

Notices to Members

February 2000

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INFORMATIONAL

**MSRB Rule G-37
Exemptive
Relief**

**NASD Issues Various
MSRB Rule G-37
Decisions On Exemptive
Relief****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
- Registered Representatives
- Senior Management
- Training

KEY TOPICS

- MSRB Rule G-37
- Political Contributions

Executive Summary

Since May 1999, NASD Regulation, Inc. (NASD RegulationSM) has considered three requests for exemptive relief under Municipal Securities Rulemaking Board (MSRB) Rule G-37 (Rule G-37 or Rule), relating to political contributions and prohibitions on municipal securities business. NASD Regulation granted exemptive relief to one member firm and denied exemptive relief to two other firms. In one of the cases where NASD Regulation staff denied exemptive relief, the member firm appealed the decision to the National Adjudicatory Council (NAC), which upheld the initial decision. The decisions are included in redacted form as Attachments to this Notice.

Questions/Further Information

Questions regarding this Notice may be directed to Malcolm Northam, Director, Fixed Income Securities, Department of Member Regulation, NASD Regulation, at (202) 728-8085; or Sharon Zackula, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8985.

Discussion

In recent years, NASD Regulation has published its responses to requests from member firms for exemptive relief to assist firms in evaluating the adequacy of their Rule G-37 compliance procedures and assessing the circumstances that may warrant exemptive relief under Rule G-37(i).

Attachment A provides guidance with respect to political contribution payments made by municipal finance professionals (MFPs) that are drawn from joint checking

accounts. The exemption request arose as a result of a \$400 political contribution made by an MFP from an account in which the MFP and his spouse were signatories. The member firm argued in the request for exemptive relief that the political contribution should be viewed as having been made on behalf of both the MFP and the spouse, *i.e.*, a contribution of \$200 each. NASD Regulation staff denied the exemption based on an MSRB interpretive release that states that if an MFP signs a check, whether the check was drawn on a joint account or not, and submits it as a contribution to an issuer official, the MFP is deemed to have made the full contribution.

The second exemption letter, **Attachment B**, grants relief from the prohibitions of engaging in municipal securities business contained in MSRB Rule G-37(b) in response to the merger of two parent corporations, each of which owned a broker/dealer subsidiary. Political contributions were made by MFPs of one of the parent corporations to candidates in states in which that corporation did not engage in municipal finance activities.

In the absence of an exemption, the merger of the two parent corporations and their respective broker/dealer subsidiaries would subject the surviving broker/dealer subsidiary to the prohibitions of Rule G-37. Exemptive relief was granted in this instance based on NASD Regulation staff's consideration of a recent MSRB rule interpretation that clarifies that Rule G-37 was not intended to prevent mergers in the municipal securities industry, or seriously hinder the surviving broker/dealer's business, if the merger was not intended to circumvent the Rule.¹

In **Attachment C**, the NAC responded to the most recent request for relief under MSRB Rule G-37(i) filed with NASD Regulation. The NAC was asked to consider the appeal of a firm that was barred from participating in municipal securities business with certain issuers in a state because P, the chairman and president of the firm, made duplicate campaign contributions, each totaling \$250, to a candidate for state office for whom P was entitled to vote. P made the second contribution, by check, based upon the representation from a campaign staff member that the campaign had lost the first check. Because the campaign then cashed both checks, absent an exemption, the firm was barred because P

exceeded the *de minimis* campaign contribution of \$250 per official per election allowed under MSRB Rule G-37(b). The firm had formal procedures in place to ensure compliance with the Rule, but the firm was not able to detect the second \$250 contribution because P did not follow the firm's procedures when he made the second contribution. Given P's position and his understanding of the potential adverse consequences to the entire entity, the NAC concluded that exemptive relief should not be granted in that P's second contribution was made without taking clear, simple, inexpensive, and effective steps to ensure that the second contribution would not have an adverse impact on the firm's business operations.

Summary

Although exemptive relief under Rule G-37 is granted based on the unique facts and circumstances presented by each request, publication of the exemption letters attached to this *Notice* are intended to provide member firms further guidance as to the conditions under which exemptions may be granted. NASD Regulation's publication of the factual circumstances presented in the exemption requests is also intended to help member firms avoid inadvertently triggering the two-year prohibition of Rule G-37.

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ATTACHMENT A

Exemptive Relief Denied

This is in response to your letters dated May 17 and June 10, 1999 requesting an exemption for **Firm X** from the prohibition of engaging in municipal securities business contained in Municipal Securities Rulemaking Board (MSRB) Rule G-37 (Rule).

The exemption request results from a \$400.00 contribution made on October 5, 1997 by a registered representative (Representative) to a member of the **City A** City Council for whom the Representative was eligible to vote. Subsequent to the contribution, the Firm participated in three transactions involving the **City A**. You seek an exemption from the Rule because although the \$400.00 contribution check was signed by and reflects only the Representative's name, both the Representative and his spouse were authorized signatories on the joint account. You have provided affidavits dated May 17, 1999 from both the Representative and his spouse which indicate that the political contribution was discussed and agreed to by both individuals prior to the time the contribution was made, and that it was the intention that the contribution be made on behalf of both individuals. Thus, you believe that the contribution should be viewed as having been made on behalf of both the Representative and spouse, *i.e.* a contribution of \$200.00 each.

Rule G-37 allows municipal finance professionals to make political contributions in an amount up to and including \$250.00 to a person for whom the municipal finance professional is entitled to vote. In a February 16, 1996 interpretive release the MSRB stated that "[I]f a municipal finance professional signs a check, whether the check was drawn on a joint account or not, and submits it as a contribution to an issuer official, then the municipal finance professional is deemed to have made the full contribution"

Based upon the facts you have presented, and the MSRB's interpretive release, we conclude that the entire \$400.00 contribution should be attributed to the **Firm X's** Representative. Accordingly, the Firm is not entitled to an exemption from Rule G-37.

Additionally, your letters state that the **Firm X** does not believe that the Representative is a "municipal finance professional" because the Representative's municipal securities conduct was limited to isolated introductions of **Firm X** municipal finance bankers to representatives of the government of the **City A**. For purposes of this response, we have assumed that the Representative would be considered a municipal finance professional under the Rule. Any questions concerning the Representative's status as a municipal finance professional under the Rule should be addressed to the MSRB.

Finally, as outlined in your letters and the attachments, **Firm X** had procedures which required that political contributions by officers or employees of **Firm X** be subject to a pre-clearance/reporting process. The Representative apparently did not either pre-clear or report his political contribution. The failure of the Representative to follow **Firm X's** procedures is not a consideration whether to consider an exemption to the Rule.

ATTACHMENT B

Exemptive Relief Granted

This is in response to your letter dated August 30, 1999, which requests an exemption from the prohibition of engaging in municipal securities business contained in the Municipal Securities Rulemaking Board (MSRB) Rule G-37 (Rule).

The request for an exemption is a result of a merger of **Corporation A** with **Corporation B**. **Corporation A** is the parent company of **Firm X**. Pursuant to the merger of **Corporation A** and **Corporation B**, **Firm X** will be merged with **Firm Y**, a registered broker-dealer subsidiary of **Corporation B**. An exemption from the Rule is requested because of political contributions to issuer officials made by two senior officials of **Corporation B**.

In support of your request for an exemption, you make a number of representations in your letter including the following:

Two senior officials at **Corporation B** made contributions that were properly reported by **Corporation B** in its G-37/38 Reports. One of the senior officials made a \$1,000 contribution to a private citizen running for Governor of **State A** on August 10, 1998. You state that the recipient of the **State A** Contribution lost the election and is not currently an issuer official. You represent that the **Corporation B** senior official who made the **State A** Contribution was not connected with municipal finance efforts; rather, he was a chief operating officer of **Corporation B's** holding company. You further represent that the senior official is resigning from **Corporation B** prior to the merger date with **Firm X**, and the official will not be associated with **Firm X**.

A second contribution of \$1,000 was made by an official of **Corporation B** to the current Lt. Governor of **State B** in connection with the 1998 campaign for Governor and Lt. Governor of **State B**. The **State B** Contribution was made on October 22, 1998. You argue that the **State B** Contribution does not raise any of the concerns that the Rule is designed to address. You state that an individual at **Corporation B** (rather than its broker-dealer subsidiary, **Firm Y**), made the contribution while working for **Corporation B**. **Corporation B**, as you represent, does not have any operations in the **State B** and has no **State B** public finance clients. You also state that the senior official who made the **State B** Contribution will not be involved in the public finance effort at **Firm X**; he possibly will be a director. You represent that the **State B** Contribution was never intended to, nor could be perceived to be intended to, influence the awarding of public finance business in **State B**, since **Corporation B** had no plans to seek business in **State B** at the time of the contribution. Further, you state that the **Corporation B** officer who made the **State B** Contribution will not be involved in the solicitation of municipal finance business, and there is no connection between the contribution and **Firm X's** public finance efforts.

We consent to an exemption of the two year prohibition from municipal securities business with an issuer as defined by Rule G-37. Our consent is based on consideration of the MSRB's recent interpretation of G-37;² and in consideration of the fact that instead of combining the activities of its affiliated securities firms, the parent holding company could have exercised its ability to simply avoid the prohibition contained in the Rule by maintaining separate securities affiliates. Our consent is also based on your representation that the senior official who made the **State B** Contribution will not be involved in the solicitation of municipal finance business or otherwise involved in the public finance effort at **Firm X**. Please be advised that this exemption is based strictly on our understanding of the material facts as you have represented them and that our decision in this matter could be different if the facts are not represented or if other material facts have not been disclosed to us.

ATTACHMENT C

Exemptive Relief Denied

The National Adjudicatory Council (“NAC”) of NASD Regulation, Inc. (“NASD Regulation”) reviewed the appeal of **Firm X** requesting exemptive relief on December 16, 1999, and denied the request.

P, the chairman of the Board and president of **Firm X**, made two \$250 contributions to the campaign of a candidate for a **G** state office. Before making the first contribution, **P** did not follow the **Firm X** procedures expressly by submitting a request in writing to **DQ**, the firm’s Designated Qualified Municipal Securities Principal, to obtain clearance to make the contribution, but represented that he took steps above and beyond those required by the procedures by obtaining pre-clearance orally from both **DQ** and **R**, Associate General Counsel of **Firm X**. Several months later, upon receiving a telephone call from the campaign stating that the campaign had misplaced **P**’s initial \$250 contribution, **P** wrote a second check for \$250 to the campaign. **P** did not follow the **Firm X** procedures when he wrote the second contribution check. He indicated that he did not do so because the second check was merely a replacement for the first contribution, which had been pre-cleared by the appropriate **Firm X** person, the firm’s Designated Qualified Municipal Securities Principal. Both checks were cashed by the campaign with the result that **P** exceeded the allowable contribution to the candidate for whom **P** was entitled to vote by \$250.

Although it appears that the formal procedures in effect at **Firm X** are sufficient to assure compliance with MSRB Rule G-37, **P** did not use these procedures in determining whether to make a second contribution to the campaign. Further, the MFP, as president of **Firm X**, is keenly aware of the adverse impact to a firm for failing to comply with MSRB Rule G-37. Notwithstanding **P**’s position and the potential adverse consequences to the entire entity, **P** made a second contribution to the campaign without taking clear, simple, inexpensive, and effective steps to assure that a contribution would not have an adverse impact on the firm’s business operations. **P** did not determine before writing the second check if the first check had been cashed; if the check had not been cashed, **P** did not issue instructions to stop payment on the first check to avoid a duplicative contribution. Although the motive or intent of the senior officer here does not appear to be in issue, a person could use similar facts and circumstances to intentionally avoid the limits that MSRB Rule G-37 imposes on campaign contributions. In conclusion, granting relief does not appear to be appropriate because of **P**’s failure to take simple, remedial steps to avoid the possibility of violating the rule, and for this reason the NAC denied the exemptive relief requested.

The NAC granted the request for confidential treatment regarding the record generally, except that the decision of the NAC will be published in redacted form in the NASD’s Notices to Members, and otherwise provided in redacted form as requested. Key identifying information that may identify the actual parties or the issuer will be redacted (e.g., the name of the MFP; the name of the member firm; the name of the recipient of the contribution; the name of the city, state or governmental entity that is the issuer; and other legal names that may allow a reader to identify the parties involved).

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Endnotes

¹See MSRB Notice of Interpretation, Q&A No. 1, Securities Exchange Act Release No. 34-40167 (July 2, 1998), 63 FR 37434.

²In recent interpretive guidance concerning the applicability of Rule G-37 in connection with mergers in the municipal securities business, the MSRB stated that the rule, “was not intended to prevent mergers in the municipal securities industry or, once a merger is consummated, to seriously hinder

the surviving dealer’s municipal securities business if the merger was not an attempt to circumvent the [Rule’s] letter or spirit.” See MSRB Notice of Interpretation, Q&A No. 1, Securities Exchange Act Release No. 34-40167 (July 2, 1998), 63 FR 37434.

INFORMATIONAL

Erroneous Complaint Procedures

Nasdaq Reiterates Clearly Erroneous Complaint Procedures**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.

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

KEY TOPICS

- Clearly Erroneous Complaint Procedures
- NASD Rule 11890

Executive Summary

The purpose of this *Notice* is to reiterate the procedures for filing complaints under the National Association of Securities Dealers, Inc. (NASD[®]) Rule 11890 – the Clearly Erroneous Transaction Rule. NASD Rule 11890 (the Rule) establishes the process for The Nasdaq Stock Market, Inc. to review certain transactions in Nasdaq[®] securities and declare them null and void or otherwise modify their terms.

When filing an erroneous complaint, a member should file the complaint within a specified time period and should provide the following information about the transactions in question:

- name of security;
- number of shares;
- price;
- contra broker; and
- the executing Nasdaq system.

Questions/Further Information

Questions regarding this *Notice* should be addressed to Dan Franks, Senior Vice President, Nasdaq Market Operations, at (203) 385-6250; or John Malitzis, Assistant General Counsel, Office of General Counsel, The Nasdaq Stock Market[®], at (202) 728-8245.

Background

Under the Rule, designated officers of The Nasdaq Stock Market have the authority to review transactions arising out of the use or operation of systems owned or operated by Nasdaq (e.g., Small Order Execution SystemSM [SOESSM] and SelectNetSM) and to declare a trade “clearly erroneous.” A designated officer also may decline to act upon a request to review a transaction, or

may adjust the terms of the transaction to achieve an equitable rectification.

The Rule requires members to submit erroneous complaints in writing to Nasdaq Market Operations (Market Operations) within certain time periods, depending on when the alleged erroneous trade occurred. Specifically, for transactions executed between 9:30 a.m. Eastern Time (ET) and 10:00 a.m., the complaint must be received by 10:30 a.m., while complaints for transactions executed at all other times (i.e., outside the 9:30 a.m. to 10:00 a.m. time window) must be received by Market Operations within 30 minutes of execution.

Once a timely complaint is received, a complainant will have up to 30 minutes to submit any supporting written information concerning the complaint. Market Operations will notify the counterparty and provide 30 minutes to submit any supporting written information concerning the disputed trade. Notwithstanding the 30-minute period to submit information, once a party to a disputed trade communicates that it has no further information to provide, it may not thereafter provide additional information unless requested to do so by Nasdaq staff. After a party has applied to Nasdaq for review of a trade, the transaction will be reviewed and a determination rendered, unless both parties to the trade agree to withdraw the matter prior to the time a decision is rendered.

Complaints Must Identify The Transaction

Recently, Market Operations has received faxed “complaints” that state a member wishes to file an erroneous complaint, but which

give little or no detail to identify the transaction. This makes adjudication of a potential erroneous transaction virtually impossible. Thus, in addition to being filed timely, an erroneous complaint should identify the security, shares, price, and contra broker as well as the Nasdaq system through which the transaction was executed. In the case of SelectNet transactions, the member may identify the transactions by providing the SelectNet reference numbers. Nasdaq may reject a request if the transaction cannot be readily identified from the filed complaint.

Orders Outside Normal Market Hours Require Caution

The Market Operations Review Committee (MORC), which has jurisdiction over Nasdaq erroneous determinations, advises members to use caution when entering or executing transactions prior to market open or after market close when markets tend to be less liquid. The MORC also advises members to be cautious in using automated software to send multiple preferenced SelectNet orders. In either case it may not be obvious that a transaction is erroneous, and traders should pay particular care

to orders entered or executed outside of normal market hours, details of the order, and preventative overrides necessary to enter or execute such orders.

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NASD Notice to Members 00-11

INFORMATIONAL

FIPS Changes

Fixed Income Pricing
System Additions,
Changes, And Deletions
As Of December 23,
1999

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 December 23, 1999, the following bonds were added to the Fixed Income Pricing SystemSM (FIPS[®]).

Symbol	Name	Coupon	Maturity
AMKR.GB	Amkor Technology Inc.	9.250	05/01/06
AMKR.GB	Amkor Technology Inc.	10.500	05/01/09
AOAH.GA	AOA Holding LLC	10.375	06/01/06
BFSR.GB	Saul BF Real Estate Inv. Tr	11.625	04/01/02
BIGT.GA	Pinnacle Holdings Inc.	10.000	03/15/08
CHPP.GA	ChicPac Intl. Ltd.	12.750	08/01/09
CSK.GA	Chesapeake Corp.	10.375	10/01/00
CSK.GB	Chesapeake Corp.	9.875	05/01/03
CSK.GC	Chesapeake Corp.	7.200	03/15/05
DJOR.GA	DJ Orthopedics LLC	12.625	06/15/09
FALC.GB	Falcon Building Products Inc.	10.500	06/15/07
FRA.GA	Flooring America Inc.	9.250	10/15/07
FTMN.GA	Freeport-McMoran Resource Partners LP	8.750	04/15/04
GGRT.GA	G & G Retail Inc.	11.000	05/15/06
HDPT.GA	HAD Parts System	12.000	08/01/05
HGR.GA	Hanger Orthopedic Group Inc.	11.250	06/15/09
HWD.GC	Hollywood Casino Corp.	0	05/01/06
HWG.GC	Hallwood Group Inc.	7.000	07/31/00
KMCT.GB	KMC Telecon Holdings Inc.	13.500	05/15/09
LAB.GA	LaBranche & Co. Inc.	9.500	08/15/04
LEA.GC	Lear Corp.	7.960	05/15/05
LEA.GD	Lear Corp.	8.110	05/15/09
LGNF.GA	Lodgian Financing Corp.	12.250	07/15/09
LLSC.GA	LLS Corp.	11.625	08/01/09
NEV.GB	Nuevo Energy Co. Ser B	9.500	06/01/08
OHI.GA	Omega Healthcare Inv Inc.	6.950	08/01/07
OHI.GB	Omega Healthcare Inv Inc.	6.950	06/15/02
OSVN.GA	O'Sullivan Indus Inc.	13.375	10/15/09
RCNC.GD	RCN Corp.	10.125	01/15/20
SBSA.GB	Spanish Broadcasting Sys. Inc.	12.500	06/15/02
SSNI.GA	Samsonite Corp.	11.125	07/15/05
SUAS.GA	South Seas Prop LP	10.000	04/15/03
TEP.GE	Tucson Electric Power Co.	8.500	10/01/09
TEP.GF	Tucson Electric Power Co.	7.500	08/01/08
TFYP.GC	Thrifty Payless Inc.	12.250	04/15/04
TLCP.GA	Telecorp PCS Inc.	11.625	04/15/09
TRHG.GB	Triad Hospitals Hldgs Ser B	11.000	05/15/09
TSFL.GA	Transamerica Financial Corp.	0	03/01/10
TWRS.GD	CROWN Castle Intl. Corp.	11.250	08/01/11
WDEQ.GA	Woods Equipment Co.	15.000	07/15/11
WDEU.GA	WEC Co.	12.000	07/15/09
WSLF.GA	Winslow Furniture Inc.	12.750	08/15/07

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As of December 23, 1999, the following bonds were deleted from FIPS.

Symbol	Name	Coupon	Maturity
ACFL.GA	ACC Consumer Finl Corp.	10.250	12/01/03
ACTT.GA	ACT III Theatres	11.875	02/01/03
BFT.GA	Bally Total Fitness Hldgs. Corp.	9.875	10/15/07
CEAW.GA	Caesars World Inc.	8.875	08/15/02
DELL.GA	Dell Computer	11.000	08/15/00
DITV.GA	Digital TV Svs. Inc.	12.500	08/01/07
DREA.GA	Duane Reade	12.000	09/15/02
DRHC.GA	Duane Reade Hldg. Corp.	15.000	09/15/04
EDYN.GC	Envirodyne Indus. Inc.	12.000	08/15/00
FLES.GA	Food 4 Less Supermarkets Inc.	10.450	04/15/00
FNRI.GA	Flores & Rucks Inc.	13.500	12/01/04
HMAR.GB	Hide Marine Inc.	8.375	02/15/08
HWMT.GA	Howmet Corp.	10.000	12/01/03
NIN.GB	Nine West Group Inc.	9.000	08/15/07
RJR.GA	RJ Reynolds Tobacco Hldgs. Inc.	8.00	01/15/00
RXR.GA	Revco DS Inc. New	9.125	01/15/00
SIND.GB	Synthetic Industries Inc.	9.250	02/15/07
SLGN.GB	Silgan Holdings Corp.	13.250	06/15/02
SLTA.GA	Specialty Foods Acq. Corp.	13.000	08/15/05
SLTF.GA	Specialty Foods Corp.	11.125	10/01/02
TATO.GA	Trident Automotive PLC	10.000	12/15/05
TMAR.GB	Trico Marine Svc Inc.	8.500	08/01/05
TMAR.GC	Trico Marine Svc Inc.	8.500	08/01/05
TSAT.GA	TCI Satellite Entmt. Inc.	10.875	02/15/07
TSAT.GB	TCI Satellite Entmt. Inc.	12.250	02/15/07
WYG.GB	Wyamn-Gordon Co.	8.000	12/15/07

As of December 23, 1999, changes were made to the symbols of the following FIPS bonds.

New Symbol	Old Symbol	Name	Coupon	Maturity
BFT.GA	BFIT.GA	Bally Total Fitness Hldgs. Corp.	9.875	10/15/07
BFT.GB	BFIT.GB	Bally Total Fitness Hldgs. Corp.	9.875	10/15/07
GES.GB	GUES.GB	Guess Inc.	9.500	08/15/03
LEA.GB	LEAC.GA	Lear Corp.	9.500	07/15/06
LRST.GA	LED.GA	Lear Seating Corp.	8.250	02/01/02
SFD.GA	SFDS.GA	Smithfield Foods Inc.	7.625	02/15/08
SFX.GA	SFXE.GA	SFX Entertainment Inc.	9.125	02/01/08
SFX.GB	SFXE.GB	SFX Entertainment Inc.	9.125	12/01/08
SKK.GA	SPNI.GB	Spinnaker Indus. Inc.	10.750	10/15/06
SPLT.GA	SPLC.GA	SplitRock Sus. Inc. Ser B	11.750	07/15/08

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 RegulationSM, at (301) 590-6447.

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

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INFORMATIONAL

**SEC Rule 504
And Intra-State-
Only Offerings**

**Amendments Adopted To
Clarify The Application Of
NASD Rules To Offerings
Under SEC Rule 504 And
Intra-State-Only Offerings****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
- Trading & Market Making

KEY TOPICS

- Free-Riding and Withholding
- IM-2110-1
- NASD Rule 2710
- NASD Rule 2720
- NASD Rule 2810
- Underwriting Compensation

Executive Summary

On December 1, 1999, the Securities and Exchange Commission (SEC) approved amendments submitted by NASD Regulation, Inc. (NASD RegulationSM) that clarify the application of certain National Association of Securities Dealers, Inc. (NASD[®]) rules to limited offerings under SEC Rule 504 and intra-state-only offerings.¹

The text of these amendments is included with this *Notice to Members* (see Attachment A).

Questions/Further Information

Questions concerning this *Notice to Members* may be directed to Suzanne E. Rothwell, Chief Counsel, Corporate Financing Department, NASD Regulation, at (202) 974-2700.

Discussion

SEC Rule 504 provides an exemption from registration under Section 5 of the Securities Act of 1933 (Securities Act) for offerings of up to \$1 million of securities. The SEC amended Rule 504 in early 1999² to provide that securities sold under Rule 504 will be deemed “restricted securities” under SEC Rule 144, and general solicitation and advertising will be prohibited unless the offering is:

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

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

The NASD has amended its rules to clarify that Rule 504 offerings that are public offerings of unrestricted securities are required to be filed with NASD Regulation for review of underwriting terms and arrangements under NASD Rules 2710 and 2810, and compliance with the requirements of NASD Rule 2720.³

Description Of Amendments**Rule 504 Offerings**

NASD Regulation has amended its rules to provide that all Rule 504 offerings, other than offerings of securities that would be deemed “restricted securities” under SEC Rule 144, must be filed with NASD Regulation for review and are subject to compliance with the requirements in Rules 2710, 2720, or 2810, as applicable.⁴ Rule 504 offerings are not required to be filed with NASD Regulation if the securities are deemed “restricted securities” under SEC Rule 144. This amendment is consistent with the application of Rules 2710, 2720, and 2810 to other offerings that are exempt from SEC registration but are nonetheless public in nature.

In addition, IM-2110-1 has been amended to apply the Free-Riding and Withholding Interpretation to offerings of securities under Rule 504 that are not deemed “restricted securities” under SEC Rule 144.

Intra-State-Only Offerings

Rule 2710(b)(9) has also been amended to delete rule language stating that an offering relying on

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Section 3(a)(11) of the Securities Act (the SEC's intra-state-only offering exemption) must be filed only when the offering is "considered a public offering in the state where offered." Consequently, all intra-state-only securities offerings must be filed with NASD Regulation for review and are subject to compliance with Rules 2710, 2720, and 2810, as applicable.

Members' Filing Obligations

Some members have questioned whether Rule 504 offerings and intra-state-only offerings must be

filed with NASD Regulation when NASD members have not distributed securities in the offering. The definition of "participation in a public offering" in Rule 2710(b)(5), however, includes a wide group of activities by a member in connection with an offering in addition to distribution activities. Such additional activities include:

- participation in the preparation of the offering or other documents;
- furnishing of customer and/or broker lists for solicitation; or

- participation in any advisory or consulting capacity to the issuer.

Members are reminded of their obligation to file any public offering with NASD Regulation when they will participate in a public offering as set forth in Rule 2710.

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ATTACHMENT A

Text Of Amendments

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

IM-2110-1. "Free-Riding and Withholding"

(I) Explanation of Terms

The following explanation of terms is provided for the assistance of members. Other words which are defined in the By-Laws and Rules shall, unless the context otherwise requires, have the meaning as defined therein.

(1) Public Offering

The term public offering shall mean any primary or secondary distribution of securities made pursuant to a registration statement or offering circular including exchange offers, rights offerings, offerings made pursuant to a merger or acquisition, straight debt offerings, offerings pursuant to SEC Rule 504, and all other securities distributions of any kind whatsoever, except any offering made pursuant to an exemption from registration under Sections 4(1), 4(2), or 4(6) of the Securities Act of 1933, as amended, or pursuant to Rule 504 if the securities are "restricted securities" under SEC Rule 144(a)(3) [(unless considered a public offering in the states where offered)], Rule 505, or Rule 506 adopted under the Securities Act of 1933, as amended. The term public offering shall exclude exempted securities as defined in Section 3(a)(12) of the Act, and debt securities (other than debt securities convertible into common or preferred stock) and financing instrument-backed securities that are rated by a

nationally recognized statistical rating organization in one of its four highest generic rating categories. The term public offering shall exclude secondary offerings by an issuer, or any security holder of the issuer, of actively-traded securities.

2710. Corporate Financing Rule - Underwriting Terms and Arrangements

(a) No change.

(b) Filing Requirements

(1) - (7) No change.

(8) Exempt Offerings

Notwithstanding the provisions of subparagraph (1) above, the following offerings are exempt from this Rule, Rule 2720, and Rule 2810. Documents and information relating to the following offerings need not be filed for review:

(A) securities exempt from registration with the Commission pursuant to the provisions of Sections 4(1), 4(2), or 4(6) of the Securities Act of 1933, as amended, or pursuant to Rule 504 [(unless considered a public offering in the states where offered)] if the securities are "restricted securities" under SEC Rule 144(a)(3), Rule 505, or Rule 506 adopted under the Securities Act of 1933, as amended;

* * *

(9) Offerings Required to be Filed

Documents and information relating to all other public offerings including, but not limited to, the following must be filed with the Association for review:

(A) - (C) No change.

(D) securities exempt from registration with the Commission pursuant to Section 3(a)(11) of the Securities Act of 1933, as amended[, which is considered a public offering in the state where offered];

(E) securities exempt from registration with the Commission pursuant to Rule 504 adopted under the Securities Act of 1933, as amended, [which is considered a public offering in the states where offered] unless the securities are "restricted securities" under SEC Rule 144(a)(3);

2720. Distribution of Securities of Members and Affiliates — Conflicts of Interest

(a) General No change.

(b) Definitions

For purposes of this Rule, the following words shall have the stated meanings:

(1) - (13) No change.

(14) Public offering — any primary or secondary distribution of securities made pursuant to a registration statement or offering circular including exchange offers, rights offerings, offerings made pursuant to a merger or acquisition, straight debt offerings, offerings pursuant to SEC Rule 504, and all other securities distributions of any kind whatsoever, except any offering made pursuant to an exemption from registration under Sections 4(1), 4(2), or 4(6) of the Securities Act of 1933, as amended, or pursuant to SEC Rule 504 [(unless considered a public

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offering in the states where offered)] if the securities are "restricted securities" under SEC Rule 144(a)(3), SEC Rule 505, or SEC Rule 506 adopted under the Securities Act of 1933, as amended. The term public offering shall exclude exempted securities as defined in Section 3(a)(12) of the Act.

Endnotes

¹Securities Act Release No. 42191 (December 1, 1999); 64 FR 68404 (December 7, 1999).

²Securities Act Release No. 7644 (February 25, 1999), 64 FR 11090 (March 8, 1999).

³The definition of "public offering" found in Rule 2720 determines which offerings are subject to that rule and must be filed with NASD Regulation for pre-offering review under Rules 2710 and 2810. Rule 2710 explicitly incorporates the definitions contained in Rule 2720. See Rule 2710(a). The definition of the term "public offering" included in the Free-Riding and Withholding Interpretation, Rule IM-2110-1, is limited to the application of that Interpretation. See Endnote 1 in *NASD Notice to Members 98-48* (July 1998).

⁴In addition, other provisions of NASD rules that refer to "public offerings" would be interpreted to include Rule 504 offerings, except for Rule 504 offerings of securities that would be deemed to be Section 144(a)(3) "restricted securities." See NASD

Rules 0120(h) (general definition of "fixed price offering"), 0120(p) (general definition of "selling group"), 0120(q) (general definition of "selling syndicate"), 2750 (transactions with related persons), 2830 (investment company securities), 3350 (short sale rule), 3370 (prompt receipt and delivery of securities) and 6410(e) (definition of "initial public offering" in NASD systems and programs rules). As a matter of policy, the NASD interprets those provisions in the context of Rule 2720's definition of "public offering."

Disciplinary Actions

Disciplinary Actions Reported For February

NASD Regulation, Inc. (NASD RegulationSM) has taken disciplinary actions against the following firms and individuals for violations of National Association of Securities Dealers, Inc. (NASD[®]) rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). Unless otherwise indicated, suspensions will begin with the opening of business on Tuesday, February 22, 2000. The information relating to matters contained in this *Notice* is current as of the end of January 28, 2000.

Firms Fined, Individuals Sanctioned

Hibernia Investment Securities, Inc. (CRD #17526, New Orleans, Louisiana) and Kenneth Alan Rains (CRD #2218000, Associated Person, Mandeville, Louisiana) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$10,000. Rains was fined \$5,000 and suspended from association with any NASD member in any principal capacity for two weeks. Without admitting or denying the allegations, the firm and Rains consented to the described sanctions and to the entry of findings that the firm allowed Rains to be actively engaged in the management of the firm's securities business without being registered with the NASD in any capacity. **(NASD Case #C05990060)**

W&D Securities, Inc. (CRD #867, Jersey City, New Jersey) and Donald Wiese (CRD #1489608, Registered Principal, Managapan, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and

fined \$20,000, jointly and severally. Wiese was also suspended from association with any NASD member in any principal capacity for 15 days. Without admitting or denying the allegations, the firm and Wiese consented to the described sanctions and to the entry of findings that Wiese was the president and a director of the firm and actively involved in the management of the firm's exchange floor trading operations without being registered with the NASD in any capacity. The firm allowed him to act in such a manner without being registered as a general securities principal. The findings also stated that the firm, acting through Wiese, failed to establish, maintain, and enforce adequate written supervisory procedures to prevent the above violations. **(NASD Case #C9B990040)**

Firms And Individuals Fined

Brookfield Grace, Inc. (CRD #37044, Memphis, Tennessee) and Gary Kent Wunderlich, Jr. (CRD #2256877, Registered Principal, Memphis, Tennessee) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$25,000, jointly and severally. Without admitting or denying the allegations, the firm and Wunderlich consented to the described sanctions and to the entry of findings that the firm, acting through Wunderlich, broke escrow in the escrow bank account of a mini-max private placement contingency offering prior to the receipt of all customer funds required to meet the contingency. The early release of funds by the firm and Wunderlich rendered false the representation in the offering memorandum that the offering was being made as a mini-max contingency offering. **(NASD Case #C05990055)**

Kukje Investment and Securities, Inc. (CRD #31075, Los Angeles, California) and Yojin Jung (CRD #2161964, Registered Principal, Burbank, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$10,000, jointly and severally. Without admitting or denying the allegations, the firm and Jung consented to the described sanctions and to the entry of findings that the firm, acting under the direction and control of Jung, effected securities transactions when the firm failed to maintain sufficient net capital and failed to file a Form U-4 on behalf of a general securities representative who offered and sold securities without being registered with the firm. The findings also stated that the firm, acting through Jung, permitted an individual to offer and sell securities to public customers while deemed inactive for failure to complete the Regulatory Element of the NASD's Continuing Education requirements. **(NASD Case #C02990065)**

Northeast Securities, Inc. (CRD #25996, Mitchell Field, New York) and Randi Patrice Mason (CRD #722302, Registered Principal, East Norwich, New York) submitted an Offer of Settlement pursuant to which they were censured and fined \$10,500, jointly and severally. Without admitting or denying the allegations, the firm and Mason consented to the described sanctions and to the entry of findings that the firm, acting through Mason, failed to file quarterly reports with the NASD disclosing reportable customer complaints and failed to establish, maintain, and enforce written supervisory procedures designed to reasonably achieve compliance with the NASD rule pertaining to the customer complaint reporting

requirement. **(NASD Case #C10990165)**

Professional Planning & Technologies, Inc. (CRD #17234, Warwick, Rhode Island) and Harry Harootunian (CRD #237375, Registered Principal, Cranston, Rhode Island) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$20,000, jointly and severally. In addition, the firm is required to file all proposed advertising and sales literature with the NASD 15 business days prior to use for a period of three years. If the NASD submits comments on the material, it shall be immediately withheld from further circulation and distribution until the specified changes have been made unless the firm is otherwise notified. The revised material shall be refiled again 15 business days before use unless otherwise agreed to by the NASD. Without admitting or denying the allegations, the firm and Harootunian consented to the described sanctions and to the entry of findings that the firm, acting through Harootunian, distributed sales materials that contained misleading information and failed to address adequately the risks of an offering necessary to provide the reader with a sound basis for evaluating the investment. In total, the sales materials were not based on principles of fair dealing and good faith. **(NASD Case #C11990059)**

San Clemente Securities, Inc. (CRD #21895, San Clemente, California) and Cooke Baille Christopher (CRD #1590203, Registered Principal, San Clemente, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$15,000, jointly and severally. Without

admitting or denying the allegations, the firm and Christopher consented to the described sanctions and to the entry of findings that the firm, acting through Christopher, permitted a person subject to a statutory disqualification to function as an associated person of the firm without having obtained NASD approval. The findings also stated that the firm, acting through Christopher, failed to have and maintain sufficient net capital and failed to report numerous customer complaints to the NASD. **(NASD Case #C02990064)**

USA Capital, Inc. (CRD #19674, Philadelphia, Pennsylvania) and Sean Michael Sweeney (CRD #2056728, Registered Principal, Bryn Mawr, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$14,500, jointly and severally. Without admitting or denying the allegations, the firm and Sweeney consented to the described sanctions and to the entry of findings that the firm, acting through Sweeney, failed to comply with the terms of its restrictive agreement when it effected transactions in equity securities, municipal securities, options, and government bonds. The findings also stated that the firm, acting through Sweeney, conducted general securities and municipal businesses without having either a qualified and registered financial and operations principal or a qualified and registered municipal securities principal. **(NASD Case #C9A990065)**

Wilson Stephenson Kyle, Inc. (CRD #22937, Fort Worth, Texas) and Ronald Gene Stephenson (CRD #1275757, Registered Principal, Fort Worth, Texas) submitted a Letter of Acceptance,

Waiver, and Consent pursuant to which they were censured and fined \$10,000, jointly and severally. Without admitting or denying the allegations, the firm and Stephenson consented to the described sanctions and to the entry of findings that the firm, acting by and through Stephenson, engaged in options related activities without a qualified registered options principal. The findings also stated that the firm, acting by and through Stephenson, failed to implement the Firm Element of the NASD's Continuing Education Program and failed to develop a needs analysis and training program for the firm's covered registered persons. **(NASD Case #C06990026)**

Firms Fined

DJS Securities Limited (CRD #13353, New York, New York) submitted an Offer of Settlement pursuant to which the firm was censured, fined \$15,000, and fined an additional \$2,500, jointly and severally, with a registered representative. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm, acting through individuals, engaged in a municipal securities business without prior notification to the NASD in violation of the firm's membership agreement and failed to employ the services of a qualified municipal securities principal. **(NASD Case #C10990099)**

First Montauk Securities Corp. (CRD #13755, Red Bank, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the

entry of findings that it failed to report the correct price of transactions to the Automated Confirmation Transaction ServiceSM(ACTSM), failed to maintain memoranda of brokerage orders, and failed to reflect the terms and conditions of orders. The findings also stated that the firm and an individual failed to establish, maintain, and enforce written supervisory procedures relating to marking-the-close activity, trade reporting, and books and records. **(NASD Case #CMS990159)**

Friedman, Billings, Ramsey & Co., Inc. (CRD #25027, Arlington, Virginia) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$15,000, and ordered to pay \$4,625, 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 executed customer orders to buy and sell shares and failed to use reasonable diligence to ascertain the best inter-dealer market so that the resultant price to the customer was as favorable as possible under prevailing market conditions. The findings also stated that the firm failed to show the terms, conditions, and correct time of execution on brokerage order memoranda. In addition, the firm failed to report transactions in Nasdaq National Market[®] (NNM) securities to ACT, failed to designate transactions as late to ACT, and failed to report the correct execution time to ACT in NNM securities. **(NASD Case #CMS990165)**

Securities & Investment Planning Company (CRD #36538, Chatham, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$10,000.

Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to execute orders presented at its published bid or offer in the amount up to its published quotation size, thereby failing 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 and regulations concerning the Securities and Exchange Commission (SEC) and the NASD firm quote rules. **(NASD Case #CMS990161)**

Spear, Leeds & Kellogg (CRD #13988, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent (AWC) pursuant to which the firm was censured, fined \$40,000, and required to conduct a review of its supervisory procedures regarding registration of personnel and to submit a report to the NASD detailing its review and revised procedures within 90 days of acceptance of this AWC. The firm will implement changes to its procedures to ensure that all persons actively engaged in the firm's investment banking or securities business, or the management thereof, are properly registered with the NASD. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to ensure that persons actively engaged in the management of the firm's investment banking or securities business were properly registered as general securities principals with the NASD. The firm also failed to establish, maintain, and enforce written supervisory procedures that would ensure proper registration of persons. **(NASD Case #C05000001)**

Individuals Barred Or Suspended

Michael Louis Accurso (CRD #1900337, Registered Principal, Brooklyn, 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, Accurso consented to the described sanctions and to the entry of findings that he had an impostor sit for and complete the Series 7 qualification exam on his behalf. Accurso also failed to respond to NASD requests to appear for an on-the-record interview. **(NASD Case #C10990195)**

Irwin Morton Alickman (CRD #2363877, Registered Representative, Andover, Massachusetts) 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 five months. Without admitting or denying the allegations, Alickman consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without providing prior written notice to, or receiving approval from, his member firm. **(NASD Case #C11990057)**

Mark Steven Balbirer (CRD #2297951, Registered Representative, Sunrise, Florida) was fined \$15,000 and suspended from association with any NASD member in any capacity for two years. The National Adjudicatory Council (NAC) imposed the sanctions following a call for review of an Office of Hearing Officers (OHO) decision. The sanctions were based on findings that Balbirer executed unauthorized trades in the account of a public customer. **(NASD Case #C07980011)**

Keith Michael Bleich (CRD #2372764, Registered Representative, Staten Island, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$290,868.18, which includes disgorgement of \$215,868.18 in monies earned, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bleich consented to the described sanctions and to the entry of findings that he had an impostor take the Series 7 and Series 63 qualification exams on his behalf and failed to appear for an on-the-record interview with the NASD. **(NASD Case #C10990208)**

Byron Edward Boothe, Jr. (CRD #1498153, Registered Representative, Georgetown, Kentucky) 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, Boothe consented to the described sanctions and to the entry of findings that he failed to follow a public customer's instructions to effect certain transactions in his account and in an attempt to reconcile the customer's account, provided materials that misstated the actual positions and account balances. The findings also stated that Boothe provided fictitious confirmations to another customer that reflected transactions had been effected in a joint account when they had not. Boothe provided the customer with a \$28,000 check to settle the customer's complaint and failed to notify his member firm promptly. In addition, Boothe failed to follow the instructions of a third public customer to effect certain sales transactions in his account. **(NASD Case #C05990021)**

Kelly Barrett Boyd (CRD #2165856, Registered Representative, Hilton, New York) 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, Boyd consented to the described sanctions and to the entry of findings that she requested a \$10,000 bank check claiming that it was to be sent to a customer, had the check made payable to attorneys representing the builder of and holder of the mortgage on her home which had been foreclosed, and provided the check to the attorneys, partially satisfying her debt and using the funds for her own benefit. The findings also stated that she altered checks totaling \$40,000 by changing the names of the payees in order to use the funds for her own benefit and to pay for personal obligations. **(NASD Case #C8B990038)**

Chris Jon Brainard (CRD #2687215, Registered Representative, Pleasantville, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$10,000, suspended from association with any NASD member in any capacity for 20 business days, and ordered to disgorge \$4,021.35 in commissions to the NASD. Without admitting or denying the allegations, Brainard consented to the described sanctions and to the entry of findings that he submitted new customer account documents to his member firms that he knew, or should have known, were incomplete. The findings also stated that Brainard failed to make a bona fide public distribution of initial public offerings, each of which traded at a premium in the immediate secondary markets. **(NASD Case #C10990224)**

Bradford Lee Brinton (CRD #2572055, Registered Representative, St. Joseph, Missouri) was barred from association with any NASD member in any capacity. The NAC imposed the sanction following appeal of an OHO default decision. The sanctions were based on findings that Brinton forged or caused to be forged the endorsement of a customer's \$1,695.23 dividend check, deposited the check into a bank account he controlled, and converted the proceeds to his own use and benefit. **(NASD Case #C04990005)**

Erik Marcell Carey (CRD #2360041, Registered Representative, College Park, Maryland) 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 six months. Without admitting or denying the allegations, Carey consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without providing prior written notice to, or receiving approval from, his member firm, in that he sold shares in an investment company that traded equity options to customers. **(NASD Case #C9A990061)**

Denise Lynn Crowley-DelRossi (CRD #2308457, Registered Representative, Boca Raton, Florida) submitted an Offer of Settlement pursuant to which she was fined \$32,624—\$12,624 of which represents disgorgement of commissions received in connection with unsuitable trades—and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Crowley-DelRossi consented to the described sanctions and to the entry of findings that she implemented

courses of unsuitable trading in the accounts of public customers based upon their age, disability, income needs, trading experience, investment objective, financial situation, retirement needs, or concentration of positions. **(NASD Case #C07990037)**

Robert Eugene Dettle (CRD #66370, Registered Representative, Santa Cruz, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$31,416.50, suspended from association with any NASD member in any capacity for one year, and required to requalify prior to reassociating with a member firm following his suspension. 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, Dettle consented to the described sanctions and to the entry of findings that he maintained and/or opened securities accounts at other member firms without informing them of his association with a member firm and failed to provide written notification of the existence of the accounts to his member firm. The findings also stated that Dettle purchased new issues securities at the initial public offering price which subsequently traded at a premium in the secondary market. **(NASD Case #C04990050)**

Ali Durson Eryurt (CRD #1605004, Registered Representative, Tampa, Florida) was barred from association with any NASD member in any capacity. The sanctions were based on findings that Eryurt failed to pay a \$68,583.86 arbitration award and failed to respond to NASD requests for information. **(NASD Case #C07990032)**

Shane Tyrone Ferras (CRD #2172005, Registered Principal, Bayville, New York) was barred from association with any NASD member in any capacity. The sanctions were based on findings that Ferras failed to respond to NASD requests for information relating to an allegation that he effected unauthorized transactions. **(NASD Case #C10990070)**

Christopher Gordon Fike (CRD #2493817, Registered Representative, Bayshore, New York) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for 18 months. Without admitting or denying the allegations, Fike consented to the described sanctions and to the entry of findings that he made material misrepresentations, omitted to disclose material facts, and predicted the future price of speculative securities in connection with the offer and sale of securities. The findings also stated that Fike made recommendations to a public customer that were unsuitable in light of the customer's financial situation and needs. **(NASD Case #C3A990021)**

Robert Francis Fox (CRD #1635033, Registered Representative, Jersey City, New Jersey) was barred from association with any NASD member in any capacity. The sanctions were based on findings that Fox failed to appear for NASD on-the-record interviews and to respond to NASD requests for information and documents regarding the underwriting activities of a former member firm. **(NASD Case #C10990098)**

Steven Bruce Freymark (CRD #1179879, Registered Representative, Cherry Hill, New Jersey) was barred from

association with any NASD member in any capacity. The sanctions were based on findings that Freymark failed to respond to an NASD request for information regarding a customer complaint alleging that he had misappropriated the customer's funds. **(NASD Case #C9A990026)**

Anthony James Frisone (CRD #2362943, Registered Principal, Brooklyn, New York) 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, Frisone consented to the described sanctions and to the entry of findings that he had an impostor take the Series 7 qualification exam on his behalf and failed to complete an NASD on-the-record interview. **(NASD Case #C10990219)**

David Peter Gerstenblatt (CRD #221406, Registered Representative, Newton, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$20,000 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Gerstenblatt consented to the described sanctions and to the entry of findings that he misused customer funds totaling \$45,135. **(NASD Case #C11990056)**

Jeffrey Phillip Halling (CRD #2468671, Registered Representative, Eagan, Minnesota) was fined \$42,142.43 and barred from association with any NASD member in any capacity. The fine is due and payable upon reentry into the securities industry. The sanctions were based on findings that Halling received \$72,142.85 from public customers

to purchase an index annuity and mutual funds, failed to make the purchases, and deposited the funds into his personal checking account. Halling eventually returned \$30,000.42 to the customers and retained the remaining \$42,142.43 to pay personal expenses, thereby misusing and converting customer funds. The findings also stated that Halling failed to respond to an NASD request for information relating to the conversion allegations. **(NASD Case #C04990032)**

Andy Han (CRD #2601275, Registered Representative, Yorba Linda, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$25,000 and suspended from association with any NASD member in any capacity for six months. Han also consented to testify at future NASD disciplinary proceedings related to his misconduct. Without admitting or denying the allegations, Han consented to the described sanctions and to the entry of findings that he functioned as a general securities representative, purchased and sold securities in the accounts of public customers, and received approximately \$10,000 in commissions without being registered with the NASD. The findings also stated that Han failed to respond truthfully during an NASD investigation concerning monetary compensation received in connection with the unregistered sales activities, although he later recanted the false statement. **(NASD Case #C02990068)**

James Michael Harp (CRD #1109270, Registered Representative, Evansville, Illinois) was barred from association with any NASD member in any capacity. The sanctions were based on findings that Harp transmitted fraudulent

electronic insurance applications to his member firm and was credited with commissions for the purported sales. **(NASD Case #C8A990036)**

Terry Michael Hillegas (CRD #1823870, Registered Representative, Salisbury, Pennsylvania) submitted an Offer of Settlement pursuant to which he was censured, fined \$7,500, suspended from association with any NASD member in any capacity for three months, and required to requalify by exam before becoming registered after the suspension. Four thousand dollars of the fine shall be satisfied by paying that amount to the Maryland Securities Division in connection with the settlement of a proceeding. Without admitting or denying the allegations, Hillegas consented to the described sanctions and to the entry of findings that he engaged in the offer and sale, for compensation, of debt securities without providing prior written notice to his member firm. **(NASD Case #C9A990040)**

Robert Boyer Hutchinson (CRD #2284274, Registered Representative, Sonoma, California) was barred from association with any NASD member in any capacity. The sanctions were based on findings that Hutchinson failed to respond to NASD requests for information regarding possible unauthorized trading. **(NASD Case #C01990004)**

John Carmine Infantino (CRD #869581, Registered Principal, Commack, New York) was barred from association with any NASD member in any capacity. The sanctions were based on findings that Infantino failed to respond to NASD requests for information and documents pertaining to a member firm and its books and records. **(NASD Case #C10990125)**

Douglas Fulton Kaiser (CRD #1674570, Registered Principal, Coral Springs, 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 principal or supervisory capacity for 10 business days. Without admitting or denying the allegations, Kaiser consented to the described sanctions and to the entry of findings that he failed to reasonably supervise a registered representative to prevent or detect suitability violations in connection with options transactions effected in the account of a public customer. **(NASD Case #C07990081)**

Gordon Kerr (CRD #268444, Registered Representative, Walnut, California) was barred from association with any NASD member in any capacity. The NAC imposed the sanctions following appeal of a Los Angeles District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Kerr functioned as a securities principal while he was barred from acting in that capacity.

Kerr has appealed this action to the SEC. The bar is in effect pending consideration of the appeal. **(NASD Case #C02980051)**

Michael Lee Eng King (CRD #2319364, Registered Principal, Portland, Oregon) was fined \$30,000, barred from association with any NASD member in any capacity, and ordered to pay \$29,760, plus interest, in restitution to a public customer. The sanctions were based on findings that he engaged in excessive trading in the account of a public customer and engaged in unsuitable recommendations through a significant amount of short selling in

the account that was not consistent with the customer's investment objectives and experience. **(NASD Case #C3B980022)**

Michael Kogan (CRD #2802077, Registered Principal, Warrington, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$15,000, suspended from association with any NASD member in any capacity for 18 months, and required to pay \$12,500 in restitution to a public customer. Satisfactory proof of payment of restitution, or of reasonable and documented efforts undertaken to effect restitution, shall be provided to the NASD within 120 days after acceptance of this AWC. Without admitting or denying the allegations, Kogan consented to the described sanctions and to the entry of findings that he signed the names of public customers on forms used to transfer and open brokerage accounts for the customers without their knowledge or consent. The findings also stated that Kogan effected a transaction involving the purchase of stock in a speculative private placement offering for a customer's account and did not have reasonable grounds for believing that the recommendation and resultant transaction were suitable based on the customer's financial situation, investment objectives, and needs. In addition, Kogan failed to supervise a sales representative adequately in that the representative made unsuitable recommendations to a customer and Kogan failed to take adequate steps to confirm that the transactions were proper. **(NASD Case #C9A990063)**

Daniel Charles Krueger (CRD #1583786, Registered Representative, Fond Du Lac, Wisconsin) was barred from

association with any NASD member in any capacity. The sanctions were based on findings that Krueger failed to respond to NASD requests for information regarding possible outside business activities. **(NASD Case #C04990031)**

John Joseph Lee (CRD #1264054, Registered Principal, West Babylon, New York) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for nine months. Without admitting or denying the allegations, Lee consented to the described sanctions and to the entry of findings that he was directly engaged in the management, direction, or supervision of an underwriting when he was not qualified as a municipal securities principal. The findings also stated that he represented himself to be an authorized officer of his firm at the closing of the issue when, in fact, he was not. In addition, Lee provided false information to the NASD when questioned as to who had been the firm's municipal securities principal at the time of the undertaking.

Because Lee is already serving a previous suspension, his suspension for the above Offer will commence on August 4, 2000, and will conclude on May 4, 2001. **(NASD Case #C10990037)**

Boutros Fouad Mansour (CRD #2426615, Registered Principal, Manchester, Connecticut) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity and ordered to disgorge \$52,450, plus interest, in ill-gotten gains to his member firm and public customers.

Without admitting or denying the allegations, Mansour consented to the described sanctions and to the entry of findings that he improperly converted \$52,450 belonging to clients for his own use and benefit. **(NASD Case #C11990055)**

Armand John Mastraccio (CRD #1504679, Registered Representative, Utica, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$23,072, which includes disgorgement of \$18,072 in commissions earned, and suspended from association with any NASD member in any capacity for one month. Without admitting or denying the allegations, Mastraccio consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without providing prior written notice to, or receiving approval from, his member firm and received \$18,072 in commissions as a result of these transactions. **(NASD Case #C11990054)**

Mark Alan McGee (CRD #2422551, Registered Representative, Newcastle, Washington) was barred from association with any NASD member in any capacity. The sanctions were based on findings that McGee converted \$31,079 that he received from public customers for investment purposes and fraudulently obtained \$26,000 of these funds by misrepresenting the existence of a specific investment product. The findings also stated that McGee failed to respond to NASD requests for information concerning customer complaints. **(NASD Case #C3B990017)**

LeRoy Kenneth Messenger (CRD #815653, Registered Principal, Elk Grove Village, Illinois) 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, Messenger consented to the described allegations and to the entry of findings that he failed to respond to an NASD request to testify in an investigation into activities of his member firm. **(NASD Case #C8A990080)**

Miguel Anibal Millan, III (CRD #1798177, Registered Representative, San Antonio, Texas) was barred from association with any NASD member in any capacity. The sanctions were based on findings that Millan failed to respond to NASD requests for information regarding customer complaints alleging forgery, fraud, unauthorized trading, and conversion. **(NASD Case #C06990005)**

Keith Laurence Mohn (CRD #1085092, Registered Representative, West Bloomfield, Michigan) was censured, fined \$50,000, and barred from association with any NASD member in any capacity. The SEC substantially affirmed the sanctions following appeal of a January 1999 NAC decision. The sanctions were based on findings that Mohn participated in private securities transactions without providing prior written notice to his member firm. **(NASD Case #C8A960063)**

Vaughn Miles Mungin (CRD #1507144, Registered Principal, Bowie, Maryland) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$10,000, suspended from association with any NASD member in any capacity for two months, and required to pay \$22,500 in restitution to public customers.

Satisfactory proof of payment of restitution, or of reasonable and documented efforts undertaken to effect restitution, shall be submitted to the NASD within 120 days of acceptance of this AWC. Without admitting or denying the allegations, Mungin consented to the described sanctions and to the entry of findings that he exercised effective control over the account of a public customer and recommended numerous purchases and sales of securities without having reasonable grounds for believing the transactions were suitable in view of the size and frequency of the transactions and the nature of the account. The findings also stated that Mungin effected a transaction involving the purchase of stock in a speculative private placement offering for the account of another public customer without reasonable grounds for believing the recommendation and resultant transaction were suitable based on the customer's financial situation, investment objectives, and needs. **(NASD Case #C9A990062)**

Jamie Patrash (CRD #2744189, Registered Representative, Jacksonville, Florida) was barred from association with any NASD member in any capacity. The sanctions are based on findings that Patrash altered checks given to him to purchase mutual funds by changing the payee from his member firm to himself, cashed the checks, and converted the funds to his own use and benefit. The findings also stated that Patrash altered and cashed checks given to him by individuals to become independent contractors with one of his firm's affiliated companies and stole cash from other individuals applying to be independent contractors. The findings also stated that Patrash converted approximately \$2,841 in total. **(NASD Case #C07990052)**

Roger Stevenson Peavey (CRD #1510419, Registered Principal, Marshall, Minnesota) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for one year and six months. Without admitting or denying the allegations, Peavey consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without providing prior written notice to, or receiving written approval and/or acknowledgment from, his member firms. **(NASD Case #C04990023)**

Peter Charles Pessoni, Jr. (CRD #2188339, Registered Representative, West Islip, New York) was barred from association with any NASD member in any capacity. The sanctions were based on findings that Pessoni failed to respond to NASD requests for information regarding a customer complaint alleging possible misrepresentations and the failure to execute a sell order. **(NASD Case #C10990091)**

Mark Robert Polakowski (CRD #2789210, Registered Representative, Hackensack, New Jersey) 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, Polakowski consented to the described sanctions and to the entry of findings that he signed a customer's name on an insurance policy delivery receipt form although the customer never received the policy, without the customer's knowledge or consent. The findings also stated that Polakowski failed to respond to NASD requests for information. **(NASD Case #C9B990032)**

Michele Edwardia Posey (CRD #2435628, Registered Representative, Chicago Heights, Illinois) was barred from association with any NASD member in any capacity and required to pay \$12,500 in restitution. The sanctions were based on findings that Posey withdrew \$12,500 from the accounts of public customers and used the funds for some purpose other than for the benefit of the customers. The findings also stated that Posey failed to respond fully to NASD requests for information concerning withdrawals from customers' accounts and financial documentation. **(NASD Case #C8A990059)**

Peter John Quartararo, Jr. (CRD #1727697, Registered Principal, Boca Raton, Florida) submitted an Offer of Settlement pursuant to which he was fined \$42,000 and barred from association with any NASD member in any capacity with a right to reapply after two years. Without admitting or denying the allegations, Quartararo consented to the described sanctions and to the entry of findings that he executed trades against his member firm's trading account whereby he or his customers profited at the firm's expense. The findings also stated that the trades involved purchases at, around, or below the market bid price and the subsequent sales of the same securities back to the firm's trading account at, around, or above the market ask price. Quartararo achieved profits for his personal accounts and those of his customers at the expense of his firm, breaching his fiduciary duty to his firm. In addition, the findings also stated that Quartararo failed to report transactions through ACT in a timely manner. **(NASD Case #C07990038)**

Sean Eric Radetich (CRD #2613626, Registered Representative, East Norwich, New York) was fined \$20,000 and suspended from association with any NASD member in any capacity for two years for settling a customer complaint away from the firm and fined \$20,000 and barred from association with any NASD member in any capacity for failing to respond truthfully to NASD requests for information. The fines are due upon reentry into the securities industry. The sanctions were based on findings that Radetich signed a \$21,500 joint promissory note to settle a customer complaint of unauthorized trading without the knowledge or approval of his member firm. The findings also stated that Radetich failed to respond truthfully to NASD requests for information concerning the customer complaint, the settlement, and his termination from a member firm. **(NASD Case #C01980020)**

Jason Thane Reddish (CRD #2516090, Registered Representative, Woodbury, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$25,000 and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Reddish consented to the described sanctions and to the entry of findings that he recommended and engaged in transactions 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 financial situation, size and frequency of the transactions, nature of the accounts, investment objectives, and needs. **(NASD Case #C9B990038)**

Karl Eton Roberts (CRD #2368514, Registered Representative, Westbury, New York) submitted an Offer of Settlement pursuant to which he was fined \$3,000 and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Roberts consented to the described sanctions and to the entry of findings that he failed to respond in a timely manner to NASD requests for information. **(NASD Case #C10990150)**

Ryan Leslie Rothstein (CRD #2400151, Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$50,000, barred from association with any NASD member in any capacity, and ordered to disgorge \$697,197.80 to the NASD. Without admitting or denying the allegations, Rothstein consented to the described sanctions and to the entry of findings that he had an impostor take the Series 7 qualification exam on his behalf and failed to appear for an NASD on-the-record interview. **(NASD Case #C10990207)**

James Edward Rufo (CRD #1219023, Registered Representative, Clifton, New York) 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, Rufo consented to the described sanctions and to the entry of findings that he made improper use of \$28,768 belonging to a client. **(NASD Case #C11990060)**

Earl John Rusnak (CRD #1503669, Registered Principal,

Highland Park, New Jersey) was barred from association with any NASD member in any capacity. The sanctions were based on findings that Rusnak failed to respond to NASD requests for information about a customer complaint concerning unauthorized purchases of a particular stock. **(NASD Case #C9B990018)**

Nathaniel Lee Sain (CRD #2618922, Registered Representative, New York, New York) was barred from association with any NASD member in any capacity. The sanctions were based on findings that Sain failed to respond to NASD requests for information regarding a customer complaint concerning unauthorized trading. **(NASD Case #C10990064)**

Galen Dwight Skramstad (CRD #1454841, Registered Representative, Marshall, Minnesota) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for eight months. Without admitting or denying the allegations, Skramstad consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, or prior written approval and/or acknowledgment from, his member firm. **(NASD Case #C04990023)**

Michael Van Smith (CRD #2651979, Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$10,000, which includes disgorgement of \$261.50 in commissions earned; suspended from association with any NASD member in any capacity for 30 business days; ordered to pay

\$6,625,85, plus interest, in restitution to public customers; and required to requalify by exam as a general securities representative within 90 days of issuance of this AWC. If Smith fails to requalify within this time period, he cannot associate with any NASD member firm in any capacity until he does requalify. The fine, disgorgement, and restitution are due and payable prior to reassociation following the suspension or prior to any application or request for relief from any statutory disqualification. Without admitting or denying the allegations, Smith consented to the described sanctions and to the entry of findings that he executed transactions for the joint account of public customers without their prior knowledge, authorization, or consent. **(NASD Case #C10000008)**

Harry H. Son (CRD #2878916, Registered Representative, Great Neck, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$7,500, suspended from association with any NASD member in any capacity for two years, and required to requalify by exam as a general securities representative. If Son becomes registered after completion of his suspension, his member firm must adopt and implement compliance programs and procedures to monitor his conversations with public customers and incoming/outgoing mail between Son and public customers to ensure compliance with federal securities laws and NASD rules and regulations for a period of 12 months. The fine is due and payable upon reentry or prior to any application for relief from statutory disqualification. Without admitting or denying the allegations, Son consented to the described sanctions and to the entry of

findings that, during a telephone solicitation to a public customer, he gave false and misleading information and misrepresented his identity by using the name of another registered representative. **(NASD Case #C1000001)**

Dan Calvin Steingruber, Jr. (CRD #2340541, Registered Representative, Laguna Niguel, California) was barred from association with any NASD member in any capacity. The sanctions were based on findings that Steingruber engaged in private securities transactions without providing prior written notification to his member firm of his participation in the transactions. The findings also stated that Steingruber failed to respond to NASD requests for information. **(NASD Case #C02990040)**

Malek Paul Tawil (CRD #2329493, Registered Representative, Palm Beach Gardens, Florida) was fined \$60,000 and barred from association with any NASD member in any capacity. The fine is due upon reentry to the securities industry. The sanctions were based on findings that Tawil effected unauthorized transactions in the accounts of public customers and failed to respond to an NASD request for information. **(NASD Case #C07990053)**

Joseph Teseo (CRD #2182666, Registered Representative, Atlantic Beach, New York) was fined \$25,000 and suspended from association with any NASD member in any capacity for two years. The fine is due upon reentry to the securities industry. The sanctions were based on findings that Teseo failed to respond in a timely manner to NASD requests for information about a customer complaint. **(NASD Case #C10990089)**

Louis Jahi Walthall (CRD #2856591, Registered Representative, Wyandanch, 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, Walthall consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information regarding a customer complaint. **(NASD Case #C10990167)**

Daniel Earl Wood (CRD #2134937, Registered Representative, LaJolla, California) was fined \$28,535 and suspended from association with any NASD member in any capacity for two years for private securities transactions and barred from association with any NASD member in any capacity for failure to respond. The sanctions were based on findings that Wood participated in private securities transactions without providing prompt written notice to, and receiving written approval from, his member firm. The findings also stated that Wood failed to respond to NASD requests for information. **(NASD Case #C02990043)**

Christopher John Zekakos (CRD #2466593, Registered Representative, Brooklyn, New York) was barred from association with any NASD member in any capacity. The sanctions were based on findings that Zekakos failed to respond to NASD requests for information regarding a customer complaint alleging he engaged in fraudulent advertising and sales practices. **(NASD Case #C10990071)**

Chester Edward Zyskowski (CRD #1180609, Registered Representative, Bayonne, New

Jersey) was barred from association with any NASD member in any capacity. The sanctions were based on findings that Zyskowski received cash payments totaling \$240 from a public customer to be applied in payment of premiums for life insurance policies, failed to forward these payments to his member firm, and improperly used the funds. The findings also stated that Zyskowski failed to respond to an NASD request for information. **(NASD Case #C10990156)**

Individuals Fined

Scott Thomas Fleming (CRD #1326991, Registered Principal, New Canaan, Connecticut) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and fined \$70,000 which includes the disgorgement of about \$60,000 in financial benefit received. Without admitting or denying the allegations, Fleming consented to the described sanctions and to the entry of findings that, while registered as a general securities principal of a firm, he opened a personal securities account at another firm and purchased shares in initial public offerings that traded at a premium upon the commencement of the secondary market and as such were considered "hot issues." **(NASD Case #C11990058)**

Thomas Joseph Graham (CRD #716766, Registered Principal, Lutherville, Maryland) submitted an Offer of Settlement pursuant to which he was censured and fined \$15,300 which includes disgorgement of \$1,800 in commissions earned. Without admitting or denying the allegations, Graham consented to the described sanctions and to the entry of findings that he falsely

represented on public customer variable annuity applications and other investment forms that he was the “registered representative” for the sales when, in fact, they were sold by another registered representative. **(NASD Case #C9B990009)**

Gary Keith Imus (CRD #1328490, Registered Representative, Tucson, Arizona) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and fined \$17,000. Without admitting or denying the allegations, Imus consented to the described sanctions and to the entry of findings that he made recommendations for the purchase and sale of securities to public customers that were unsuitable in view of the frequency of the recommended transactions and the use of margin in connection with the transactions. **(NASD Case #C3B990035)**

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 January 14, 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*.

Daniel Richard Howard (CRD #1112346, Registered Representative, Cambridge, Massachusetts) was fined \$25,000 and suspended from association with any NASD member in any capacity for 180 days. The sanctions were based on findings that Howard made unsuitable recommendations to a public customer in that the recommended

securities failed to match the investment objectives and needs of the customer. The findings also stated that Howard caused the filing of an inaccurate Form U-4 and subsequently failed to update his Form U-4 to disclose a pending NASD investigation.

Howard has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C11970032)**

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.

Mark Steven Balbirer (CRD #2297951, Registered Representative, Sunrise, Florida) was named as a respondent in an NASD complaint alleging that he effected an unauthorized purchase of stock in the account of a public customer. **(NASD Case #C07000001)**

Bryant Edward Banks (CRD #2090317, Registered Principal, Dunwoody, Georgia) was named as a respondent in an NASD complaint alleging that he made unsuitable recommendations in the account of a public customer and implemented a course of unsuitable trading based upon her age, fixed income, income needs, short term investment horizon, and lack of

investment experience that resulted in a realized loss of over \$30,000. The complaint also alleges that Banks failed to respond to NASD requests for information. **(NASD Case #C07000002)**

Donny Menashe Bashkin (CRD #2239782, Registered Representative, New York, New York) was named as a respondent in an NASD complaint alleging that he conducted unauthorized trading in the accounts of public customers. The complaint also alleges that Bashkin made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or engaged in acts, practices, or courses of business which operated as a fraud or deceit upon any persons in connection with the purchase or sale of securities. In addition, the complaint alleges that Bashkin effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive, or other fraudulent devices or contrivances. **(NASD Case #C10990217)**

Craig Alan Chytraus (CRD #2577574, Registered Representative, Los Angeles, California) was named as a respondent in an NASD complaint alleging that he executed transactions in the account of public customers without their prior knowledge, authorization, or consent. **(NASD Case #C02990070)**

John Patrick Clancy (CRD #2085167, Registered Representative, New York, New York) was named as a respondent in an NASD complaint alleging that he executed transactions in the account of a public customer

without the customer's prior knowledge, authorization, or consent. The complaint also alleges that Clancy failed to appear for an NASD on-the-record interview. **(NASD Case #C10990222)**

Kevin Charles Cole (CRD #2525945, Registered Representative, San Diego, California) was named as a respondent in an NASD complaint alleging that Cole received \$300 from a public customer for investment in a variable insurance policy, failed to apply the funds as directed, and instead, converted \$160 to his own use and benefit and used the remaining \$140 for purposes other than to invest on behalf of the customer. **(NASD Case #C02990071)**

Yan Dikshteyn (CRD #2528880, Registered Representative, Chicago, Illinois) and Igor M. Fleishmakher (CRD #2102367, Registered Principal, Chicago, Illinois) were named as respondents in an NASD complaint alleging that they engaged in extensive and egregious unauthorized trading in the accounts of public customers that resulted in substantial harm to the customers. The complaint also alleges that Dikshteyn and Fleishmakher induced the purchase or sale of securities by means of manipulative, deceptive, and other fraudulent devices and contrivances. The complaint further alleges that Dikshteyn made baseless price predictions and other misrepresentations to induce customers to purchase securities or to ratify unauthorized trades. **(NASD Case #CAF990044)**

The Hamilton-Shea Group, Inc. (CRD #37526, Pompano Beach, Florida) was named as a respondent in an NASD complaint alleging that the firm—while acting

as a distribution participant in connection with a distribution of common stock—bid for, purchased, and attempted to induce others to purchase the stock. The complaint also alleges that the firm engaged in penny stock transactions that violated penny stock transaction and disclosure rules. The complaint further alleges that the firm failed to report statistical and summary information relating to written customer complaints to the NASD. Moreover, the complaint alleges that the firm, acting through an individual, failed to develop adequate written supervisory systems and procedures to monitor the firm's compliance with the penny stock transaction and disclosure rules and NASD customer complaint quarterly reporting requirements. In addition, the complaint alleges that the firm, while acting through an individual:

- failed to supervise the trading activity of its head trader to ensure compliance with SEC and NASD rules regarding prohibited conduct while participating in a stock distribution; and
- conducted a securities business while failing to maintain the minimum required net capital. **(NASD Case #CAF000002)**

Leonard Vincent Lombardo (CRD #2401363, Registered Representative, Union Beach, New Jersey) was named as a respondent in an NASD complaint alleging that he induced public customers to purchase and sell securities by making baseless price predictions and false and misleading representations without a reasonable basis. The complaint also alleges that Lombardo purchased and sold securities in the accounts of public customers without their prior knowledge, authorization, or consent. **(NASD Case #C10000006)**

Richard Alexander Preisig, Jr. (CRD #2372868, Registered Principal, Pelham Manor, New York) was named as a respondent in an NASD complaint alleging that he trained registered representatives to telemarket speculative securities that were underwritten or recommended by his member firm and directed the representatives to convey to public investors baseless predictions of price rises and other unfounded and untrue optimistic statements about the firm's stock. The complaint also alleges that Preisig directed or encouraged registered representatives to use scripts that contained material misrepresentations and price predictions and omitted to state material facts necessary in order to make the statements made, in the light of circumstances under which they were made, not misleading. The complaint further alleges that Preisig effected transactions in, or induced the purchase or sale of securities by means of manipulative, deceptive, or other fraudulent devices and contrivances. **(NASD Case #CAF990045)**

Dmitry Slidovker (CRD #252374, Registered Representative, Brooklyn, New York) was named as a respondent in an NASD complaint alleging that he made purchases in the accounts of public customers without their knowledge or consent and in the absence of written or oral authorization to exercise discretion in their accounts. The complaint also alleges that Slidovker made baseless price predictions and induced the purchase of a security by means of manipulative, deceptive, and other fraudulent devices and contrivances. **(NASD Case #CAF000001)**

Faramarz Steve Varasteh (CRD #1985952, Registered Representative, Scottsdale, Arizona) was named as a respondent in an NASD complaint alleging that he entered transactions in the account of a public customer without the customer's authorization. The complaint also alleges that Varasteh promised to reimburse the customer for margin interest charges and any losses that the customer incurred as a result of his recommendations. The complaint further alleges that Varasteh issued checks totaling \$19,000 to reimburse the customer for losses. In addition, the complaint alleges that Varasteh failed to respond to NASD requests for information. **(NASD Case #C3A000001)**

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 actions were based on the provisions of NASD Rule 8210 and Article VII, Section 2 of the NASD By-Laws. The date the suspension commenced is listed after the entry.

Murphy & Lopes & Co., Inc., New Bedford, Massachusetts (January 4, 2000)

Firms Canceled

The following firms were canceled from membership in the NASD for failure to comply with formal written requests to submit financial information to the NASD. The actions were based on the provisions of NASD Rule 8210 and Article VII, Section 2 of the NASD By-Laws. The date the

cancellations commenced is listed after the entry.

Airmark Investments, Inc., Tucker, Georgia (January 11, 2000)

G.F.B. Securities, Inc., East Meadow, New York (January 11, 2000)

M. Cornfeld, Inc., Los Angeles, California (January 11, 2000)

Muller Sports Securities, LLC, New York, New York (January 11, 2000)

Tiger Investment Group, Inc., Waltham, Massachusetts (January 11, 2000)

U.S.A. Investments Incorporated, Morristown, New Jersey (January 11, 2000)

Suspensions Lifted

The NASD has lifted the suspensions from membership on the date shown for the following firms because they have complied with formal written requests to submit financial information.

First American Equities, Inc., Dunedin, Florida (January 7, 2000)

Remington Securities Corp., New York, New York (January 14, 2000)

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

The dates the registrations were revoked are included after each entry. If the individual has paid the

finest, costs and/or provided proof of restitution, the listing also includes the date the registration was reinstated.

Butt, Sameer Y., New York, New York (December 30, 1999)

Cohen, Michael Allen, Parsippany, New Jersey (December 30, 1999)

Dumancella, Alvaro F., Baldwin, New York (December 30, 1999 - January 6, 2000)

Haynes, Peter Steven, Boonton, New Jersey (December 30, 1999)

McKeown, Edward Michael, Santa Ana, California (December 30, 1999)

Moore, Joel Dean, Redding, California (December 30, 1999)

Reed, Toney L., Miami, Florida (December 30, 1999)

Whitaker, Steven A., Humble, Texas (December 30, 1999)

Individual Suspended Pursuant To NASD Rule Series 9510 For Failure To Comply With Arbitration Settlement Agreement

The date the registration was suspended is included after the entry. If the individual has paid the arbitration award or entered into a settlement agreement, the listing also includes the date the suspension was lifted.

Lauria, JonPaul, Coral Springs, Florida (December 29, 1999 - January 7, 2000)

NASD Regulation Charges Josephthal & Co., Inc. And Top Execs With Fraud And Unfair Dealing With Customers

NASD Regulation announced that it has issued a complaint charging Josephthal & Co., Inc., New York, NY; Dan D. Purjes, Chief Executive Officer; Paul H. Fitzgerald, Managing Director of Capital Markets; and Matthew I. Balk, former Senior Managing Director for Equity Marketing, with fraud and unfair business practices with investors in connection with securities sales.

According to NASD Regulation's complaint, in late May 1996, Josephthal violated federal securities laws and NASD conduct rules during a massive sales effort aimed at selling, from its inventory, over 1.1 million common shares of VictorMaxx Technologies, Inc. (VMAX). As the underwriter of VictorMaxx' initial public offering and Market Maker for the stock, Josephthal supported the stock from August 1995 until the beginning of May 1996. By mid-May 1996, the firm had suffered a loss of between \$3 and \$4 million on the inventory held in the stock.

In an effort to cut its losses, Purjes, Fitzgerald, and Balk decided to sell the position to the firm's customers. However, it is alleged that the firm's representatives had shown little interest in retailing the stock until mid-May when, to induce the sales force to move the stock, Purjes, Fitzgerald, and Balk paid them commissions of about 29 percent of an investor's total purchase of the stock. As a result, from May 17-May 31, 1996, the Josephthal sales force aggressively recommended VictorMaxx to its customers. During these 10 business days, Josephthal

brokers sold almost 1,000,000 shares in over 400 customer transactions at an average price of \$2.10 per share. Sales during the two-week effort represented nearly 36 percent of the tradable shares of the common stock. Josephthal remained a Market Maker in the security throughout the fraudulent sales effort.

Shortly after Josephthal sold its position, the market price of VictorMaxx tumbled. Within a month, it was below a dollar, where it has remained since. On October 24, 1996, it was delisted from the Nasdaq SmallCapSM Market and by the fourth quarter of 1996 the price ranged from \$.01 to \$.375. Thus, an investor in VictorMaxx who purchased during the May sales effort and held onto that stock for no more than 45 days would have incurred more than a 50 percent loss. According to the complaint, in violation of the firm's obligation of fair dealing, at no time did it disclose to its customers its plan to quickly dispose of its losing inventory position through a massive retail sales effort fueled by an extremely high special sales credit to its sales force.

The complaint also notes that just days before the start of the VictorMaxx sales effort, Josephthal and Purjes had settled, with the NASD, a case with almost identical violations.

NASD Regulation did not allege that VictorMaxx, Inc., which is listed on the OTC Bulletin Board[®], knew that Josephthal was selling off its stock in the marketplace or engaged in any wrongdoing.

This matter was investigated by NASD Regulation's District Office in Denver, Colorado.

NASD's National Adjudicatory Council Fines Morgan Stanley, Inc. \$495,000 For Manipulation And Locked And Crossed Markets; Fines Firm Traders

The NAC censured and fined New York-based Morgan Stanley & Co., Inc., \$495,000 for manipulating the prices of nine securities that underlie the Nasdaq 100 Index (NDX) on two separate "expiration Fridays" in 1995 and for causing locked and crossed markets to occur in nine stocks. The NDX options expire on the third Friday of every month.

Following independent review, the NAC affirmed the findings by NASD's Market Regulation Committee (MRC) that six Morgan Stanley traders, including the firm's then-OTC Desk Head Trader, manipulated the prices of the nine securities. David Robert Slaine, the former head of OTC trading at Morgan Stanley, and five other traders – Thomas Anthony Crocarno, Carl DeFelice, Joseph Louis Ferrarese, Peter William Ferriso, Jr., and Charles McMichael Simonds – were each fined \$2,500.

The NAC dismissed the charge of manipulation against Robert Scott Ranzman, thereby eliminating the sanctions imposed against him.

The cash settlement value of the NDX options was, at the time, determined by the opening print price for each of the 100 stocks. (Since April 1996, the cash settlement value of NDX options has been based on a volume-weighted average of the prices in each of the component securities, as reported during the first five minutes of trading.) Morgan Stanley, in order to ensure that the firm's Program Trading Desk did

not suffer a loss when NDX options expired, had an arrangement with the firm's OTC Desk to sell to the Program Trading Desk the exact amount of each security necessary to close out pre-existing stock positions established to hedge investments in NDX options. As part of this agreement, the Morgan Stanley OTC Desk would sell the securities to the firm's Program Trading Desk at the opening print price – the first reported trade in each of the securities. As a result of this arrangement, Morgan Stanley's OTC Desk established significant short positions in these nine securities.

The NAC affirmed the finding by the MRC that, in connection with this arrangement, prior to the market openings on March 17, 1995, and October 20, 1995, Morgan Stanley's OTC Desk improperly and fraudulently raised the prices it quoted for these nine securities, artificially moving the market for each security – and the opening print price in that security – higher. The firm raised its bids without purchasing any stock prior to the opening.

The intra-firm transactions enabled the Program Trading Desk to close its hedge positions at a price (in this case, the opening print price) that would prevent substantial losses, and the stock manipulation enabled the OTC Desk to minimize any losses it might have faced in covering its short position.

The NAC found that the prices of four securities were manipulated on March 17, 1995, and the prices of a separate set of five securities were manipulated on October 20, 1995.

Morgan Stanley aggressively raised its bid for the nine securities, before the market opened, creating the last new inside bid price prior to the opening. Morgan Stanley decreased its bid for every one of the nine securities within minutes after the market opened, and in some instances without buying any stock at all.

In addition, Morgan Stanley violated the NASD's rule regarding locked and crossed markets. A locked market occurs when the inside bid price equals the inside sell price in the same security, and a crossed market occurs when the inside bid price is greater than the inside sell price of a security. NASD rules require firms to make reasonable attempts to trade prior to locking or crossing the market during normal business hours, and there was no evidence that the traders attempted, during normal business hours, to contact and transact with other Market Makers whose quotes they locked or crossed. On March 17, the markets for three securities opened locked, and one opened crossed and on October 20, the markets in five securities opened locked. The NAC did not review the MRC's dismissal of the complaint's allegation that Morgan Stanley's written supervisory procedures were inadequate to deter locked and crossed market activity.

The NAC's decision reduced the sanctions that the MRC had ordered. The MRC had censured all respondents; fined Morgan Stanley \$1 million individually; fined Slaine \$100,000 jointly and severally with the firm and suspended him in all capacities for 90 calendar days; fined each of the other respondents \$25,000, jointly and severally with the firm, and suspended them in all capacities for a period of 30 business days; and assessed all respondents hearing costs. The MRC imposed sanctions on the firm for manipulation, but not for the violation of NASD Marketplace Rule 4613(e). Instead, the MRC treated that violation as an aggravating factor with respect to the manipulation. The NAC imposed sanctions against Morgan Stanley of a censure and a fine of \$450,000 for the manipulation and \$45,000 for the locked and crossed markets, and imposed a fine of \$2,500 against each of the six traders – David Robert Slaine, Thomas Anthony Crocarno, Carl DeFelice, Joseph Louis Ferrarese, Peter William Ferriso, Jr., and Charles McMichael Simonds. The NAC also ordered Morgan Stanley to pay the costs of the MRC hearing.

Both Morgan Stanley and the traders may appeal the NAC's decision to the SEC within 30 days of the date of the decision.

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For Your Information

Series 55 Exam Grace Period Expires May 1, 2000

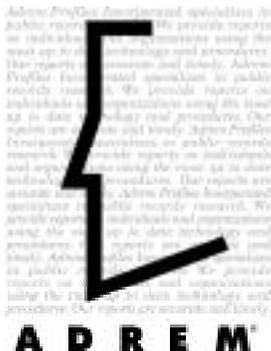
On April 1, 1998, NASD Regulation, Inc., amended the National Association of Securities Dealers, Inc. (NASD®) Registration Rules regarding the qualification of representatives who trade equity securities in The Nasdaq Stock Market, Inc. and/or over-the-counter. A new qualification examination was established – the Limited Representative—Equity Trader Examination (Series 55). Registered persons who functioned as equity traders were given a two-year grace period and are required to pass the Series 55 exam by May 1, 2000.

Equity traders who have not completed the Series 55 exam should take the exam as soon as possible. On May 1, 2000, any equity trader who has not passed the Series 55 will have to cease all trading activities in Nasdaq® and/or over-the-counter equity securities.

Questions regarding this announcement may be directed to Carole Hartzog, Testing and Continuing Education Department, at (301) 590-6696.

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