venture Holdings Trust	11.000	06/01/07
VHT.GD	Venture Holdings Trust	12.000	06/01/09
WHSE.GA	Williamhouse Regency(Del) Inc.	11.500	06/15/05

As of January 24, 2000, the following bonds were deleted from FIPS.

Symbol	Name	Coupon	Maturity
AGLS.GA	Anchor Glass Container Corp.	9.875	12/15/08
ALIL.GA	Alliance Laundry System LLC/C	orp. 9.625	05/01/08
ALVY.GA	Alvey Systems Inc.	11.375	01/31/03
ATEN.GA	AT Entertainment Inc.	14.500	07/15/08
BRUO.GA	Bruno's Inc.	10.500	01/01/05
CBBS.CD	CBS Inc.	8.875	06/01/22
CBBS.GA	CBS Inc.	7.625	01/01/02
CBBS.GB	CBS Inc.	7.750	06/01/99
CBBS.GC	CBS Inc.	7.125	11/01/23
CBS.GA	CBS Corp.	7.150	05/20/05
CLCU.GA	Classic Communications Inc.	13.250	08/01/09
			March 2000

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Symbol	Name	Coupon	Maturity
DBSC.GA	Dobson Communications Corp.	11.750	04/15/07
DGX.GB	Quest Diagnostics Inc.	9.875	07/01/09
DRFL.GA	Drummond Financial Corp.	00.000	07/31/08
FED.GA	First Federal Financial Corp.	11.750	01/01/04
FENY.GA	Forcenergy Inc.	9.500	02/15/07
FENY.GB	Forcenergy Inc.	8.500	02/15/07
GBFE.GA	Golden Books Family Entmt Inc.	7.650	09/15/02
GND.GA	Grand Casinos Inc.	10.125	12/01/03
GNMH.GA	Genmar Holdings Inc.	13.500	07/15/01
HOVV.GB	Hovanian Enterprises Inc.	11.250	04/15/02
HWD.GA	Hollywood Casino Corp.	12.750	11/01/03
ISCM.GA	Insight Commun/Fin Corp.	8.250	03/01/00
LENF.GA	Lenfest Communication Inc.	8.375	11/01/05
LENF.GB	Lenfest Communication Inc.	10.500	06/15/06
LTCH.GB	Litchfield Fin'l Corp.	8.875	11/01/03
LTCH.GC	Litchfield Fin'l Corp.	10.000	11/01/04
MTEL.GA	Mobile Telecomm Tech Corp.	13.500	12/15/02
NXTL.GG	Nextel Communications Inc.	11.500	09/01/03
PNM.GE	Public Service Company N Mex	9.125	03/15/00
RGRO.GA	Ralphs Grocery Company	10.250	07/15/02
STSA.GA	Sterling Financial Corp.	8.750	01/31/00
UFIC.GA	UNIFI Communications Inc.	14.000	01/28/00
WFGM.GA	Waterford Gaming LLC	12.750	02/07/00
WFSG.GA	Wilshire Financial Svcs Grp Inc.	13.000	08/05/04
WFSG.GB	Wilshire Financial Svcs Grp Inc.	13.000	01/01/04
WIRL.GA	Wireless One Inc.	13.000	10/15/03
WIRL.GB	Wireless One Inc.	13.500	08/01/06
WMHO.GA	Williamhouse Regency Del Inc.	11.500	06/15/05
WRC.GA	World Color Press Inc.	8.375	11/15/08

As of January 24, 2000, changes were made to the symbols of the following FIPS bonds.

New Symbol	Old Symbol	Name	Coupon	Maturity	
CNPA.GA DMCB.GA	CNP.GA DMCV.GA	Crown Central Petroleum Dairy Mark Coven Strs Inc.	10.875 10.250	02/01/05 03/15/04	_
IHSV.GA IHSV.GB IHSV.GC	IHS.GA IHS.GB IHS.GC	Integrated Health Svcs. Inc. Integrated Health Svcs. Inc. Integrated Health Svcs. Inc.	10.750 9.625 10.250	07/15/04 05/31/02 04/30/06	
IHSV.GD IHSV.GE ASD.GH	IHS.GD IHS.GE AMSN.GA	Integrated Health Svcs. Inc. Integrated Health Svcs. Inc. American Standard Inc.	9.500 9.250 8.250	09/15/07 01/15/08 06/01/09	
TLTX.GA VX.GA	TTX.GA VILG.GA	Tultex Corp. Vialog Corp.	10.625 12.750	03/15/05 11/15/01	
WAXX.GA TLTX.GB SIDE.GA	WAX.GC TTX.GB ASSR.GA	Waxman Industries Inc. Tultex Corp. Associated Materials Inc.	12.750 9.625 9.250	06/01/04 04/15/07 03/01/08	

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 Regulation<sup>™</sup>, at (301) 590-6447. Any questions regarding the FIPS master file should be directed to Cheryl Glowacki, Nasdaq<sup>®</sup> Market Operations, at (203) 385-6310.

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#### **INFORMATIONAL**

# Trade Date— Settlement Date

Good Friday: 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

# Good Friday: Trade Date—Settlement Date Schedule

The Nasdaq Stock Market® and the securities exchanges will be closed on Good Friday, April 21, 2000. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

Trade Date	Settlement Date	Reg. T Date*
April 17	April 20	April 25
18	24	26
19	25	27
20	26	28
21	Markets Closed	_
24	27	May 1

<sup>\*</sup>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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www.nasdr.com





# Disciplinary Actions

Disciplinary Actions Reported For March NASD Regulation, Inc. (NASD Regulation<sup>™</sup>) 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). Unless otherwise indicated, suspensions will begin with the opening of business on Monday, March 20, 2000. The information relating to matters contained in this Notice is current as of the end of February 23, 2000.

# Firm Expelled, Individual Sanctioned

J. Banks Company (CRD #42570, Boca Raton, Florida) and Jeffrey B. Banks a.k.a. Jeffrey B. Nuss (CRD #2133170, Registered Principal, Highland Beach, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were fined \$125,000, jointly and severally, and the firm was expelled from the NASD. Banks was barred from association with any NASD member in any capacity with the right to reapply after two years and permanently barred from association with any NASD member in a principal or supervisory capacity. Payment of the fine shall be a prerequisite for consideration of any application for reentry by either the firm or Banks. Without admitting or denying the allegations, the firm and Banks consented to the described sanctions and to the entry of findings that the firm, by and through Banks, failed to have a qualified financial and operations principal (FINOP) properly associated with the firm and improperly misrepresented the identity of its alleged FINOP in

communications with the NASD. The findings also stated that the firm, by and through Banks, conducted its securities business while failing to maintain the required minimum net capital, failing to keep an accurate general ledger, and making a series of misleading oral and written statements to the NASD regarding alleged violations of NASD rules and federal securities laws. In addition, the firm permitted an unregistered person to sell the firm's common stock through a private placement offering. (NASD Case #C07990066)

# Firm Fined, Individuals Sanctioned

D.L. Cromwell Investments, Inc. (CRD #37730, Boca Raton, Florida), Lloyd Sylvester Martin Beirne (CRD #1982417, Registered Principal, Boca Raton, Florida) and Matthew Greenwald (CRD #229262, Registered Principal, Boca Raton, Florida). Beirne was fined \$10,000, jointly and severally, with the firm and suspended from association with any NASD member in any supervisory capacity for 15 business days. Greenwald was fined \$10,000. jointly and severally, with the firm and suspended from association with any NASD member in any supervisory capacity for five business days. The fines for Beirne and Greenwald will not be in addition to the fine assessed against the firm. The firm was censured, fined \$37,585.94 (which includes disgorgement of \$12,585.94 in commissions), and ordered to retain an independent consulting firm for one year to review the firm's compliance and written supervisory procedures to determine their adequacy and consistency with applicable laws and regulations. The independent

consultant will make written recommendations which the firm will promptly adopt and implement or suggest alternative procedures which the consultant may approve. At least six months, but no longer than a year from the date of the initial report, the consultant will conduct a follow-up review and prepare a written report addressing the firm's compliance and written supervisory procedures. The sanctions were based on findings that Beirne and Greenwald failed to adequately supervise a registered representative so as to detect the unsuitable recommendations the representative made to public customers. The findings also stated that the firm failed to establish and maintain a supervisory system of its registered representatives that was reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules. (NASD Case #C07990037)

# Firm And Individual Fined

Aragon Financial Services, Inc. (CRD #16023, Brea, California) and Douglas Lyman Lish (CRD #310660, Registered Principal, Anaheim, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm and Lish were censured and fined \$25,000, jointly and severally. Without admitting or denying the allegations, the firm and Lish consented to the described sanctions and to the entry of findings that they failed to report customer complaints received by the firm and securities-related arbitrations to the NASD in which the firm, and/or persons associated with the firm, were named as respondents and which were disposed of by award or settlement in dollar amounts exceeding the thresholds set by the NASD. (NASD Case #C02990072)

### **Firms Fined**

LLC n.k.a. Dougherty & Company, LLC (CRD #7477, Minneapolis, Minnesota) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$23,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it commenced best efforts offerings of shares of common stock using private placement memoranda which failed to include statements that the firm, and/or persons associated with the firm, would be purchasing a portion of the offerings. The findings also stated that the firm failed to file, or to file in a timely manner, appropriate documents with the MSRB in connection with municipal offerings. (NASD Case

**Dougherty Summit Securities** 

Frederick & Company, Inc. (CRD #333, Milwaukee, Wisconsin) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was consured and

#C0400006)

which the firm was censured and fined \$14,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to correctly identify aggregated transaction reports in Nasdag National Market® (NNM) and Nasdaq SmallCap<sup>™</sup> Market securities, failed to prepare accurate last sale reports, and failed to properly report Consolidated Quotation System transactions through the Automated Confirmation Transaction Service<sup>s₁</sup> (ACT<sup>SM</sup>). The findings also stated that the firm improperly disclosed on confirmations that the firm had acted as a Market Maker in principal transactions with customers when, in fact, the firm was not a registered Market Maker

and failed to disclose to customers a markup/markdown or similar remuneration. In addition, the firm sold shares of initial public offerings (IPO) to investment partnerships and failed to have current information on file in accordance with the Free-Riding and Withholding Interpretation of the NASD Board of Governors. In connection with private placements, the firm received funds from public customers and deposited the funds into a firm-controlled bank account and failed to establish a reserve bank account and compute a reserve formula requirement. Moreover, the firm failed to establish, maintain, and enforce written supervisory procedures governing its trading and marketmaking activities, its adherence to free-riding and withholding rules, and its handling of customer funds in private placement offerings. (NASD Case #C8A000003)

Keane Securities Co., Inc. (CRD #8452, New York, New York)

submitted a Letter of Acceptance, Waiver, and Consent (AWC) pursuant to which the firm was censured, fined \$10,000, and required to revise the firm's written supervisory procedures relating to the Securities and Exchange Commission (SEC) and NASD firm quote rules within 60 days of acceptance of this AWC by the National Adjudicatory Council (NAC). Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it was presented with orders at its published bid or offer in an amount up to its published quotation size, failed to execute the orders, and therefore failed to honor its published quotation. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve

compliance with applicable securities laws, regulations, and NASD rules concerning SEC and NASD firm quote rules. (NASD Case #CMS990173)

Maxcor Financial, Inc. (CRD #19801, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$41,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, through its Euro Brokers division, it created inaccurate books and records through the use of an inactive customer account as a suspense account and failed to provide timely notice to the NASD of the inaccurate books and records. The findings also stated that Euro Brokers failed to establish written supervisory procedures that designated the principals in the operations department and set forth their responsibilities. (NASD Case #C1000007)

Miller & Schroeder Financial, Inc. (CRD #37526, Minneapolis, Minnesota) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$14,060. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it permitted an individual to conduct a securities business and to act in a registered capacity when the individual's registration had lapsed for noncompliance with the Regulatory Element of the Continuing Education requirement. (NASD Case #C04000001)

Schonfeld Securities, L.L.C. (CRD #23304, Jericho, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to

which the firm was censured, fined \$10,000, and required to submit revised written supervisory procedures concerning transaction reporting to the NASD within 60 days of acceptance of this AWC by the NAC. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it incorrectly designated as ".SLD" to ACT transactions in NNM and listed securities. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning transaction reporting. (NASD Case #CMS000005)

Standard New York Securities, Inc. (CRD #35560, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$10,000, and required to submit revised written supervisory procedures concerning transaction reporting to the NASD within 60 days of acceptance of this AWC by the NAC. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to transmit transactions through ACT in NNM, Nasdaq SmallCap, and OTC equity securities in a timely manner, failed to designate such transactions as late to ACT, and failed to include the correct time of execution. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning transaction reporting. (NASD Case #CMS000004)

The Third Market Corporation (CRD #30181, Chicago, Illinois) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$19,500, and required to pay \$223.76 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 bought shares of securities for its marketmaking account while holding unexecuted customer limit orders and failed to display customer limit orders immediately when the orders were at a price that would have improved the firm's bid or offer in each security related to those orders. The findings also stated that the firm failed to report transactions to ACT correctly and to maintain the time of entry of an order on a brokerage order memorandum. In addition, the firm failed to maintain a record showing the time the firm routed limit orders to the New York Stock Exchange for display. The firm also failed to execute a customer limit order when the inside market was better than the customer's limit order price and sold shares of securities to public customers and failed to use reasonable diligence to ascertain the best inter-dealer markets so that the resultant prices were as favorable to the customers as possible under prevailing market conditions. Moreover, the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws and regulations regarding trade reporting, ACT reporting, limit order protection, registration, books and records, locked and crossed markets, the Order Handling Rules, anticompetitive practices, and best execution. (NASD Case #CMS000006)

Whale Securities Co., L.P. (CRD #13516, New York, New York)

submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$27,000, and required to revise the firm's written supervisory procedures relating to locked and crossed markets, the Small Order Execution System<sup>SM</sup> (SOES<sup>SM</sup>), registration, limit orders, best execution, and books and records. The revised procedures must be submitted to the NASD within 60 days of acceptance of this AWC by the NAC. Without admitting or denving 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 Nasdag® securities in its public quotation when each such order was at a price that would have improved the firm's bid or offer in each 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 minimus change in relation to the size of the firm's bid or offer in each security. The findings also stated that the firm failed to provide written notification to its customers that it was a Market Maker or. where it acted as principal, that the price on the customer confirmation was an average price and instead disclosed an incorrect reported trade price. The firm also reported transactions incorrectly to ACT and failed to correctly identify aggregated transaction reports in NNM and Nasdaq SmallCap securities. Moreover, the firm failed to maintain or enter information accurately on memoranda of brokerage orders or to maintain a customer transaction confirmation. In addition, the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable

securities laws, regulations, and NASD rules concerning locked and crossed markets, SOES, registration, limit orders, best execution, and books and records. (NASD Case #CMS990175)

William Scott & Co., LLC (CRD #14979, Union, New Jersey)

submitted a Letter of Acceptance. Waiver, and Consent pursuant to which the firm was censured and fined \$32,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report customer complaints received by the firm to the NASD and permitted a registered representative to conduct a securities business while his securities industry registrations were inactive as a result of his failing to satisfy the Regulatory Element of the Continuing Education requirement. The findings also stated that the firm failed to have all of its covered registered representatives participate in the Firm Element of the Continuing Education program and failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable rules of the NASD concerning the Regulatory and Firm Elements of Continuing Education. (NASD Case #C10000004)

# **Individuals Barred Or** Suspended

John Leslie Anderson (CRD #2192152, Registered Principal, Madera, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$9,076 (which includes disgorgement of \$1,576 in commissions), suspended from association with any NASD member in any capacity for 90 days, and ordered to requalify as a registered

options principal before associating with any NASD member in that capacity. Anderson was also ordered to pay restitution and interest totaling \$4,261.01 to a public customer. Without admitting or denying the allegations, Anderson consented to the described sanctions and to the entry of findings that he recommended and engaged in the purchase and sale of numerous option spread contracts in the account of a public customer and did not have reasonable grounds for believing that the recommendations and resultant transactions were suitable for the customer on the basis of the customer's financial situation, needs, and ability to evaluate the risks of such trading given the customer's knowledge and experience in financial matters and/or securities investments. (NASD Case #C02990056)

Joshua David Arnold (CRD #828189, Registered Principal, Edina, Minnesota) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$7,500 and suspended from association with any NASD member in a principal capacity for 30 days. Arnold also agreed to refrain for one year from accepting or maintaining employment in a sales capacity with any NASD member unless that firm has formulated special supervisory procedures to oversee and monitor his sales practices with customers. The firm must submit the special supervisory procedures to the NASD prior to, or no later than, 30 days after Arnold's association with the firm. Without admitting or denying the allegations, Arnold consented to the described sanctions and to the entry of findings that he recommended numerous purchases and sales of securities to public customers without having a reasonable basis for believing that

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such recommendations were suitable in view of their investment objectives, financial resources, frequency of transactions, and type of securities. (NASD Case #C0400003)

Aroon K. Benny (CRD #2927597, Associated Person, Woodside, New York) was barred from association with any NASD member in any capacity. The sanction is based on findings that Benny failed to respond to NASD requests for information regarding possible misappropriation of funds. (NASD Case #C10990133)

**Howard Charles Berkowitz (CRD** #1293296, Registered Principal, Highland Mills, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$20,000, suspended from association with any NASD member in any capacity for 90 days, required to disgorge \$3,731 in commissions to the estate of a public customer, and required to requalify as a general securities representative within 90 days from the date this AWC is issued by the NASD. If Berkowitz fails to requalify within the mandated period, he will be suspended from association with any member firm in that capacity until such exam is successfully completed. Without admitting or denying the allegations, Berkowitz consented to the described sanctions and to the entry of findings that he exercised discretion in the account of a public customer without written authority and without the knowledge and approval of his member firm. The findings also stated that Berkowitz failed to make reasonable efforts to obtain current information concerning the customer's investment objectives and financial, tax, and health status before making recommendations pursuant to his verbal discretionary authority. (NASD Case #C10000020)

Gregory Dean Boynton (CRD #1983783, Registered Representative, Walnut Creek, California) submitted an Offer of Settlement pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Boynton consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information and documents. (NASD Case #C01990019)

Brent Paul Calderone (CRD #2661084, Registered Representative, Staten Island, New York) was barred from association with any NASD member in any capacity. The sanction is based on findings that Calderone failed to respond to NASD requests for information regarding possible unauthorized transactions in a customer account. (NASD Case #C10990154)

**Daniel Alan Camm (CRD** #2568664, Registered Representative, Tampa, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. The fine is due and payable prior to reassociation with a member firm following the suspension or prior to any application requesting relief from a statutory disqualification. Without admitting or denying the allegations, Camm consented to the described sanctions and to the entry of findings that he sold a \$13,500 promissory note to a public customer without obtaining prior written approval from his firm. (NASD Case #C07000007)

Steven Berti Carosso (CRD #1476354, Registered Principal, Hackensack, New Jersey)

submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$7,500 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Carosso consented to the described sanctions and to the entry of findings that he submitted a request for payment form to his member firm that misrepresented the nature of the expense with a fictitious invoice for reimbursement of \$6,600 in alleged expenses. (NASD Case #C10000025)

Paul E. Colontino (CRD #2407870, Registered Representative, Brooklyn, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Colontino used an impostor to take the Series 7 exam on his behalf. The findings also stated that Colontino failed to respond to NASD requests for information and for on-the-record interviews. (NASD Case #C10990059)

Lance Reed Dalton (CRD #1944499, Registered Representative, Isle of Palms, South Carolina) was barred from association with any NASD member in any capacity. The sanction was based on findings that Dalton engaged in outside business activities and private transactions and failed to provide prior notification to, or to request approval from, his member firms. The findings also stated that Dalton failed to respond to NASD requests for an on-the-record interview. (NASD Case #C07990044)

John Thomas Davis (CRD #62264, Registered Representative, East Pittsburgh, Pennsylvania) was barred from association with any NASD member in any capacity. The sanction was

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based on findings that Davis received checks totaling \$40,188 from a public customer for deposit in the customer's account at his member firm, failed to deposit the checks, made the checks payable to himself, and converted the funds to his own use. The findings also stated that Davis failed to respond to NASD requests for information. (NASD Case #C9A990052)

Michael Anthony Dietze (CRD #2692450, Registered Representative, Iselin, New **Jersey)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Dietze consented to the described sanction and to the entry of findings that he failed to amend his Form U-4 to disclose that he was the subject of an investigation by the New York County District Attorney's Office. (NASD Case #C9B000001)

Charles John Distefano (CRD #2198727, Registered Principal, Medford, New York) was fined \$25,000, suspended from association with any NASD member in any capacity for two years, and ordered to requalify by exam for unauthorized trading and failure to execute a customer order. Distefano was also barred from membership with any NASD member in any capacity for nondisclosures, misrepresentation, and failure to respond. In addition, Distefano was required to pay \$146,983.13, plus pre-judgment interest, in restitution to public customers. The fine is due and payable prior to reentry in the securities industry. The sanctions were based on findings that Distefano made materially false and misleading statements and failed to disclose material facts in

connection with the sale of securities to public customers including the risks involved with investments and the financial remuneration he would receive from sales of securities. The findings also stated that Distefano failed to execute a customer's order to sell securities and effected unauthorized transactions in the accounts of public customers. In addition, Distefano failed to respond to NASD requests to give testimony and to produce documents. (NASD Case #C3A990008)

Herman Epstein (CRD #201696, Registered Principal, Franklin Lakes, New Jersey) was barred from association with any NASD member in any capacity. The sanction was based on findings that Epstein failed to respond to an NASD request for information and to appear for testimony in connection with an investigation. (NASD Case #CAF980013)

Nathaniel Gaddy (CRD #1069005, Registered Representative, **Mount Laurel, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gaddy consented to the described sanction and to the entry of findings that he caused unauthorized withdrawals totaling \$75,600 from the variable annuity contract of a public customer and converted the proceeds to his own use and benefit. The findings also stated that Gaddy failed to respond to NASD requests for information and documents. (NASD Case #C9A00003)

Harry Gliksman (CRD #223138, Registered Principal, Los Angeles, California) was censured, suspended from association with any NASD member in any capacity for six months, and required to requalify as a general securities representative. The SEC sustained the sanctions following appeal of a NAC decision. The sanctions were based on findings that Gliksman made unsuitable recommendations to a public customer.

Gliksman has appealed this action to the U.S. Court of Appeals for the Ninth Circuit and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C02960039)

James Joseph Harrington, Jr. (CRD #1592332, Registered Representative, Coral Springs, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was suspended from association with any NASD member in any capacity for 10 business days and required to pay \$9,000 in restitution to a public customer. Without admitting or denying the allegations, Harrington consented to the described sanctions and to the entry of findings that he executed discretion in the account of a public customer without obtaining prior written authorization from the customer and prior written acceptance of the account as discretionary by his member firm. The findings also stated that Harrington made baseless price predictions and/or predictions of returns in recommendations to public customers. In addition, Harrington negligently made statements of fact which were untrue or omitted to state facts necessary to make the statements not misleading, in light of the circumstances in which they were made. (NASD Case #C04000005)

**Daniel Scott Hernandez (CRD** #2673877, Registered Representative, Hicksville, New York) submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations. Hernandez consented to the described sanction and to the entry of findings that he made a cold call to a public customer, misrepresenting his background and experience and the number of branches his firm had across the country. The findings also stated that Hernandez failed to appear for an NASD on-the-record interview regarding the cold call to the customer. (NASD Case #C10990198)

Steven Eugene Herron (CRD #1860442, Registered Representative, Largo, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Herron consented to the described sanction and to the entry of findings that he effected sales of promissory notes to public customers, for which he received \$23,124.35 in commissions, without obtaining prior written approval from his member firm. (NASD Case #C0700006)

Danforth Earl Holley (CRD #2037314, Registered Representative, Grosse Pointe, Michigan) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Holley consented to the described sanction and to the entry of findings that he opened a checking account and obtained a

credit card in the name of a public customer. The findings also stated that Holley sold securities in the customer's account and spent the proceeds totaling approximately \$363,000 for his own use and benefit. (NASD Case #C8A000009)

Daniel Hong (CRD #2497385, Registered Principal, Chicago, Illinois) submitted an Offer of Settlement pursuant to which he was fined \$2,500 and suspended from association with any NASD member in any capacity for one vear. The fine is due and payable prior to reassociation with a member firm following the suspension or prior to any application requesting relief from a statutory disqualification. Without admitting or denying the allegations, Hong consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for documents and information in a timely manner. (NASD Case #C8A990079)

Michael Earl Hughes (CRD #1099917, Registered Principal, Highland Park, New Jersey) was fined \$5,000, suspended from association with any NASD member in any capacity for two years, and ordered to pay \$783.24 in restitution to his member firm. The fine is due and payable upon reentry into the securities industry. The sanctions were based on findings that Hughes accessed his account records for his firm's "advantage" credit line, increased his line of credit by \$800, and used the increased line of credit for transactions and purchases totaling \$783.24. without the firm's consent or authority. (NASD Case #C9B990004)

Joseph Charles Hutchison (CRD #2031542, Registered Representative, Orion, Michigan)

submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hutchison consented to the described sanction and to the entry of findings that he participated in private securities transactions for compensation and failed to give written notice of his intention to engage in such activities to his member firm and failed to receive written approval from his firm prior to engaging in such activities. (NASD Case #C8A000007)

Henry Irvin Judy, Jr. (CRD #2348528, Registered Representative, Hilton Head, South Carolina) was barred from association with any NASD member in any capacity. The sanction was based on findings that Judy converted the funds of a public customer by depositing the customer's check into his business checking account. The findings also stated that Judy engaged in improper communications with the public by distributing sales materials that contained false and misleading information. Judy also failed to respond to NASD requests for information. (NASD Case #C07990024)

Steven Nelson Long (CRD #2948957, Registered Representative, Murray, Utah) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 20 business days. The fine is due upon reentry into the securities industry. Without admitting or denying the allegations, Long consented to the described sanctions and to the entry of findings that he effected transactions in a customer account

without the customer's authorization. (NASD Case #C3A000003)

Ricky Allen Lubinsky (CRD #1082031, Registered Principal, Orlando, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Lubinsky engaged in unsuitable and excessive trading in the accounts of a public customer. The findings also stated that Lubinsky failed to respond to NASD requests for information and documents. (NASD Case #C07990006)

**Edward Daniel McKechnie (CRD** #2321046, Registered Representative, North Branford, Connecticut) was barred from association with any NASD member in any capacity. The sanction was based on findings that McKechnie impersonated insurance policyholders in telephone calls. requested and obtained unauthorized changes of address for the policyholders which changed their addresses to his home address, and requested dividend releases that were sent to his home. The findings also stated that McKechnie forged the policyholders' signatures on the checks and deposited the checks into his personal account, thereby converting funds belonging to his customers to his own use and benefit. (NASD Case #C11990043)

Leo Morrison (CRD #2618884, Registered Representative, Bonita Springs, Florida) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for four months. Without admitting or denying the allegations, Morrison consented to the described sanction and to the entry of findings that he engaged in private securities transactions for compensation without providing written or oral notification to his member firm. The findings also stated that Morrison sent sales literature to a public customer and failed to have it approved by a registered principal of his firm prior to its use. (NASD Case #C07990061)

**Robert Franklin Mueller (CRD** #2756171, Registered Representative, Edison, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Mueller consented to the described sanction and to the entry of findings that he signed the signatures of public customers on property and casualty takeover request forms without the knowledge or consent of the customers and falsely testified during an NASD on-the-record interview that the customers had signed the forms. (NASD Case #C9B000002)

Michael Stanley Muscarella (CRD #2530037, Registered Principal, East Brunswick, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Muscarella consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for documents and/or information. (NASD Case #C10990218)

Erik Michael Nerzig (CRD #2616141, Registered Representative, Melville, New York) submitted a Letter of Acceptance, Waiver, and Consent

pursuant to which he was fined \$18,189 (including \$3,189 representing disgorgement of commissions earned), suspended from association with any NASD member in any capacity for 60 business days, and required to pay \$43,874, plus interest, in restitution to a public customer. Nerzig must also requalify by exam as a general securities representative within 90 days from the date the AWC is accepted by the NAC. If he fails to requalify within this period, he will be suspended from acting in such capacity until the exam is successfully completed. Payment of the fine and satisfactory proof of payment of restitution will be prerequisites of any application for reentry. Without admitting or denying the allegations, Nerzig consented to the described sanctions and to the entry of findings that he solicited a public customer to purchase units in an IPO and minimized the investment risks and made unwarranted price predictions. The findings also stated that Nerzig's recommendation was unsuitable because the stock was speculative and involved a high degree of risk. (NASD Case #C10000016)

**Duane Arthur Nordquist (CRD** #1402482, Registered Representative, Panora, Iowa) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$13,000 and barred from association with any NASD member in any capacity. Payment of the fine shall be a prerequisite for consideration of any future application for registration with any member firm. Without admitting or denying the allegations, Nordquist consented to the described sanctions and to the entry of findings that he offered and sold promissory notes for compensation to public customers and failed to provide written notice

to, or to receive written authorization from, his member firm to participate in private securities transactions. (NASD Case #C8A000002)

Alex Osterneck (CRD #1663321, Registered Representative, Bryn Mawr, Pennsylvania) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Osterneck consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information completely or to respond in a timely manner. (NASD Case #C9A990050)

Charles Golden Paxton (CRD #1035500, Registered Representative, Snohomish, Washington) was barred from association with any NASD member in any capacity. The sanction was based on findings that Paxton failed to respond to NASD requests for information. (NASD Case #C3B990026)

Robert Wayne Rodgers (CRD **#2596775**, Registered Representative, Dothan, Alabama) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$4,850 and suspended from association with any NASD member in any capacity for five days. The fine is due upon reentry to the securities industry. Without admitting or denying the allegations, Rodgers consented to the described sanctions and to the entry of findings that he failed to inform and to request permission, in writing, from his member firm to maintain third party trading authorization in order to trade securities accounts with another firm. (NASD Case #C05990058)

Thomas August Rusch (CRD #2685990, Registered Representative, Greenville, South Carolina) was fined \$2,500 and suspended from association with any NASD member in any capacity for 60 days. The sanctions were based on findings that Rusch failed to respond to an NASD request for information in a timely manner. (NASD Case #C07990047)

Desh Deepak Sahni (CRD #2652421, Registered Representative, Glen Cove, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for three months. The fine shall be due and payable prior to reassociation with a member firm or prior to any application requesting relief from a statutory disqualification. Without admitting or denying the allegations, Sahni consented to the described sanctions and to the entry of findings that he failed to disclose an arrest on a compliance disclosure form that he submitted to a member firm. (NASD Case #9B000005)

Joseph John Salerno, III (CRD #1846102, Registered Principal, Margate, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$100.000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Salerno consented to the described sanctions and to the entry of findings that, as branch manager of a member firm, he sold penny stocks to public customers without obtaining signed receipts of the required penny stock transaction risk disclosure statement and trade agreements

and signed written statements relating to the purchaser's financial condition, investment experience, and investment objectives. Transactions also took place without disclosing the bid and ask price prior to the transactions or at the time of confirmation, and without disclosing compensation to the firm and registered representative at the time of confirmation. The findings also stated that Salerno engaged in private securities transactions without providing prior written notice to, and receiving written approval from, his member firm. In addition, Salerno accepted monies for investment without signed subscription agreements or any other indication that the customers intended to purchase Class "A" shares of the security's common stock and allowed an unregistered person to solicit public customers to invest. Salerno also failed to supervise registered representatives properly to ensure compliance with applicable rules and regulations and to prevent fraudulent price predictions and misrepresentations. Moreover, while the member firm participated in a distribution of shares of a common stock purchased from a selling security holder, Salerno posted bid and ask price quotations for the stock; he purchased, and permitted other registered representatives at the firm to purchase, shares from retail customers and other market participants; and he solicited, and permitted other registered representatives at the firm to solicit, purchases of the stock from retail customers and other market participants. (NASD Case #C04000004)

Harlan James Scott (CRD #1545214, Registered Representative, Fort Collins, Colorado) submitted a Letter of

Acceptance, Waiver, and Consent pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Scott consented to the described sanctions and to the entry of findings that he failed to amend his Form U-4 to disclose a guilty plea to a felony. (NASD Case #C3A000004)

**Robert Murray Smith (CRD** #428820, Registered Representative, Bryn Mawr, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$15,000, suspended from association with any NASD member in any capacity for 45 days, suspended from association with any NASD member in any principal capacity for one year, and required to regualify by passing the Series 7 exam within 90 days after the acceptance of this AWC. If Smith fails to regualify within the 90 days, he may not continue to function as a registered representative until he does so. Without admitting or denying the allegations, Smith consented to the described sanctions and to the entry of findings that he recommended and engaged in purchase and sale transactions in the accounts of public customers without having reasonable grounds for believing that such recommendations and resultant transactions were suitable based on financial situation, investment objectives, needs, size and frequency of transactions, and the nature of the accounts. The findings also stated that Smith exercised discretion in the accounts of public customers without having obtained prior written authorization from the customers and prior written acceptance of the accounts

as discretionary by his member firm. (NASD Case #C9A000002)

Ronna Sue Stark (CRD #2136690, Registered Representative, Lacey, Washington) was barred from association with any NASD member in any capacity. The sanctions were based on findings that Stark failed to respond to NASD requests for information regarding a possible conversion of customer funds. (NASD Case #C3B990030)

Ralph Anthony Stingo (CRD #729783, Registered Representative, Bellerose Terrace, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$15,000 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Stingo consented to the described sanctions and to the entry of findings that he deposited \$5,467.23 of customer funds into his personal account, thereby commingling the monies with other funds. (NASD Case #C10000017)

Matthew Franklin Taylor, Jr. (CRD #3013563, Registered Principal, Dayton, Ohio) was barred from association with any NASD member in any capacity. The sanction was based on findings that Taylor failed to respond to NASD requests for information concerning his termination from a member firm and his possible participation in private securities transactions. (NASD Case #C8B990027)

Thomas Arthur Turnure (CRD #1316278, Registered Principal, Wyckoff, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$5,000, suspended from association with any NASD member in any capacity for 10 business days, and required to

requalify as a general securities principal. Without admitting or denying the allegations, Turnure consented to the described sanctions and to the entry of findings that he failed to report customer complaints received by his former member firm to the NASD. (NASD Case #C10000003)

Gary Lee Walker (CRD #2622510, Registered Representative, Sacramento, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$10,000 and barred from association with any NASD member in any capacity. The fine is due and payable prior to any membership application or request for relief from any statutory disqualification. Without admitting or denying the allegations, Walker consented to the described sanctions and to the entry of findings that he borrowed \$10,400 from public customers when he knew that he would be unable to repay the loans when due. (NASD Case #C01000002)

Susan Marie Wuest (CRD #1395441, Registered Representative, Gilbert, Arizona) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Wuest consented to the described sanction and to the entry of findings that she converted approximately \$194,000 from the accounts of public customers and approximately \$112,000 from her member firm to her own use. The findings also stated that, in connection with her conversion of funds from her firm, Wuest forged the required second signature on checks so that she could deposit the checks into her own account. (NASD Case #C3A000002)

### **Individual Fined**

Leonard Alan Neuhaus (CRD #1871294, Registered Principal, **Roslyn Heights, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, and required to regualify by exam in all capacities within 90 days of the acceptance of this AWC by the NASD. If Neuhaus fails to regualify within this mandated period, he will be suspended from functioning in that capacity with any member firm until such exam is successfully completed. Without admitting or denying the allegations, Neuhaus consented to the described sanctions and to the entry of findings that he failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules relating to the designation of supervisory personnel, trade reporting, best execution, the Limit Order Protection Interpretation, Order Handling Rules, registration of persons with the NASD, the use of SOES, recordkeeping, locked and crossed markets, and anticompetitive practices. (NASD Case #CMS990179)

### **Decision Issued**

The following decision has been issued by the DBCC or the Office of Hearing Officers and has been appealed to or called for review by the NAC as of February 15, 2000. The findings and sanctions imposed in the decision 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*.

Jim Newcomb (CRD #1376482, Registered Principal, Fort Collins, Colorado) was fined \$32,000 and suspended from association with any NASD member in any capacity for 90 days. The sanctions were based on findings that Newcomb engaged in private securities transactions, received selling compensation for these transactions, and failed to give prior written notice to, or to receive written approval from, his member firm.

Newcomb has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C3A990050)

# **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.

Gerard Bruzzese (CRD #2540877, Registered Representative, Brooklyn, New York) was named as a respondent in an NASD complaint alleging that he effected transactions in the joint account of public customers without their knowledge, authorization, or consent. The complaint also alleges that Bruzzese failed to appear for an NASD on-the-record interview. (NASD Case #C10000023)

Richard Alan Frondorf (CRD #2054157, Registered Representative, Abita Springs, Louisiana) was named as a respondent in an NASD complaint alleging that he caused checks in the total amount of \$6.500 to be sent to public customers without their prior knowledge or consent, thereby creating margin loan balances in their accounts. The complaint also alleges that Frondorf induced the customers to provide false written statements concerning the activity which he tendered to his member firm. (NASD Case #C05000002)

Patricia Leonora Gill (CRD #1079696, Registered Representative, Torrance, California) was named as a respondent in an NASD complaint alleging that she sent a letter without the knowledge or consent of public customers, requesting liquidation of their interest in a mutual fund and to send the proceeds to her member firm. The complaint further alleges that a \$281,198.51 proceeds check was deposited in the firm's general account and was credited to an account of which Gill was a coowner with her brother. The complaint further alleges that Gill converted the proceeds to her own use and benefit and no part of the proceeds were ever credited to the customers' account. In addition, the complaint alleges that Gill failed to

respond to NASD requests for information. (NASD Case #C02000001)

Richard Scott Ginsberg (CRD #1516467, Registered Representative, Ft. Lauderdale, Florida) was named as a respondent in an NASD complaint alleging that he made baseless price predictions and/or predictions of returns in his recommendations to public customers. The complaint also alleges that Ginsberg defrauded customers by recklessly making misstatements and omissions of material fact. The complaint further alleges that, through his actions, customers incurred realized and unrealized losses of at least \$850,000 and Ginsberg received ill-gotten gains in the form of commission income. (NASD Case #C04000002)

Mark Lund Griffis (CRD #2767069, Registered Representative, West Palm Beach, Florida) was named as a respondent in an NASD complaint alleging that he effected unauthorized transactions in the account of a public customer. The complaint also alleges that Griffis effected transactions in another public customer's individual and IRA accounts pursuant to oral discretion, without written authority and without the account approved as a discretionary account by his member firm. The complaint further alleges that Griffis failed to respond to NASD requests for information. (NASD Case #C07000004)

Jeffrey Alan Klawitter (CRD #1439576, Registered Representative, Downers Grove, Illinois) was named as a respondent in an NASD complaint alleging that he received checks totaling \$1,550 from public customers to pay for a financial plan or an asset allocation plan,

cashed the checks, and used the funds for his own benefit or for some purpose other than the customers' benefit. The complaint also alleges that Klawitter failed to respond to NASD requests for documents and information. (NASD Case #C8A000006)

Joel Mark Warren (CRD #2676655, Registered Principal, Hyattsville, Maryland) was named as a respondent in an NASD complaint alleging that he caused \$286,000 to be withdrawn from the securities account maintained by a public customer and to be transferred, in part, to the customer's bank account and, in part, to another bank account. without the authorization or consent of the customer. The complaint also alleges that Warren failed to respond to NASD requests to provide a written report concerning matters in a Form U-5. (NASD Case #C9A000004)

John C. Welling (CRD #2837015, Registered Representative, Lee's Summit, Missouri) was named as a respondent in an NASD complaint alleging that he obtained personal checks for the bank account of an individual in his firm, made the checks payable to himself, signed the individual's name to the checks, deposited them into an account Welling controlled, and converted the funds to his own use. The complaint alleges that Welling converted \$6,500. (NASD Case #C04000008)

Michael Edmond Zulick (CRD #1834341, Registered Principal, Akron, Ohio) was named as a respondent in an NASD complaint alleging that he converted payment for order flow checks payable to his member firm to his personal use. The complaint also alleges that Zulick charged numerous items for personal use to his firm's corporate

credit card and paid for the charged items with firm funds, thereby converting firm funds to his own use. The complaint further alleges that Zulick wrote corporate checks to himself or for cash which he used for his personal benefit and paid for personal items with checks drawn on his firm's checking account, thereby converting firm funds to his personal use. (NASD Case #C8B000001)

# Firm Suspended

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

Bright Cove Securities, Inc., Virginia Beach, Virginia (February 10, 2000)

Individuals Whose Registrations Were Revoked For Failure To Pay Fines, Costs, And/Or Provide Proof Of Restitution In Connection With Violations

**Cruz, Paul,** Colorado Springs, Colorado (February 17, 2000)

**Gates, Donald R.,** Cabot, Arkansas (February 17, 2000)

**McVicar, Patrick J.,** Jersey City, New Jersey (February 17, 2000)

**Palma, Victor H.,** Staten Island, New York (February 17, 2000) **Stone, Michael S.,** Eagan, Minnesota (February 17, 2000)

# NASD Regulation Charges U.S. Rica Financial, Inc.; Firm President With Obtaining Secret Profits From Customers

NASD Regulation announced that it issued a complaint charging U.S. Rica Financial, Inc., San Jose, CA and its president and owner, Vinh Huu Nguyen, with misrepresenting to customers, on its Web Site, www.usrica.com, and on trade confirmations, the amounts that the firm was charging customers for online trades. The complaint alleges that U.S. Rica and Nguyen advertised at different times on its Web Site that customers would be charged a fixed low commission for Internet trades, that it is "Ranked Top 10 for Overall Low Cost" by Gomez.com, and that trades would be done for free during a 1999 year-end, "Millennium Special." In fact, the firm was making secret profits on its customer trades by fraudulently charging undisclosed markups and markdowns.

In the complaint, NASD Regulation alleges that U.S. Rica and Nguyen violated the NASD's advertising rule, engaged in fraudulent conduct, issued false and misleading confirmations, and failed to maintain the necessary records regarding transactions in its inventory account. U.S. Rica's activities resulted in secret profits totaling more than \$37,000 from trading in January 1999. The complaint further alleges U.S. Rica made secret profits of nearly \$19,000 from 21 trades during December 1999 on a day when it advertised to customers that all Internet trades would be done for free. The firm is also alleged to have made more than \$58,000 in undisclosed charges to customers

in over 300 trades throughout the last two years. NASD Regulation charges that as recently as January 5, 2000, U.S. Rica and Nguyen charged customers undisclosed amounts for trades.

NASD Regulation alleges that Nguyen, through U.S. Rica, was placing trades for its customers on a principal, rather than agency basis. When assuming the role of principal in a trade, a brokerage firm takes an order from customers and buys the securities from or sells them to its customers from its own account, and charges a markup. In completing an agency transaction, the firm takes a customer's order, goes to the market, fills it, and then charges a commission.

In violation of NASD rules, U.S. Rica indicated to customers that their orders had been filled on an "agency basis" and that they would be charged a low, \$4.95 commission. NASD Regulation alleged that U.S. Rica and Nguyen actually filled customers' orders by purchasing the stock for the firm's inventory (acting as principal) and then selling it to customers charging a markup as well as the \$4.95 commission. For example, in one sale, a customer placed an order for 500 shares of a listed security. Nguyen purchased the stock for 22 3/8 in U.S. Rica's inventory account. He then sold the shares from the firm's inventory account to the customer for the price of \$23.00 per share. The customer's confirmation statement reflected that the trade was an agency trade with a commission of \$4.95. In reality, U.S. Rica's markup, and secret profit, was \$312.50 a fact not disclosed to the customer.

The issuance of a disciplinary complaint represents the initiation of a formal proceeding by NASD

Regulation in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint. Because this complaint is unadjudicated, the respondents should be contacted before drawing any conclusion regarding the allegations. This case was investigated by NASD Regulation's San Francisco District Office.

# NASD Regulation Announces Eight Day-Trading Enforcement Actions

NASD Regulation announced the filing of eight new enforcement actions in the day-trading area. These formal disciplinary actions are the direct result of NASD Regulation's focused examinations of day-trading firms conducted over the course of the past year.

These eight cases include allegations and, in some settled cases, findings of violations in the following areas:

- Misuse of customer funds and securities;
- Improper lending and margin practices;
- Exaggerated and misleading advertising;
- Violations of NASD short sale rules;
- Improperly registered persons;
- Improper use of SOES; and
- Supervisory inadequacies.

## Misuse Of Funds

Two of the cases involve allegations of misuse of funds, including one in which the owner of a day-trading management

company solicited more than \$150,000 from outside investors, falsely representing that these moneys would be used for "riskfree" loans to day-trading customers of the firm. In addition, the investors were promised returns of at least 15 percent per year or 20 percent of the profits earned by the day traders to whom the money was lent. Instead, the funds were loaned to customers with no controls or restrictions, were improperly used for branch operating expenses, and were eventually lost.

# Improper Lending/Margin Practices

In two other cases, NASD Regulation found violations of its rules in connection with margin calls, including one in which a firm's principal allowed a customer to effect 120 transactions after the customer's account was coded "no more business" by the clearing firm for failing to meet a margin call. In another case, the firm's registered representative established a separate entity account, which then loaned funds to firm customers to meet Regulation T margin calls.

## Violations Of Advertising Rules

Four of the day-trading actions include allegations or findings of violations of the NASD's advertising rules, including instances in which firms placed exaggerated and potentially misleading advertising on the Internet, as well as in local print and radio media. These firms typically exaggerated the ability of customers to access markets immediately, without disclosing the risks inherent in day-trading strategies, including market volatility. One advertisement told prospective day traders that they could "control [their] own destiny through electronic day trading" without any corresponding disclosure of the risks.

#### Violations Of Short Sale Rules

Violations of the NASD's short sale rules were found in three cases, including failures to make affirmative determinations that securities could be delivered prior to the execution of each customer short sale transaction. In one case, a firm impermissibly allowed its day-trading customers to review daily postings of securities available to be borrowed and to make their own affirmative determinations of whether the securities could be borrowed prior to executing short sale transactions.

# Inadequate Supervision/Improper Registration

NASD Regulation, in its formal complaints alleged and, in certain settled cases, made findings that firms failed to ensure that individuals actively engaged in their day-trading operations were properly registered, including one case in which the individual running the firm's day-trading business was not registered as a principal. In other cases, employees of the firm were acting as equity traders without having completed the NASD's Series 55 registration requirements. In one case, the firm allowed individuals to input trades for customers for periods of several weeks, without registering them in any capacity with the firm.

### Supervisory Deficiencies

Certain actions involve serious supervisory deficiencies, including one case in which a firm engaged in day-trading activities without having any written procedures in place to address that area of the firm's business.

The sanctions in the group of settled actions include censures, suspensions and individual fines, and fines against firms ranging from \$13,000 to \$37,500.

These actions were investigated and filed by NASD Regulation District Offices in New Orleans, Dallas, and Chicago.

# DAY TRADING ENFORCEMENT ACTIONS INCLUDE:

# 1. 1-800DAYTRADE.COM, Inc., Richardson, Texas – Case #C06000006

1-800DAYTRADE.COM, Inc. settled the following charges without admitting or denying NASD Regulation allegations. The findings include:

- using radio and newspaper advertisements that reflect exaggerated and unwarranted statements and failing to file advertisements with the NASD;
- failing to register traders;
- executing short sale on a "downtick" violations;
- failing to maintain accurate books and records; and
- failing to maintain adequate supervisory procedures.

The firm was censured and fined \$25,000, which includes unlawful profits of \$7,500.

# 2. Donnelly & Co., Inc., Midland, Texas – Case #C06000004

Donnelly & Co., Inc., along with its President, George Arthur Donnelly, III, settled the following charges without admitting or denying NASD Regulation allegations. The findings include:

- executing proprietary trades through SOES in violation of the SOES rules;
- distributing a press release and promotional materials reflecting exaggerated and unwarranted

**NASD Notices to Members—Disciplinary Actions** 

March 2000

- statements in violation of the advertising rules;
- failing to adhere to Continuing Education — Firm Element requirements; and
- failing to maintain adequate supervisory procedures.

Both the firm and Donnelly were censured and fined. The firm was fined \$17,500, of which the firm and George Donnelly are jointly responsible for \$15,000.

# 3. Self Trading Securities, Inc., Austin, Texas – Case #C06000005

Self Trading Securities, Inc., along with John A. Pearson, are named as respondents in this complaint. The complaint sets forth allegations of:

- registration violations (use of licensed, but unregistered order input personnel);
- advertising violations (use of an Internet Web site to reflect exaggerated and unwarranted statements);
- Continuing Education Firm Element; and
- inadequate supervisory procedures.

# 4. LaSalle St. Securities, L.L.C., Chicago, Illinois – Case #C8A000015

LaSalle St. Securities, L.L.C. settled the following charges without admitting or denying NASD Regulation allegations. The findings include:

 failing to designate a branch as an Office of Supervisory Jurisdiction;

- publishing newspaper advertisements which contained exaggerated and unwarranted statements;
- failure to evidence principal approval of new day-trading accounts; and
- trade reporting violations.

The firm was censured and fined \$13,000.

# 5. Heath A. Butler, et al., New Orleans, Louisiana – Case #C05000006

Heath A. Butler and Don A. Rouzan are named in this complaint, which alleges:

- misuse of funds and fraud in the sale of securities consisting of investment contracts by which investors financed daytraders — to date, less than 10 percent of investors' money has been repaid having been lost by day traders or consumed by branch office expenses; and
- conducting private securities transactions in connection with the sale of these same securities.

# 6. Addison Securities, Inc., et al., Dallas, Texas – Case #C050000

Addison Securities, Inc., along with Abel Garcia, Jr., without admitting or denying NASD Regulation allegations, settled the following charges. The findings include:

- the firm, acting through Garcia, lent funds to public customers through an entity owned in part by Garcia, for the purpose of meeting Regulation T margin calls;
- Garcia exercised discretion in a customer account without written authorization; failed to mark

- trades in the account as discretionary; and signed the customer's name to documents, including letters of authorization, with oral, but not written authorization:
- the firm allowed Garcia to actively engage in the management of the firm's daytrading operations without requiring him to be registered as a principal;
- short sale rule violations, including exercising short sale transactions on a "downtick"; failing to make affirmative determination that stocks sold short could be delivered or borrowed; and failing to appropriately mark transactions as short sale; and
- deficiencies in its written supervisory procedures, specifically with respect to its day-trading operations, which were in draft form only, despite the fact that the firm conducted this business for 16 months.

The firm is censured and fined \$37,500, portions of which are joint and several against Garcia; Garcia is fined an additional \$5,000 and suspended for three weeks.

## 7. James Han, Case #C05000005

The allegations in this complaint against James Han, formerly with Landmark Securities Corporation, include the following:

- unauthorized transfer of customer funds to Han's account;
- unauthorized transfer of customers' securities to Han's account; and
- failure to respond to staff requests for information.

**NASD Notices to Members—Disciplinary Actions** 

March 2000

# 8. Choice Investments, Inc., Austin, Texas – Case #C050000

Choice Investments, Inc., along with a firm principal, Mark Wright, settled the following charges without admitting or denying NASD Regulation allegations. The findings include:

- Wright allowed a customer to continue trading after the account had been coded "no more business" by the clearing firm; specifically, Wright transferred the customer's transactions into an account that he controlled, and then, after three weeks, transferred positions back into the customer's account after it had been cleared to trade again;
- the firm permitted an individual to execute equity security trades without the proper registration;
- the firm executed short sale transactions without having made an affirmative determination that the stock could be borrowed; and
- the firm's supervisory procedures were deficient and the firm relied on customers to make their own affirmative determinations that stock could be borrowed, prior to entering into short sale transactions.

The firm is censured and fined \$27,000. The firm and Wright are jointly responsible for \$12,500 of that amount. Wright is also suspended for three weeks in all capacities.

# NASD Regulation Expels LT Lawrence & Co., Inc., Bars Principals For Fraud, And Obtains \$275,000 In Restitution For Investors

NASD Regulation announced that it has expelled LT Lawrence & Co., Inc., of New York, NY, from the securities industry and permanently barred its Chief Executive Officer, Lawrence Principato, and its President, Todd E. Roberti, for defrauding investors through excessive markups and markdowns in 350 transactions. In settling the charges, Principato and Roberti have agreed to fully reimburse the 300 LT Lawrence customers, in 37 states and the United Kingdom, who sustained \$275,000 in damages.

NASD Regulation originally filed a complaint against LT Lawrence. Principato, and Roberti in September 1998 alleging that they charged the firm's customers excessive or fraudulent markups or markdowns in transactions of EcoTyre Technologies, Inc. Common Stock and Class A Warrants. As alleged in the complaint, the fraudulent transactions occurred while LT Lawrence, after acting as managing underwriter for EcoTyre's initial public offering, dominated and controlled the trading activity of these securities from February 6, 1996 through March 29, 1996. As part of this settlement, Principato and Roberti neither admitted nor denied the allegations.

In the September 1998 complaint, NASD Regulation also alleged that

the firm's Compliance Officer, Mitchell J. Halpern, failed to establish, implement, and enforce supervisory procedures designed to prevent this type of conduct. As part of Halpern's settlement, also announced, he neither admitted nor denied the allegations and has been suspended from associating with any NASD member, in any capacity, for a period of 30 days and fined \$20,000.

In July 1999, LT Lawrence's Head Trader, Thomas J. Dalton, settled a related disciplinary proceeding by consenting, without admitting or denying NASD Regulation's allegations, to findings that he also participated in the fraud. Mr. Dalton was suspended from associating with any NASD member, in any capacity for a period of three months and fined \$40,000.

NASD Regulation did not allege any wrongdoing on the part of EcoTyre.

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# For Your Information

# **FOCUS Filing Dates**

NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) would like to remind members of their obligation to file the appropriate FOCUS reports by their due dates. The following schedule outlines remaining due dates for 2000 reports. Questions regarding the information to be filed can be directed to the appropriate District Office. Business questions as to how to file the FOCUS report, resetting passwords, and technical questions concerning system requirements, file uploads, and submission problems for Web-Based FOCUS can all be directed to (800) 321-NASD.

# **FOCUS Due Dates For Remaining 2000 Reports**

Annual Schedule I For 2000 Year End	Due Date
2000 FOCUS Schedule I	January 25, 2001

# Monthly And Fifth\* FOCUS II/IIA Filings For Remaining 2000 Reports

Period Ending	Due Date
February 29, 2000	March 23, 2000
April 30, 2000	May 23, 2000
May 31, 2000	June 23, 2000
July 31, 2000	August 23, 2000
August 31, 2000	September 26, 2000
October 31, 2000	November 24, 2000
November 30, 2000	December 26, 2000

<sup>\*</sup>A fifth FOCUS report is an additional report that is due from a member whose fiscal year end is a date other than the calendar quarter.

# Quarterly FOCUS Part II/IIA Filings For 2000 Reports

Quarter Ending	Due Date
March 31, 2000	April 26, 2000
June 30, 2000	July 26, 2000
September 30, 2000	October 24, 2000
December 31, 2000	January 25, 2001

# NASD Regulation Delays Implementation Date Of Phase III Of OATS From July 31, 2000 To October 31, 2000

On March 9, 2000, NASD
Regulation filed with the Securities and Exchange Commission (SEC) for immediate effectiveness a rule proposal that extends the implementation date of Phase III of the Order Audit Trail System (OATS™) to **October 31, 2000**. As provided under National Association of Securities Dealers, Inc. (NASD®) Rule 6957, Phase III applies the recording and reporting requirements under the OATS Rules to all manual orders.

Since the implementation of OATS, NASD Regulation has been closely

reviewing OATS activities with the goal of identifying ways in which to improve OATS by enhancing its effectiveness as a regulatory tool, while reducing the burdens it imposes. In this regard, NASD Regulation is considering certain changes and enhancements to OATS.

Several of these enhancements that the staff is considering would change the requirements that will become effective as part of Phase III under current OATS Rules. To provide NASD Regulation adequate time to fully analyze and consider these changes and determine whether further proposed rule changes are appropriate, NASD Regulation has proposed that the

effective date of Phase III implementation be extended from July 31, 2000 to October 31, 2000. If we are able to amend the OATS requirements, we will communicate any changes to you as soon as possible.

#### **Questions/Further Information**

Questions concerning this information may be directed to Stephanie M. Dumont, Assistant General Counsel, Office of General Counsel, NASD Regulation at (202) 728-8176.

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# NASD

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