



# Notices to Members

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## Notices

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# Notice to Members

MAY 2003

## SUGGESTED ROUTING

Legal and Compliance  
Operations  
Senior Management

## Rule 3070

SEC Approves Amendment to Rule 3070 to Require Filing with NASD of Criminal and Civil Complaints and Arbitration Claims

## KEY TOPICS

Rule 3070  
Reporting Requirements

## Executive Summary

On March 3, 2003, the Securities and Exchange Commission (SEC) approved SR-NASD-2002-112, a proposal to amend NASD Rule 3070 to require members promptly to file with NASD copies of certain criminal and civil complaints and arbitration claims that name a member or an associated person as defendant or respondent.

The SEC approval order and text of amended Rule 3070 are attached.

Questions concerning this *Notice* should be directed to Philip Shaikun, Assistant General Counsel, Office of General Counsel, NASD Regulatory Policy and Oversight, at (202) 728-8451.

## Background and Discussion

This rule change is part of NASD's continuing efforts to improve the quality and flow of information to NASD regarding allegations of broker misconduct. NASD believes that review of information contained in complaints and arbitration claims will enhance its regulatory efforts and better protect investors through early detection of broker misconduct and problem trends.

The amendment requires members promptly to file with NASD copies of the following documents: (1) any criminal complaints filed against the member or plea agreements entered into by the member that are covered by Rule 3070; (2) any securities or

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commodities-related private civil complaints filed against the member; (3) any arbitration claim against the member; and (4) any criminal complaint or plea agreement, private civil complaint or arbitration claim against an associated person that is reportable under question 14 on Form U-4, irrespective of any dollar threshold requirements that question imposes for notification.

To minimize the burden on members and eliminate duplicative filing requirements, the amendment specifically carves out any arbitration claims that are originally filed in the NASD Dispute Resolution forum and those documents that have already been requested by NASD's Registration and Disclosure staff, provided such documents are produced to Registration and Disclosure within 30 days of the request.

Upon receipt of documents subject to the amendment, members promptly should send copies by first class mail or courier to the following address:

NASD Member Regulation  
Attn: 3070  
1735 K Street, NW  
Washington, DC 20006

The amendment does not change existing reporting requirements under Rule 3070 or Form U-4. Accordingly, although the amendment eliminates certain dollar thresholds for purposes of triggering the requirement to file with NASD a copy of a complaint or claim, members should continue to apply the applicable thresholds to determine whether notification is required under Rule 3070 or on Form U-4.

### Effective Date

The Rule will become effective on May 21, 2003.

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## 3070. Reporting Requirement

(a) through (c) No change.

(d) Nothing contained in [paragraphs (a), (b) and (c) of] this Rule shall eliminate, reduce, or otherwise abrogate the responsibilities of a member or person associated with a member to promptly file with full disclosure, required amendments to Form BD, Forms U-4 and U-5, or other required filings, and to respond to [the Association] NASD with respect to any customer complaint, examination, or inquiry.

(e) Any member subject to substantially similar reporting requirements of another self-regulatory organization of which it is a member is exempt from [the provisions] paragraphs (a), (b) and (c) of this Rule.

(f) Each member shall promptly file with NASD copies of:

(1) any indictment, information or other criminal complaint or plea agreement for conduct reportable under paragraph (a)(5) of this Rule;

(2) any complaint in which a member is named as a defendant or respondent in any securities or commodities-related private civil litigation;

(3) any securities or commodities-related arbitration claim filed against a member in any forum other than the NASD Dispute Resolution forum;

(4) any indictment, information or other criminal complaint, any plea agreement, or any private civil complaint or arbitration claim against a person associated with a member that is reportable under question 14 on Form U-4, irrespective of any dollar thresholds Form U-4 imposes for notification, unless, in the case of an arbitration claim, the claim has been filed in the NASD Dispute Resolution forum.

(g) Members shall not be required to comply separately with paragraph (f) in the event that any of the documents required by paragraph (f) have been the subject of a request by NASD's Registration and Disclosure staff, provided that the member produces those requested documents to the Registration and Disclosure staff not later than 30 days after receipt of such request. This paragraph does not supersede any NASD rule or policy that requires production of documents specified in paragraph (f) sooner than 30 days after receipt of a request by the Registration and Disclosure staff.

available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-2002-03 and should be submitted by March 31, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-5570 Filed 3-7-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47434; File No. SR-NASD-2002-112]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc., To Amend NASD Rule 3070 To Require Members To File Copies of Criminal and Civil Complaints and Arbitration Claims With NASD

March 3, 2003.

#### I. Introduction

On August 15, 2002, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder<sup>2</sup> to amend Rule 3070 of its rules to require members promptly to file copies with NASD of certain criminal and civil complaints and arbitration claims against a member or a person associated with a member. NASD amended the proposed rule change on December 9, 2002.<sup>3</sup> Notice of the proposed rule change and Amendment No. 1 thereto was published for comment in the *Federal Register* on December 27, 2002.<sup>4</sup>

The Commission received five comment letters regarding the proposal.<sup>5</sup> On February 12, 2003, NASD

filed a response to the comment letters.<sup>6</sup> This order approves the proposed rule change as amended by Amendment No. 1.

#### II. Description of the Proposal

The proposed rule change amends NASD Rule 3070 to require members to file promptly with NASD copies of certain criminal and civil complaints and arbitration claims against the member or a person associated with the member. The purpose of the rule proposal is to improve the quality and flow of information to NASD with respect to allegations of broker misconduct, so that NASD can enhance investor protection efforts by promptly taking appropriate regulatory action to address the specific alleged misconduct and to prevent similar or related misconduct in the future.

Specifically, the proposed rule change requires members to file with NASD copies of (1) any criminal complaints filed against the member or plea agreements entered into by the member that are covered by the rule; (2) any securities or commodities-related private civil complaints filed against the member; (3) any arbitration claim against the member (except those claims that have already been filed with NASD Dispute Resolution, in which case NASD obtains copies of such claims directly from NASD Dispute Resolution); and (4) any criminal complaint or plea agreement, private civil complaint or arbitration claim against an associated person that is reportable under question 14 on Form U-4, irrespective of any dollar threshold requirements that question imposes for

*Notice to Members* 02-53 concerning the proposed amendment to NASD Rule 3070 prior to the Commission's publication of the proposed rule filing; letter from Marc A. Cohn, Assistant Vice President, Metropolitan Life Insurance Company ("MetLife"), to Jonathan G. Katz, Secretary, Commission, dated December 27, 2002 ("MetLife Letter"); letter from Stephen G. Sneeringer, Senior Vice President & Counsel, A.G. Edwards & Sons, Inc. ("A.G. Edwards"), to Jonathan G. Katz, Secretary, Commission, dated January 17, 2002 ("A.G. Edwards Letter"); letter from Edward Turan, Chairman, Arbitration Committee, Securities Industry Association ("SIA") and John Polanin, Jr., Chairman, Self-Regulation and Supervisory Practices Committee, SIA, to Jonathan G. Katz, Secretary, Commission, dated January 24, 2003 ("SIA Letter"); and letter from David A. Weintraub, Attorney at Law, David A. Weintraub, P.A. ("Weintraub"), to Jonathan G. Katz, Secretary, Commission, dated February 6, 2003 ("Weintraub Letter"). The comment letters are described in Section III, *infra*.

<sup>6</sup> See letter from Philip A. Shaikun, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated February 11, 2003 ("NASD Response Letter"). The NASD Response Letter does not respond to the Weintraub Letter because the Weintraub Letter was received by the Commission after NASD filed the NASD Response Letter.

notification (except those arbitration claims that have already been filed with NASD Dispute Resolution). To avoid duplicative filing, the rule proposal also provides that members need not separately produce the above-referenced documents if they have already been the subject of a request by NASD's Registration and Disclosure staff. These amendments are discussed in greater detail in the Commission's notice soliciting public comment on this proposal.<sup>7</sup>

#### III. Summary of Comments

The Commission received five comment letters on the proposed rule change.<sup>8</sup> Although four of the commenters generally supported NASD's desire to obtain and collect information regarding broker misconduct, they each contended that the proposal was unduly burdensome for members and offered alternative suggestions for achieving NASD's stated objectives.<sup>9</sup> The fifth comment letter was written in response to the SIA Letter and in support of the proposed rule change.<sup>10</sup> World Group and A.G. Edwards stated that NASD would be unduly burdened by the volume of documents it would receive compared to the amount of new relevant information. MetLife and the SIA stated that the proposal was inconsistent with NASD's rule modernization initiative, which seeks to streamline NASD rules by maximizing regulatory efficiency while imposing the least regulatory burden.<sup>11</sup>

In its response to commenters, NASD focused only on comments made in connection with this proposal. The World Group, MetLife and A.G. Edwards Letters also addressed a change in NASD's policy regarding letters NASD issues when a determination is made to close an investigation without disciplinary action (referred to as "close-out letters"). While notice of the policy change with respect to close-out letters was contained in the same *Notice to Members* 02-53 that announced that NASD had filed with the SEC its proposal to amend Rule 3070, that policy change is not part of this rule filing. Accordingly, this order does not address the policy change with respect to close-out letters.

NASD disagrees that the proposal would impose duplicative filing requirements on members or be unduly

<sup>7</sup> See *supra*, note 4.

<sup>8</sup> See *supra*, note 5.

<sup>9</sup> See World Group Letter, MetLife Letter, A.G. Edwards Letter and SIA Letter.

<sup>10</sup> See Weintraub Letter.

<sup>11</sup> See *Special NASD Notice to Members* 01-35.

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Patrice Gliniecki, Vice President and Deputy General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated December 6, 2002, and enclosures ("Amendment No. 1"). Amendment No. 1 replaced the original rule filing in its entirety.

<sup>4</sup> See Securities Exchange Act Release No. 47060 (December 20, 2002), 67 FR 79203.

<sup>5</sup> See letter from Kevin L. Palmer, Legal Department, World Group Securities, Inc. ("World Group"), to Jonathan G. Katz, Secretary, Commission, dated September 19, 2002 ("World Group Letter") (World Group commented on NASD

burdensome. NASD notes that members are not required under existing rules to routinely file with NASD the documents sought under the proposal. NASD believes that information contained in those complaints and arbitration claims will enhance its regulatory efforts and better protect investors through early detection of broker misconduct and identification of problem trends. As to the burden on NASD, NASD states that deference must be given to NASD's determination that, on balance, the value of information it will receive outweighs any additional work for the organization.

NASD states that the rule proposal minimizes the burden on members, including duplicative filing requirements: it specifically carves out any arbitration claims that are originally filed in the NASD Dispute Resolution forum and those documents that have already been requested by NASD's Registration and Disclosure staff (provided such documents are produced to Registration and Disclosure within 30 days of the request). Moreover, the rule requires only the filing of those complaints and claims most likely to contain information relevant to NASD's regulatory mission, excluding, for example, private civil litigation complaints or arbitration claims that do not involve securities or commodities-related conduct.

World Group stated that the current reporting system appears to be an effective means for monitoring the misconduct or alleged misconduct of brokers and representatives. They noted that NASD has spent significant resources on the development of Integrated National Surveillance and Information Technology Enhancements (INSITE) to aid in more effective firm examinations. World Group stated that it might be more efficient to amend Rule 3070 to require the reporting of the additional information required by the proposal in the current reporting system. NASD responded that it believes that the current reporting system fails to capture important information that could improve its regulatory efficacy.

MetLife stated that the proposal required the reporting of information that is reportable through electronic filings on Forms U-4, U-5, BD and Rule 3070 reports with certain exclusions for certain events based on dollar amounts. They stated that the current system is already fractured, redundant and burdensome in that the same incident may have to be reported twice on different mediums such as a Form U-4, U-5 or BD amendment and a Rule 3070 filing. They suggested that NASD

streamline the current reporting system by requiring member firms to report events to NASD only once through a new electronic medium. NASD responded that while MetLife's general proposal to develop a new system is worth long-term consideration, its feasibility is uncertain and, in any event, it does not now provide a viable alternative to the current proposal.

A.G. Edwards stated that most of the information required to be reported in the proposal is already required to be reported by members on the CRD. A.G. Edwards suggested that NASD assume the responsibility to report to the CRD any required information based on its review of the complaints and arbitration claims. They thought this would relieve members from the regulatory burden of reporting these actions to the CRD and would relieve some of the questions that they believe have arisen in regard to the reliability of that reporting. NASD responded that it does not believe such steps are necessary or appropriate. NASD explained that the rule proposal requires different information for different regulatory purposes from that reported to the CRD, and NASD believes it has reasonably minimized the burden on members under the proposal.

The SIA stated that the rule should be limited to copies of retail customer lawsuits and arbitrations that allege sales practice violations in accordance with current Form U-4 and U-5 reporting requirements and dollar thresholds. The SIA stated that such an approach would be more resource-efficient and would produce more targeted reviews of complaints by NASD. NASD noted in its response that the SIA seeks to exclude from the proposal complaints in "nearly all class actions; non-retail civil litigation, including product failure, and operational complaints, and small claims involving relatively small dollar amounts."<sup>12</sup> The proposal requires a member to file with NASD any criminal complaint or plea agreement, private civil complaint or arbitration claim against an associated person that is reportable under question 14 on Form U-4, irrespective of any dollar threshold requirements that question imposes for notification (except those arbitration claims that have already been filed with NASD Dispute Resolution).

The NASD Response Letter states the following in support of NASD's belief that the SIA proposal is too narrow in scope and could lead to confusion.<sup>13</sup> First, under the SIA formulation to limit

the proposal to retail customer complaints and claims, NASD would not receive complaints alleging egregious conduct between members (such as collusive market making) or involving institutional customers (such as a kickback scheme in the distribution of initial public offerings). Such allegations of misconduct constitute relevant regulatory information, so NASD sees no sound policy reason to limit the subject matter of complaints to those involving retail customers. Since these and other allegations sometimes first appear in criminal proceedings, NASD believes it appropriate to maintain the requirement in the proposal to file copies of such documents.

Second, limiting the proposal to complaints and claims alleging sales practice violations would undermine a significant purpose of the rule proposal, namely to detect securities or commodities-related patterns of conduct or emerging trends that might warrant regulatory action. The regulatory intent would be frustrated if members were permitted to parse the language of a potential filing to determine whether its substance technically comprised a sales practice violation. Furthermore, litigation and arbitrations that related to securities or commodities conduct, but do not amount to a sales practice violation, nevertheless may prove to correlate to other conduct injurious to the investors and markets. These determinations can only be reached if NASD has access to data that has not been filtered by application of nuance to a legal term of art.

Third, with respect to associated persons, NASD believes it is important to receive copies of complaints and claims reportable under question 14 on Form U-4, even when they fall below specified dollar thresholds, because those actions can highlight patterns of conduct or emerging trends that might warrant regulatory actions.

The Weintraub Letter was written in response to the SIA Letter with regard to the reporting of customer complaints. The SIA stated that the rule should be limited to copies of retail customer lawsuits and arbitrations that allege sales practice violations in accordance with current Form U-4 and U-5 reporting requirements. The Weintraub Letter stated that whether a customer-initiated arbitration is reportable on the Form U-4 or not has absolutely no connection to the seriousness of the underlying allegations, or the need for regulatory scrutiny.

<sup>12</sup> See NASD Response Letter at 2, SIA Letter at 2.

<sup>13</sup> See NASD Response Letter at 2-3.

#### IV. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change, as amended by Amendment No. 1, is consistent with the Act and the rules and regulations promulgated thereunder applicable to a registered securities association and, in particular, with the requirements of Section 15A(b)(6).<sup>14</sup> Specifically, the Commission finds that approval of the proposed rule change is consistent with Section 15A(b)(6) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and in general, to protect investors and the public interest.<sup>15</sup>

The Commission believes that the proposed rule change will enhance NASD's regulatory efforts and investor protection mission. The proposal should improve NASD's ability to detect and prevent fraudulent and manipulative conduct and enable it to develop regulatory responses to problem areas at the earliest possible time. The Commission further believes the regulatory benefits of the proposed rule change outweigh the additional burden on members to file with NASD copies of the specified documents, and that the proposal minimizes that burden in that the rule requires only the filing of those complaints and claims most likely to reveal information that should assist NASD's regulatory mission.

#### V. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-NASD-2002-112), as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-5572 Filed 3-7-03; 8:45 am]

**BILLING CODE 8010-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47441; File No. SR-NASD-2002-108]

#### Self-Regulatory Organizations; Notice of Filing of Amendment Nos. 1, 2, and 3 to a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Business Continuity Plans and Emergency Contact Information

March 4, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> the National Association of Securities Dealers, Inc. ("NASD"), on August 7, 2002, filed with the Securities and Exchange Commission ("Commission"), a proposed rule change to require its members to establish and maintain business continuity plans. The Commission published the proposed rule change in the **Federal Register** on September 9, 2002.<sup>3</sup> The Commission received three comments in response to the Original Notice. The NASD submitted amendments to the proposed rule change on December 12, 2002;<sup>4</sup> January 8, 2003;<sup>5</sup> and February 19, 2003.<sup>6</sup> The Commission is publishing this notice of Amendment Nos. 1, 2, and 3 to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to clarify that the proposed rule change, which would require member firms to create and maintain business continuity plans and to provide the NASD with certain information to be used in the event of future significant business disruptions, also would require members' business continuity plans to be reasonably designed to enable members to continue their business in the event of a significant business disruption. Below is the text of the proposed rule change, as

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 46444 (August 30, 2002), 67 FR 57257 ("Original Notice").

<sup>4</sup> See letter from Brian J. Woldow, Office of General Counsel, NASD, to Katherine A. England, Division of Market Regulation, Commission, dated December 11, 2002 ("Amendment No. 1").

<sup>5</sup> See letter from Brian J. Woldow, Office of General Counsel, NASD, to Katherine A. England, Division of Market Regulation, Commission, dated January 8, 2003 ("Amendment No. 2").

<sup>6</sup> See letter from Brian J. Woldow, Office of General Counsel, NASD, to Katherine A. England, Division of Market Regulation, Commission, dated February 19, 2002 ("Amendment No. 3").

amended. The base rule text is that proposed in the Original Notice. Language added by Amendments Nos. 1, 2 and 3 is italicized; language deleted by the amendments is in brackets.

\* \* \* \* \*

#### 3500. Emergency Preparedness

##### 3510. Business Continuity Plans

(a) Each member must create and maintain a written business continuity plan identifying procedures [to be followed in the event of] *relating to an emergency or significant business disruption. Such procedures must be reasonably designed to enable the member to continue its business in the event of future significant business disruptions.* The business continuity plan must be made available promptly upon request to NASD staff.

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

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

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

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

(d) *Members must designate a member of senior management to*

<sup>14</sup> 15 U.S.C. 78o-3(b)(6).

<sup>15</sup> In approving this proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

# Notice to Members

MAY 2003

## SUGGESTED ROUTING

Legal and Compliance  
Operations  
Registration  
Senior Management

## KEY TOPICS

District Elections

## INFORMATIONAL

### District Elections

NASD Informs Members of Upcoming District Committee and District Nominating Committee Elections

#### Executive Summary

In early June, NASD will issue a formal *Notice to Members* soliciting candidates and explaining the process for nominating individuals to serve on both the District Committees and the District Nominating Committees.

In this election, each District Committee will have three vacancies to fill, with the exception of District 10, which will have four. The term of office for District Committee members is three years. Each District Nominating Committee will have five vacancies to fill for a one-year term.

The purpose of this *Notice* is to inform members of the upcoming vacancies in NASD's District Committees and District Nominating Committees so that they may begin to think of candidates. Individuals from member firms of all sizes and segments of the industry are encouraged to submit candidates for consideration for membership on NASD's District Committees and District Nominating Committees.

Please note that individuals who have served two consecutive terms are no longer eligible to be re-elected; however, NASD encourages current and former committee members to assist NASD by soliciting candidates for both committees.

#### Updated Contact Information

Members are reminded of the importance of accurately maintaining with NASD their Executive Representative name and e-mail address information, as well as their firm's main postal address. This will

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ensure that member mailings, such as this District election information, will be properly directed. Failure to keep this information accurate may jeopardize the member's ability to participate in District elections as well as other member votes. To update their Executive Representative name and e-mail address, firms should access their NASD Member Firm Contact Questionnaire (NMFCQ) located on the NASD Web Site ([www.nasdr.com/disclaimer.asp](http://www.nasdr.com/disclaimer.asp)).

To update postal address information, the firm must file a Form BD Amendment via the Web CRD system. For assistance in accessing the NMFCQ or Web CRD, you may contact our Call Center at (301) 590-6500.

### Questions/Further Information

Questions concerning this *Notice* may be directed to Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD, at (202) 728-8062 or via e-mail at [barbara.sweeney@nasd.com](mailto:barbara.sweeney@nasd.com).

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# Notice to Members

MAY 2003

## SUGGESTED ROUTING

Legal & Compliance  
Registered Representatives  
Registered Principals  
Senior Management

## KEY TOPICS

Arbitration  
Associated Persons  
California Disclosure Standards  
Members

## SEC Approves Extension to IM-10100 Pilot

Waiver Program for Parties in California Arbitration Proceedings has Been Extended to September 30, 2003; New Waiver Agreement Form **Effective March 31, 2003**

### Executive Summary

The Securities and Exchange Commission (SEC or Commission) has approved an extension to a pilot program in IM-10100 of the NASD Code of Arbitration Procedure (Code) governing Failure to Act Under Provisions of Code of Arbitration Procedure.<sup>1</sup> The pilot program provides that members and associated persons involved in NASD arbitration proceedings in the State of California are required to waive application of California Ethics Standards for Neutral Arbitrators in Contractual Arbitration (the "California Standards") to their arbitration proceedings upon the request of investors or, in industry cases, upon the request of associated persons with claims of statutory employment discrimination, for a pilot period ending September 30, 2003 (or until pending litigation has resolved the question of whether or not the California Standards apply to NASD arbitration). The waiver agreement form has been revised as of March 31, 2003.

The pilot program will apply to the appointment of arbitrators from September 30, 2002, to September 30, 2003, to serve in California arbitrations.

The revised waiver agreement is included as Attachment A. The revised waiver agreement is only for use in arbitration cases in which none of the parties previously had signed the prior waiver form.

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## Questions/Further Information

Questions regarding this *Notice* may be directed to Jean I. Feeney, Vice President and Chief Counsel, NASD Dispute Resolution, at (202) 728-6959, or via e-mail, [jean.feeney@nasd.com](mailto:jean.feeney@nasd.com).

## Discussion

*Notice to Members 02-68* described the steps that NASD has taken to address concerns raised by the California Standards, which NASD believes to be in conflict with the Code of Arbitration Procedure. On July 1, 2002, NASD temporarily postponed appointing arbitrators in arbitration proceedings scheduled to take place in California. Additional information on the history of this issue, and the measures NASD has taken to provide alternatives for parties, can be found in NASD's rule proposals, SR-NASD-2002-126<sup>2</sup> and SR-NASD-2003-64,<sup>3</sup> and related SEC releases.

Effective September 30, 2002, NASD implemented a pilot amendment to IM-10100, "Failure to Act Under Provisions of Code of Arbitration Procedure," for cases that are affected by the new California Standards. The amendment requires industry parties to waive the California Standards in all cases in which all the parties in the case who are investors (referred to as "customers" in the Code) or associated persons with claims of statutory employment discrimination agree to waive application of the California Standards. Under such a waiver, the case would proceed in California under the existing NASD Code, which already contains extensive disclosure requirements and provisions for challenging arbitrators with potential conflicts of interest.

Since litigation is still pending to resolve the question of whether or not the California Standards apply to NASD arbitration, NASD has extended the pilot until September 30, 2003. The waiver form was revised effective March 31, 2003, but only for use in arbitration cases in which none of the parties had yet signed the prior waiver form. This change will not affect any parties that already have signed the prior NASD waiver agreement, or any cases in which some of the parties have signed the prior NASD waiver agreement. If any party in an ongoing case has signed the prior NASD waiver agreement, then all other parties will use the same agreement.

## Effective Date

The extension and the revised waiver form are effective on March 31, 2003.

## Endnotes

- 1 Exchange Act Release No. 47631 (April 3, 2003) (File No. SR-NASD-2003-64), 68 Fed. Reg. 17713 (April 10, 2003).
- 2 This rule filing may be found on the NASD Web Site at [www.nasdaq.com/app\\_orders\\_index.asp#02-126](http://www.nasdaq.com/app_orders_index.asp#02-126).
- 3 This rule filing may be found on the NASD Web Site at [www.nasdaq.com/app\\_orders\\_index.asp#03-64](http://www.nasdaq.com/app_orders_index.asp#03-64).

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### Waiver Agreement

The undersigned parties hereby agree that this arbitration shall be governed by the NASD Code of Arbitration Procedure and the Federal Arbitration Act. In particular, the parties agree that the provisions of the NASD Code of Arbitration Procedure, specifically including its arbitrator disclosure requirements, arbitrator selection procedures, and arbitrator disqualification provisions, and not any provisions of the California Ethics Standards for Neutral Arbitrators in Contractual Arbitration in California ("California Standards"), will apply in this arbitration. The California Standards shall have no application whatsoever to any aspect of this arbitration, including without limitation any proceedings to obtain judicial review or judicial enforcement of any arbitration award that may be entered in this arbitration.

The parties accept the disclosures required under the NASD Code of Arbitration Procedure as fully sufficient for purposes of this case, notwithstanding the fact that such disclosures may be less extensive than those required by the California Standards in cases to which those Standards apply. The parties further accept that the NASD Code of Arbitration Procedure's disqualification procedures vest the ultimate authority in the Director of Arbitration to determine whether to disqualify an arbitrator, whereas the California Standards purport to eliminate the Director of Arbitration's discretion in determining whether to disqualify arbitrators. In recognition of these, and other, variances between the NASD Code of Arbitration Procedure and the California Standards, the parties hereby expressly waive any and all rights, obligations, and/or benefits that might be conferred on them by the California Standards in this arbitration, expressly agree that they will not seek to enforce any rights or claim any remedies under or pursuant to the California Standards in any court, proceeding or forum in any matter relating to this arbitration, and expressly and irrevocably release any claim or claims that they may have based on the California Standards in connection with this arbitration or any proceedings relating thereto.

In addition, and without limiting in any way the scope of the waiver and release set forth in the foregoing paragraph, the parties specifically agree not to assert, in any forum, that non-compliance with the California Standards is a basis for challenging the validity of any arbitrator or of any arbitration award, whether asserted during the arbitration proceeding or after an arbitration award has been issued. The parties also specifically agree not to seek any relief against NASD Dispute Resolution or NASD, or any arbitrator, for any failure to comply with the Standards.

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The parties understand and acknowledge that this waiver and release applies to and includes all unknown or unsuspected consequences or results arising from or relating to the parties' waiver of any and all rights under the California Standards in connection with this arbitration. The parties represent and warrant that they have read the contents of California Civil Code section 1542, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected this settlement with the debtor."

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**THE PARTIES EXPRESSLY WAIVE ANY AND ALL RIGHTS AND BENEFITS UNDER CALIFORNIA CIVIL CODE SECTION 1542.**

NASD Arbitration No. \_\_\_\_\_

The parties hereby agree that this agreement may be signed in counterparts.

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Claimant(s):

\_\_\_\_\_  
Respondent(s): (Print here)

\_\_\_\_\_  
Claimant  
(print name and sign above)

\_\_\_\_\_  
Counsel for Respondent

\_\_\_\_\_  
Claimant  
(print name and sign above)

\_\_\_\_\_  
Counsel for Respondent

\_\_\_\_\_  
Claimant  
(print name and sign above)

\_\_\_\_\_  
Counsel for Respondent

\_\_\_\_\_  
Counsel for Claimant

\_\_\_\_\_

# Notice to Members

MAY 2003

## SUGGESTED ROUTING

Legal & Compliance  
Operations  
Senior Management

## Rule 2260

SEC Approves Amendment to Rule 2260 to Expand the Definition of “Designated Investment Adviser”

## KEY TOPICS

Designated Investment Adviser Definition  
Rule Modernization  
Rule 2260

## Executive Summary

Rule 2260 requires member firms to forward proxy material, annual reports, information statements, and other material sent to security holders, the beneficial owner, or the beneficial owner’s designated investment adviser. The current definition of “designated investment adviser” in Rule 2260 is limited to certain persons registered under the Investment Advisers Act of 1940 (Advisers Act); however, on March 3, 2003, the Securities and Exchange Commission (SEC) approved SR-NASD-2002-124 to expand the definition of designated investment adviser in Rule 2260 to include state-registered investment advisers.<sup>1</sup> Accordingly, Rule 2260, as amended, will permit beneficial owners to designate state-registered investment advisers, in addition to persons registered under the Advisers Act, to receive proxy and other materials consistent with Rule 2260.

The amendments to Rule 2260 become effective on June 16, 2003.

Rule 2260, as amended, is set forth in Attachment A.

Questions concerning this *Notice* may be directed to Kosha K. Dalal, Assistant General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD, at (202) 728-6903.

03-26

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## Background and Discussion

In July 2001, NASD announced in *Notice to Members 01-35* its intention to move forward with an initiative designed to ensure that NASD rules are as streamlined as possible, and impose the least burden to accomplish their objectives while achieving investor protection. In addition, NASD established the Economic Advisory Board (EAB) to review and analyze NASD rules and rule proposals. In response to *Notice to Members 01-35*, NASD received 37 comment letters identifying rules that should be the focus of our rule modernization effort. After a review by NASD staff and the EAB of these comment letters, in *Notice to Members 02-10* (January 2002), NASD requested comment on certain proposals that were under consideration, including the possible expansion of Rule 2260. Based on comment letters to the proposed expansion of Rule 2260 and an analysis of the proposal by the EAB, NASD approved the proposed amendment to Rule 2260.

Rule 2260 requires member firms to forward proxy material, annual reports, information statements, and other material sent to security holders, the beneficial owner, or the beneficial owner's designated investment adviser. The rule currently defines a "designated investment adviser" as a person registered under the Investment Advisers Act of 1940 (Advisers Act) who exercises investment discretion pursuant to an advisory contract for the beneficial owner. However, following the passage of the National Securities Markets Improvement Act (NSMIA) in 1996, certain state-registered investment advisers need not register under the Advisers Act. As a result, under current Rule 2260, beneficial owners cannot designate state-registered investment

advisers to receive proxy and other materials. The approved amendments to Rule 2260 expand the definition to include state-registered investment advisers.

Rule 2260 will continue to require that the beneficial owner execute a written designation addressed to the member that includes the name of the designated investment adviser. The beneficial owner will continue to have an unqualified right at any time to rescind designation of the investment adviser to receive materials and to vote proxies. The rescission must be in writing and submitted to the member.

Further, Rule 2260 continues to require that a member that receives a written designation from a beneficial owner must ensure that the beneficial owner's designated investment adviser is registered under the Advisers Act. For state registered investment advisers, a member must ensure that the beneficial owner's designated investment adviser is registered as an investment adviser under the laws of the state. One way that a member may verify registration of an investment adviser is through the use of the Investment Adviser Registration Depository ("IARD") system. Members must ensure that the designated investment adviser is exercising investment discretion over the customer's account pursuant to an advisory contract to vote proxies and/or receive proxy soliciting materials, annual reports, and other material. Members also must keep records substantiating this information.

## Effective Date

The rule amendments become effective on June 16, 2003.

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## Endnotes

- 1 See Securities Exchange Act Release No. 47214 (January 17, 2003), 68 FR 3915 (January 27, 2003) (File No. SR-NASD-2002-124). See SEC Approval Order, Securities Exchange Act Release No. 47459 (March 6, 2003), 68 FR 12120 (March 13, 2003) (File No. SR-NASD-2002-124).

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## ATTACHMENT A

New language is underlined; deletions are in brackets.

### 2260. Forwarding Proxy and Other Materials.

(a) through (e) No change.

(f) For purposes of this Rule, the term “designated investment adviser” is a person registered under the Investment Advisers Act of 1940 or registered as an investment adviser under the laws of a state,<sup>1</sup> who exercises investment discretion pursuant to an advisory contract for the beneficial owner and is designated in writing by the beneficial owner to receive proxy and related materials and vote the proxy, and to receive annual reports and other material sent to security holders.

(1) The written designation must be signed by the beneficial owner; be addressed to the member; and include the name of the designated investment adviser.

(2) Members who receive such a written designation from a beneficial owner must ensure that the designated investment adviser is registered with the Commission pursuant to the Investment Advisers Act of 1940 or with a state as an investment adviser under the laws of such state,<sup>2</sup> and that the investment adviser is exercising investment discretion over the customer’s account pursuant to an advisory contract to vote proxies and/or to receive proxy soliciting material, annual reports and other material. Members must keep records substantiating this information.

(3) Beneficial owners have an unqualified right at any time to rescind designation of the investment adviser to receive materials and to vote proxies. The rescission must be in writing and submitted to the member.

(g) No change.

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1 The term “state” as used herein shall have the meaning given to such term in Section 202(a)(19) of the Investment Advisers Act of 1940, and as such term may be amended from time to time therein.

2 Members may verify registration of an investment adviser through the use of the Investment Adviser Registration Depository (“IARD”) system.

## Disciplinary and Other NASD Actions

### REPORTED FOR MAY

NASD® has taken disciplinary actions against the following firms and individuals for violations of NASD rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this *Notice* is current as of the end of April 2003.

### Firm Expelled, Individual Sanctioned

GIT Securities Corporation (CRD #103735, Plainview, New York) and Christian Nigohossian (CRD #2212929, Registered Principal, Melville, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was expelled from NASD membership and Nigohossian was barred from association with any NASD member in any capacity. The respondents were also required to pay \$5,000, plus interest, in restitution to a public customer. The restitution must be paid before the respondents reassociate with NASD or any NASD member, or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Nigohossian, misused customer funds. (NASD Case #C11030010)

### Firm Fined, Individual Sanctioned

Wien Securities Corp. (CRD #10467, Jersey City, New Jersey) and William Paul Ryder (CRD #1347648, Registered Principal, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm and Ryder were fined \$5,000, jointly and severally. The firm was fined an additional \$15,000 and Ryder was suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm and Ryder failed to investigate adequately a public customer's orders to determine whether they were legitimate customer orders and whether the proposed prices were arbitrary and/or artificial. The findings also stated that as a result, the firm and Ryder failed to submit to NASD, and maintain in the firm's files, accurate and complete Rule 15c2-11 information regarding the circumstances surrounding the customer's orders, including his identity as a trader at another member firm. In addition, NASD found that the firm and Ryder failed to establish, maintain, and enforce reasonable written supervisory procedures designed to ensure compliance with Securities and Exchange Commission (SEC) Rule 15c2-11 and NASD Marketplace Rule 6740.

Ryder's suspension began May 5, 2003, and concluded at the close of business May 9, 2003. (NASD Case #CMS030085)

## Firms and Individuals Fined

**Bidwell & Company (CRD #10215, Portland, Oregon) and Nathan Leo Goforth, (CRD #2574394, Registered Principal, Portland, Oregon)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$25,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Goforth, failed to compute accurately the amount required to be deposited into its Special Reserve Bank Account for the Exclusive Benefit of Customers. **(NASD Case #C3B030006)**

**Century Securities Associates, Inc. (CRD #28218, St. Louis, Missouri), Tamra Lee Scarborough (CRD #1375943, Registered Principal, Edwardsville, Illinois), John Carl Bergeron (CRD #500259, Registered Principal, Natchez, Missouri) and Charles Stephen Plauche (CRD #1915220, Registered Principal, Natchez, Missouri)** submitted a Letter of Acceptance, Waiver, and Consent in which they were fined \$10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that the firm, acting through Scarborough, Bergeron, and Plauche, failed to file advertisements with the NASD Advertising Department within 10 days of their first publishing. The findings also stated that the advertisements failed to comply with the standards applicable to communications with the public in violation of NASD rules. **(NASD Case #C04030014)**

**LaSalle Street Securities, L.L.C. (CRD #7191, Chicago, Illinois) and Donald R. Dwyer, Sr. (CRD #74288, Registered Principal, River Forest, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$10,000, jointly and severally. The firm was also fined an additional \$15,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Dwyer, failed to create or accurately prepare order tickets. The findings stated that the firm, acting through Dwyer, failed to accurately report a transaction, in that it was reported as a sell transaction instead of a buy transaction. The findings also stated that the firm failed to adequately and properly enforce its written supervisory procedures to prevent violations, in that the firm failed to ensure that order tickets were prepared for each trade that was entered into by the trading department on behalf of the firm. Furthermore, the findings stated that the firm failed to accurately report to the Fixed Income Pricing System<sup>SM</sup> (FIPS<sup>SM</sup>), in that agency trades were reported as principal trades; agency trades were reported with the customer as the contra party and in some of the instances the trades were reported twice; and trades were reported as a "sell" when they should have been reported as a "buy." **(NASD Case #C8A030020)**

## Firms Fined

**1st Discount Brokerage, Inc. (CRD #39164, Jupiter, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to disclose on customer trade confirmations whether payment for order flow was received and that the source and nature of the payment would be furnished on written request. The findings also stated that the firm failed to disclose, upon opening a new account and on an annual basis thereafter, its policies on the receipt of payment for order flow and its policies for routing orders subject to payment for order flow. NASD also found that the firm failed to disclose on a quarterly basis the material aspects of its payment for order flow and/or profit-sharing arrangement with another member firm. **(NASD Case #C07030017)**

**A.B. Watley, Inc. (CRD #797, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$11,000, and required to revise its written supervisory procedures concerning the Order Audit Trail System<sup>SM</sup> (OATS<sup>SM</sup>) within 30 business days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to submit required information to OATS in 15 business days. The findings also stated that the firm failed to report timely to OATS Reportable Order Events (ROEs). The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning OATS. **(NASD Case #CMS030071)**

**Alpine Associates, L.P. (CRD #7195, Cresskill, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,000, and required to revise its written supervisory procedures concerning NASD's bid-test rule within 30 business days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed short-sale transactions in NASDAQ National Market<sup>®</sup> (NNM<sup>®</sup>) securities at or below the current inside bid when the current inside bid was below the preceding inside bid in the security. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning NASD's bid-test rule. **(NASD Case #CMS030076)**

**Bernard Herold & Co., Inc. (CRD #6193, New York, New York)** submitted an Offer of Settlement in which the firm was censured, fined \$9,500, jointly and severally, and fined an additional \$2,500, solely. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it permitted an individual to engage in activities that required registration as a Series 55 Limited

Representative-Equity Trader although the individual was never registered with NASD as an equity trader. The findings also stated that the firm accepted transactions in the Automated Confirmation Transaction Service<sup>SM</sup> (ACT<sup>SM</sup>) as long sales instead of as short sales and reported short sale transactions in ACT even though they had never been effected by the firm. NASD also found that the firm failed to establish, maintain, and enforce a supervisory system designed to achieve compliance with securities laws and applicable NASD rules including ACT system reporting requirements. In addition, NASD found that the firm failed to implement, maintain, and enforce written supervisory procedures that would have enabled the firm to prevent and detect the ACT system reporting violations. (NASD Case #C10020091)

**BNP Paribas Securities Corp. (CRD #15794, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$12,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it submitted to OATS reports with respect to equity securities traded on The NASDAQ Stock Market, Inc., that were not in the electronic form prescribed by NASD. The reports were rejected by the OATS system and notice of such rejection was made available to the firm on the OATS Web Site, but the firm did not correct or replace the reports. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations and NASD rules concerning OATS. (NASD Case #CMS030064)

**Carlin Equities Corp. (CRD #31295, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,000, and required to revise its written supervisory procedures concerning NASD's bid-test rule within 30 business days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed short-sale transactions in NNM securities at or below the current inside bid when the current inside bid was below the preceding inside bid in the security. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning the bid-test rule. (NASD Case #CMS030074)

**Citistreet Equities, LLC (CRD #7447, East Brunswick, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$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 enforce its written supervisory procedures regarding the review of mutual fund and variable annuity transactions. The findings also stated that the firm failed to obtain principal review of variable annuity and mutual fund transactions. In addition,

NASD found that the firm failed to maintain complete customer account and suitability information. (NASD Case #C9B030015)

**GVR Company, LLC (CRD #111528, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$100,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to contemporaneously or partially execute customer limit orders in an OTC Bulletin Board security after it traded the subject security for its own market-making account at a price that would have satisfied each customer's limit order. The findings also stated that the firm, as a market maker in securities, without making reasonable efforts to avoid a locked or crossed market by executing transactions with all market makers whose quotations would be locked or crossed, entered bid or asked quotations in The NASDAQ Stock Market, which caused a locked or crossed market condition to occur in each instance. NASD also found that the firm caused a locked/crossed market condition prior to the market opening by entering a bid (ask) quotation that locked/crossed another market maker's quotations without immediately thereafter sending through SelectNet<sup>®</sup>, to the market maker(s) whose quote(s) it locked or crossed, a Trade-or-Move message(s) that was at the receiving market maker's quoted price and whose aggregate size was at least 5,000 shares.

In addition, the findings stated that the firm was a party to a locked or crossed market condition prior to the market opening and received a Trade-or-Move message in each instance through SelectNet and, within 30 seconds of receiving such messages, failed to fill the incoming Trade-or-Move message for the full size of the message or move its bid down (offer up) by a quotation increment that would have unlocked/uncrossed the market. Furthermore, NASD found that the firm incorrectly reported to ACT the riskless principal transactions on OTC Equity securities and incorrectly designated the capacity of such transactions as principal. NASD also found that the firm failed to display immediately the customer limit orders in NASDAQ securities in its public quotation, when each such order was at a price that would have improved the firm's bid or offer in each such security; or when the order was priced equal to the firm's bid or offer and the national best bid or offer in such security, and the size of the order represented more than a de minimis change in relation to the size associated with its bid or offer in each such security. (NASD Case #CMS030052)

**Morgan Stanley DW, Inc. (CRD #7556, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to respond timely to NASD requests for information. (NASD Case #C07030015)

**NatCity Investments, Inc. (CRD #17490, Cleveland, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$200,000. Without admitting or denying the allegations, it consented to the described sanctions and to the entry of findings that the firm failed to adequately train its registered representatives in the sale of callable certificates of deposit (CDs) to prevent the use of false and misleading statements including misrepresentations regarding maturity, the call provision, liquidity, market risk, and interest. The findings also stated that the firm provided written materials that made misrepresentations of material facts to public customers. NASD also found that the firm falsely represented the market value of callable CDs held in public customer accounts on monthly customer account statements. In addition, NASD found that the firm failed to maintain accurate books and records. (NASD Case #CAF030012)

**North Hampton Partners, L.P. (CRD #42226, North Hampton, New Hampshire)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,000, and required to revise its written supervisory procedures concerning OATS within 30 days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to submit required information to OATS on 213 business days. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning OATS. (NASD Case #CMS030077)

**OTA LLC (CRD #25816, Purchase, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report to ACT the correct symbol indicating whether it executed transactions in eligible securities in a principal or agency capacity. The findings also stated that the firm failed to report to ACT the correct symbol indicating whether it represented the Market Maker side or the Order Entry side in transactions in eligible securities. In addition, NASD found that the firm failed to report to ACT the correct security identification for a transaction in eligible securities and failed to show the time of execution for transactions on the memorandum of the related brokerage order. (NASD Case #CMS030061)

**Pershing LLC (CRD #7560, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$11,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit through ACT, last-sale reports of transactions in NNM and Small Cap<sup>SM</sup> (SC<sup>SM</sup>) securities that constitute a pattern and practice of late reporting without exceptional circumstances. The findings also stated that the firm failed, within 90 seconds after execution, to transmit through

ACT last-sale reports of transactions in NNM securities and failed to designate such last-sale reports as late. (NASD Case #CMS030082)

**Roth Capital Partners, L.L.C. (CRD #15407, Newport Beach, California)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$15,000, and required to revise its written supervisory procedures concerning limit order display within 30 business days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to display immediately customer limit orders in NASDAQ securities in its public quotation, when each such order was at a price that would have improved the firm's bid or offer in each such security; or when the order was priced equal to the firm's bid or offer and the national best bid or offer in such security, and the size of the order represented more than a de minimis change in relation to the size associated with its bid or offer in each such security. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable laws and regulations concerning the limit order display. (NASD Case #CMS030037)

**Spear, Leeds & Kellogg, L.P. (CRD #3466, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$67,500, and required to revise its written supervisory procedures concerning OATS within 30 days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it transmitted to OATS reports that contained inaccurate, incomplete, or improperly formatted data. The findings stated that the reports contained an inaccurate Market Participant Identification (MPID). The findings also stated that the firm failed to report all applicable order information required to be recorded under NASD Marketplace Rule 6954 to OATS, and failed to report to OATS, by the deadline, Reportable Order Events. In addition, NASD found that the firm transmitted to OATS New Order Reports containing inaccurate data as to: limit order display indicator; method of receipt; the program trading and arbitrage codes; omitting data as to account type; and the receiving terminal ID and/or the receiving Department ID for orders received directly from a customer and captured electronically.

Furthermore, NASD found that the firm improperly transmitted Execution Reports to OATS for orders entered directly into the firm's proprietary order management system by other member firms. The findings stated that the firm failed to transmit to OATS route reports for orders entered directly into its proprietary order management system by other member firms. The findings also stated that the firm transmitted to OATS New Order Reports containing inaccurate routing firm MPID for orders entered directly into its proprietary order management system by other member firms, and failed to transmit to OATS the Routing Firm MIPDs for orders received from other members. Furthermore, NASD found that the firm transmitted to OATS

New Order Reports containing inaccurate or omitted Receiving Firm MPIDs for orders entered directly into its proprietary order management system by other member firms. The findings stated that the firm failed to transmit to OATS Cancel/Replace Reports on 107 consecutive business days, and entered into an agreement with another member firm and agreed to fulfill the member firm's obligations under NASD Marketplace Rule 6955. The firm, on behalf of another member firm, failed to report to OATS, by the deadline, Reportable Order Events that the member firm was required to report to OATS. NASD also determined that the firm's supervisory system, and as it related to its agreement with another member firm, did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning OATS. (NASD Case #CMS030042)

**Swift Trade Securities, Inc. (CRD #45141, Toronto, Ontario, Canada)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$16,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it submitted to OATS reports with respect to equity securities traded on The NASDAQ Stock Market, Inc., that were not in the electronic form prescribed by NASD. The reports were rejected by the OATS system and notice of such rejection was made available to the firm on the OATS Web Site, but the firm did not correct or replace the reports. The findings also stated that the firm failed to submit the Account Type Code for New Order Reports. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations, and NASD rules concerning OATS. (NASD Case #CMS030065)

**Trautman Wasserman & Company, Inc. (CRD #33007, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$12,000, and required to revise its written supervisory procedures concerning OATS within 30 business days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it submitted to OATS reports with respect to equity securities traded on The NASDAQ Stock Market that were not in the electronic form prescribed by NASD. In addition, NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable laws, regulations, and NASD rules concerning OATS. (NASD Case #CMS030040)

**U.S. Bancorp Piper Jaffray, Inc. (CRD #665, Minneapolis, Minnesota)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$40,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a market maker in securities, without making reasonable efforts to avoid a locked or crossed market by

executing transactions with all market makers whose quotations would be locked or crossed, it entered bid or asked quotations in The NASDAQ Stock Market, Inc., which caused a locked or crossed market condition to occur in each instance. The findings also stated that the firm was a party to a locked or crossed market condition prior to the market opening and received a Trade-or-Move message in each instance through SelectNet and, within 30 seconds of receiving such messages, failed to fill the incoming Trade-or-Move message for the full size of the message or move its bid down (offer up) by a quotation increment that would have unlocked/uncrossed the market. In addition, NASD found that the firm failed to execute orders presented at the firm's published bid or published offer in an amount up to its published quotation size, and thereby failed to honor its published quotation. (NASD Case #CMS030070)

**U.S. Trading Corp. (CRD #37426, Garden City, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,000, and required to revise its written supervisory procedures concerning short sales within 30 business days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed short-sale transactions in NNM securities at or below the current inside bid when the current inside bid was below the preceding inside bid in the security. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning short sales. (NASD Case #CMS030075)

**Weeden & Company, LP (CRD #16835, Greenwich, Connecticut)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a registered market maker in securities, it failed to execute orders presented at the firm's published bid or published offer in an amount up to its published quotation size, and thereby failed to honor its published quotation. (NASD Case #CMS030051)

**Wien Securities Corp. (CRD #10467, Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$82,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to display immediately the customer limit orders in NASDAQ securities in its public quotation, when each such order was at a price that would have improved the firm's bid or offer in each such security; or when the order was priced equal to the firm's bid or offer and the national best bid or offer in such security, and the size of the order represented more than a de minimis change in relation to the size associated with its bid or offer in each such security.

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

In addition, NASD found that the firm published quotations for OTC equity securities or, directly or indirectly, submitted such quotations for publication in a quotation medium and did not have in its records the documentation required by SEC Rule 15c2-11(a); did not have a reasonable basis under the circumstances for believing that the information was accurate in all material respects; or did not have a reasonable basis under the circumstances for believing that the sources were reliable. Moreover, the quotations did not represent a customer's indication of unsolicited interest. The firm also failed to file a Form 211 with NASD at least 3 business days before the firm's quotations were published or displayed in a quotation medium. In addition, the findings stated that the firm failed to report to ACT the correct symbol indicating whether the firm executed transactions in eligible securities in a principal or agency capacity; the correct symbol indicating whether the transaction was a buy, sell, sell short, sell short exempt, or cross for three transactions in eligible securities; and the firm failed to show the correct time of entry and execution on the memorandum of brokerage orders. Furthermore, the findings stated that the firm failed to show the contra side executing broker on the memorandum of one brokerage order, and failed to preserve for a period of not less than three years, the first two in a readily accessible place, the memorandum of two brokerage orders. (NASD Case #CMS030053)

**Win Capital Corp. (CRD #36172, Bayville, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it submitted to OATS reports with respect to equity securities traded on The NASDAQ Stock Market that were not in the electronic form prescribed by NASD. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve

compliance with applicable securities laws, regulations, and NASD rules concerning OATS. (NASD Case #CMS030066)

## Individuals Barred or Suspended

**Ira Leslie Aguado (CRD #1706754, Registered Representative, Kings Park, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Aguado consented to the described sanctions and to the entry of findings that he engaged in outside business activities, for compensation, without providing prompt written notice to his member firm.

Aguado's suspension began May 5, 2003, and will conclude at the close of business June 3, 2003. (NASD Case C10030019)

**Jeremy Steven Almquist (CRD #4447869, Registered Representative, Eden Prairie, Minnesota)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Almquist consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. (NASD Case #C04030017)

**Gregory Raymond Anderson (CRD #2477422, Registered Representative, Lighthouse Pt., Florida)** submitted an Offer of Settlement in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for one month. Without admitting or denying the allegations, Anderson consented to the described sanctions and to the entry of findings that he participated in a private securities transaction and failed to give written notice to, and obtain written authorization from, his member firm prior to engaging in such activities.

Anderson's suspension began May 5, 2003, and will conclude at the close of business June 4, 2003. (NASD Case #C8A020061)

**David Aaron Appell (CRD #2220139, Registered Principal, Blauvelt, New York) and Adam Bruce Swickle (CRD #2238830, Registered Principal, Jericho, New York)** submitted Offers of Settlement in which they were each fined \$15,000, suspended from association with any NASD member in any principal capacity for 30 days, and required to requalify by exam as a general securities principal (Series 24) prior to serving in a principal capacity with any firm. The fine must be paid before Appell and Swickle reassociate with any NASD member following the suspension or before requesting relief from any statutory disqualification. The sanctions are based on findings

that Appell and Swickle failed to establish, maintain, and enforce a supervisory system, including adequate written supervisory procedures, reasonably designed to achieve compliance with applicable securities laws, regulations, NASD rules regarding the timing of account reviews, the type of account reviews to be performed, or the purpose of account reviews.

The findings also stated that Appell and Swickle failed to establish procedures that would provide guidance to the Compliance Director to perform sales practice reviews on a daily, weekly, and monthly basis; the authority to accept and approve new accounts, trades, and outgoing correspondence; and the authority to handle customer inquiries. NASD also found that Appell and Swickle failed to update their firm's supervisory system to reflect personnel changes, that procedures were not followed to prevent unauthorized transactions, and that appropriate disclosures were made to public customers with respect to stock recommendations. In addition, NASD found that Appell and Swickle failed to ensure that sales were reviewed for account suitability, commission charges, and recommendations made by representatives. Moreover, NASD found that Appell and Swickle failed to ensure that the firm's Compliance Director had the requisite general securities license and experience, failed to provide him with a description of duties, failed to determine if he was performing his duties, and failed to hire a new Compliance Director.

Appell's and Swickle's suspensions began May 5, 2003, and will conclude at the close of business June 3, 2003. (NASD Case #CAF020065)

**Leroy Avery (CRD #2354752, Registered Representative, Chicago, Illinois)** was fined \$28,559, which represents disgorgement of the commissions earned from sales of viatical contracts, and suspended from association with any NASD member in any capacity for 90 days. The fine must be paid before Avery reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. The sanctions were based on findings that Avery participated in private securities transactions and outside business activities, for compensation, without giving prior written notice to his member firm.

Avery's suspension began April 14, 2003, and will conclude at the close of business July 14, 2003. (NASD Case #C8A020032)

**William Milton Bahr (CRD #859930, Registered Representative, St. Louis, Missouri)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bahr consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. (NASD Case #C04030013)

**Henry Babajide Bailey (CRD #4459384, Associated Person, District Heights, Maryland)** submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Bailey reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Bailey consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on his Uniform Application for Securities Industry Registration or Transfer Form (Form U-4).

Bailey's suspension began April 21, 2003, and will conclude at the close of business October 20, 2003. (NASD Case C9A020058)

**Homer Lynn Gary Baird, Jr. (CRD #2395659, Registered Principal, McKinney, Texas)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Baird consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firm.

Baird's suspension began April 1, 2003, and concluded at the close of business April 30, 2003. (NASD Case #C05030013)

**Vincent Roger Bickler (CRD #2042291, Registered Representative, Toms River, New Jersey)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Bickler forged the signatures of public customers on checks totaling \$1,359 and deposited the checks into his personal bank account without the customers' knowledge, authorization, or consent, thereby converting the funds for his own use and benefit. The findings also stated that Bickler failed to respond to NASD requests for information. (NASD Case C10020095)

**Gregory Emmett Bloom (CRD #2554861, Registered Representative, Sherman Oaks, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for 10 business days. In light of the financial status of Bloom, no monetary sanctions were imposed. Without admitting or denying the allegations, Bloom consented to the described sanctions and to the entry of findings that, in an attempt to settle a customer complaint, he made payments totaling \$6,000 to a public customer without informing his member firm.

Bloom's suspension began May 5, 2003, and concluded at the close of business May 16, 2003. (NASD Case #C07030016)

**James Steven Borrelli (CRD #2239217, Registered Principal, Export, Pennsylvania)** submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for six weeks and ordered to pay \$30,000 in restitution to public customers. In light of the financial status of Borrelli, he was ordered to pay \$30,000 in restitution. Without admitting or denying the allegations, Borrelli consented to the described sanctions and to the entry of findings that he, directly or indirectly, singly and in concert, by use of the means or instrumentalities of interstate commerce or of the mails, and in connection with the purchase and sale of securities, knowingly or recklessly engaged in, and/or induced others to engage in a device, scheme, or artifice to defraud; the use of an untrue statement of material fact and/or the omission of material facts necessary to make statements made not misleading; and acts, practices, or courses of business that operated as a fraud or deceit upon persons. The findings also stated that Borrelli solicited and induced public customers to purchase shares of common stock by means of material omissions of fact and risk, misrepresentations, and baseless and unreasonable price predictions. NASD also found that Borrelli failed to execute sell orders of a public customer.

Borrelli's suspension will begin May 19, 2003, and will conclude June 29, 2003. (NASD Case #CAF020023)

**John Michael Brack (CRD #2792908, Registered Principal, Orlando, Florida)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Brack falsified a transaction pre-approval form required by his member firm. NASD also found that Brack misrepresented his employment status on a new account application and failed to notify his member firm, in writing, that he had opened a securities account at another firm. In addition, Brack failed to notify the firm at which he opened the account that he was associated with an NASD member. (NASD Case #C9B020048)

**Thomas Victor Carey (CRD #2713293, Registered Representative, Minooka, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity, including clerical or ministerial functions, for 18 months. The fine must be paid before Carey reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Carey consented to the described sanctions and to the entry of findings that he misused funds belonging to his member firm, in that he drew checks on the branch office checking account payable to himself, forged the signatures of the authorized signators, and deposited the funds totaling \$6,500 into his personal account.

Carey's suspension began May 5, 2003, and will conclude at the close of business November 4, 2004. (NASD Case #C8A030019)

**Steven Phillip Charron (CRD #715925, Registered Principal, Rochester, Massachusetts)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Charron consented to the described sanction and to the entry of findings that he recommended and initiated purchase and sales transactions in the securities accounts of public customers without having reasonable grounds for believing that the recommendations and resulting transactions were suitable for the customers. The findings also stated that Charron, while registered with a member firm, was notified by the State of Rhode Island Department of Business Regulation that his application to become a licensed sales representative in Rhode Island had been denied. NASD also found that Charron, in order to circumvent his registration status in Rhode Island, entered into an arrangement with another registered individual of his member firm who was effectively registered in Rhode Island to sell securities. In addition, the findings stated that the arrangement involved the falsification of a customer account record belonging to Charron, reflecting the registered individual as the registered representative for the account. Furthermore, NASD found that the registered individual allowed his name and commission number to be placed on a customer's account, which at all times was effectively controlled by Charron, and Charron actively traded the customer's account under the registered individual's name and commission number and received commissions. (NASD Case #C11030008)

**Barry Chaskes (CRD #2228700, Registered Representative, E. Brunswick, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000, including the disgorgement of commissions of \$700, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Chaskes consented to the described sanctions and to the entry of findings that he effected unauthorized trades in the account of a public customer.

Chaskes' suspension began May 5, 2003, and will conclude at the close of business May 16, 2003. (NASD Case #C9B030018)

**William Pang Chien (CRD #2251029, Registered Principal, Plantation, Florida)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Chien consented to the described sanction and to the entry of findings that a member firm, acting through Chien, initiated sales efforts to privately place \$21,000,000 of common stock of an affiliated company through a purported Regulation D, Rule 506 offering, but there was no registration in effect for the offering, the offering failed to comply with Rule 506 requirements, and the offering did not comply with any other registration exemption. The findings also stated that, in connection with the offering of a common stock, Chien acted intentionally or recklessly in creating offering memoranda that contained numerous material

misrepresentations and omissions of material fact. NASD also found that Chien delegated supervisory responsibilities for his member firm's branch office to his brother, even though he was aware that his brother was not qualified or registered as a general principal.

In addition, NASD found that Chien failed to establish, maintain, and enforce written supervisory procedures and systems to supervise the activities of registered representatives and associated persons reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules to ensure that associated persons were not statutorily disqualified and were properly registered, that a branch office had a complete and accurate set of written supervisory procedures, and that they adequately set forth how delegated persons were to discharge their responsibilities. Moreover, NASD found that Chien assisted in the design and creation of Web sites that failed to provide a balanced statement of the benefits and risks of investing in a common stock and the target companies, failed to reflect sufficiently the inherent uncertainty of investment returns, and included inaccurate and exaggerated claims about the target companies. (NASD Case #CAF020024)

**Gregory Lee Claussen (CRD #2302870, Associated Person, Omaha, Nebraska)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Claussen consented to the described sanction and to the entry of findings that he was to void checks in instances where funds had been or were to be wired to registered representatives at his member firm. NASD found that, rather than voiding the checks as he was supposed to do, Claussen instead forged the representatives' signatures, countersigned the checks, and deposited the funds into his personal bank account. The findings also stated that Claussen failed to respond to NASD requests for information. (NASD Case #C04030012)

**Alan Howard Davidson (CRD #2548306, Registered Principal, Lexington, Massachusetts)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegation, Davidson consented to the described sanction and to the entry of findings that he willfully failed to disclose material facts on a Uniform Application for Broker-Dealer Registration (Form BD) and misrepresented material facts to NASD. (NASD Case #C11020043)

**Jonathan Boyer Day (CRD #2722456, Registered Representative, Chicago, Illinois)** was fined \$1,000 and suspended from association with any NASD member in any capacity for 25 days. The sanctions were based on findings that Day failed to disclose a material fact on his Form U-4. In addition, Day failed to respond timely to NASD requests for information.

Day's suspension began April 7, 2003, and concluded at the close of business May 5, 2003. (NASD Case #C8A010094)

**Darrel Edward DeMarco (CRD #2108732, Registered Representative, Tallmadge, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, DeMarco consented to the described sanction and to the entry of findings that he forged the name of an official of his member firm on a corporate resolution which guaranteed that the firm would stand behind automobile loans and leases entered into by an automobile dealership with professional athletes DeMarco hoped to attract as customers. The findings also stated that DeMarco signed this document without the knowledge, consent, or authorization of his firm or the firm's official whose purported signature appeared on the resolution. (NASD Case #C8B030006)

**Henry D'Onofrio (CRD #2707230, Registered Representative, Rye Brook, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that D'Onofrio failed to respond to NASD requests for on-the-record interviews. In addition, D'Onofrio willfully failed to disclose a material fact on his Form U-4. (NASD Case #C11020037)

**Barbara Alice Edwards (CRD #1001427, Registered Representative, Washington Turnpike, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$5,000 and suspended from association with NASD member in any capacity for one year. The fine must be paid before Edwards reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Edwards consented to the described sanctions and to the entry of findings that she failed to inform her supervisor at her member firm that a customer, whose account appeared on the firm's active account report, was deceased when questioned about the customer. The findings also stated that Edwards accepted unsolicited orders from the sole heir to a public customer to sell securities in the customer's account although the power of attorney over the customer's account was no longer in effect due to the customer's death; therefore, these sales represented unauthorized transactions.

Edwards' suspension began April 21, 2003, and will conclude at the close of business April 20, 2004. (NASD Case #C9B030014)

**Michael Frederick Flannigan (CRD #1135700, Registered Principal, Excelsior, Minnesota)** was fined \$25,000, jointly and severally, and barred from association with any NASD member in any supervisory capacity. The SEC affirmed the sanctions following appeal of a June 2001 National Adjudicatory Council (NAC) decision. The sanctions were based on findings

that Flannigan, acting through a member firm, allowed registered representatives of another member firm who were not registered with his member firm to engage in his firm's securities business, and exercised discretionary authority for customer accounts by following directions from a registered representative of another member firm with respect to trading in his firm's customer accounts. (NASD Case #C8A980097)

**Carmine Fusco (CRD #1958191, Registered Representative, Pompton Lakes, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Fusco consented to the described sanction and to the entry of findings that he willfully failed to amend his Form U-4 to disclose material facts. (NASD Case #C9B030017)

**Carlos Miguel Garcia, III (CRD #1961096, Registered Representative, Guilford, Connecticut)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Garcia consented to the described sanctions and to the entry of findings that he settled two customer complaints totaling \$26,000 without his member firm's knowledge or approval.

Garcia's suspension began April 21, 2003, and will conclude at the close of business October 20, 2003. (NASD Case #C11030007)

**Jeffrey Thomas Gargaro (CRD #2321455, Registered Representative, Fridley, Minnesota)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gargaro consented to the described sanction and to the entry of findings that, in his position as a treasurer of a local political party, he converted \$12,907.36 in party funds to his own personal use and benefit without the knowledge or consent of the party by writing checks to himself and subsequently endorsing and cashing those checks. The findings also stated that Gargaro failed to respond to NASD requests for information. (NASD Case #C04030010)

**Lorraine Henry Geiss (CRD #1982429, Registered Representative, Union Grove, Wisconsin)** submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Geiss consented to the described sanctions and to the entry of findings that she participated in private securities transactions and failed to give prior written notice to, and receive written acknowledgement from, her member firm prior to engaging in such activities.

Geiss' suspension began May 5, 2003, and will conclude at the close of business June 3, 2003. (NASD Case #C8A030023)

**Thomas Charles Green (CRD #228650, Registered Principal, Sherman Oaks, California)** submitted an Offer of Settlement in which he was fined \$25,000, suspended from association with any NASD member in any capacity for 10 business days, and suspended from association with any NASD member as a general securities principal or trader for three months. Without admitting or denying the allegation, Green consented to the described sanctions and to the entry of findings that, as a registered market maker, he was engaged in manipulative, deceptive, or fraudulent conduct by intentionally or recklessly causing to be executed and reported to the NASDAQ Stock Market, Inc., last-sale reports of transactions in a common stock, at or near the close of the market, for the purpose of affecting the reported closing last-sale price in the security. NASD found that, as a result, all transactions represented the closing last-sale price for the stock, and were reported at a price higher than the price of the last preceding trade in the stock reported to The NASDAQ Stock Market, or were the only trade of the day in the stock and were reported at a price higher than the prevailing inside bid. The findings also stated that Green had an interest in having the stock perform well financially because of the substantial positions in the stock held by him, his member firm, and its customers.

Green's suspension in any capacity began April 21, 2003, and concluded at the close of business May 2, 2003. Green's suspension in a principal and trader capacity began April 21, 2003, and will conclude July 20, 2003. (NASD Case #CMS020169)

**William Clinton Hamel (CRD #2955051, Registered Representative, Troy, Illinois)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Hamel failed to respond to NASD requests for information. In addition, Hamel acted in a capacity requiring that he be registered while his registration was inactive because he failed to complete the Regulatory Element of NASD's Continuing Education Requirement. (NASD Case #C8A020079)

**Brooke Lynne Hill (CRD #2896257, Registered Representative, Decatur, Alabama)** submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Hill reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Hill consented to the described sanctions and to the entry of findings that she received \$1,175 from public customers to be invested and failed and neglected to submit these funds to her member firm on the

customers' behalf until a much later time, thereby misusing the funds without the knowledge or consent of the customers.

Hill's suspension began May 5, 2003, and will conclude at the close of business May 4, 2004. (NASD Case #C05030017)

**Sharif Ali Jeffries (CRD #3162879, Registered Representative, Newark, Delaware)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Jeffries consented to the described sanction and to the entry of findings that he secured possession of numerous blank checks for a public customer's account at his member firm for which Jeffries was the financial advisor. The findings stated that, without the customer's knowledge or consent, Jeffries wrote checks on the account, forged the customer's signature on each check, negotiated the checks or caused them to be negotiated, made himself the payee on some of the checks totaling \$105,400, and converted the funds to his own use and benefit. In addition, NASD found that Jeffries caused checks totaling \$5,000 to be applied for the benefit of other customers at his member firm. Furthermore, the findings stated that Jeffries failed to respond to NASD requests for information. (NASD Case #C9A030009)

**Beth Ann Kammerdiener (CRD #4396494, Registered Representative, Eden Prairie, Minnesota)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kammerdiener consented to the described sanction and to the entry of findings that she failed to respond to NASD requests for information. (NASD Case #C04030016)

**Ali Keita (CRD #4349045, Associated Person, East Rutherford, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Keita consented to the described sanction and to the entry of findings that, without the permission or authority from his member firm, he deposited a \$7,937.77 check, payable to his member firm, into his personal bank account and attempted to convert the proceeds for his personal use. The findings also stated that Keita failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #C9B030016)

**Jeffrey Michael Kirschner (CRD #1171670, Registered Principal, Anaheim Hills, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kirschner consented to the described sanction and to the entry of findings that he participated in and received compensation for private securities transactions without providing prior written notice to his member firm. (NASD Case #C02030019)

**William Arthur Knowles (CRD #2747475, Registered Representative, Bend, Oregon)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Knowles consented to the described sanction and to the entry of findings that he effected, or caused to be effected, transactions in the accounts of public customers and exercised discretionary power in those accounts without having obtained the customers' written authorization and/or prior written authorization from his member firm to treat the accounts as discretionary. NASD also found that Knowles sold and purchased variable annuity policies for the account of a public customer without the knowledge or consent of the customer and in the absence of written or oral authorization to exercise discretion in connection with the customer's variable annuity policy. The findings also stated that, in order to effect the sale and purchase of the variable annuity policies, Knowles affixed the name of the customer to various documents without the consent or knowledge of the customer. (NASD Case #C3B030007)

**Judith Ann Krueger (CRD #4525540, Associated Person, Malvern, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before Krueger reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Krueger consented to the described sanctions and to the entry of the findings that she willfully failed to disclose a material fact on a Form U-4.

Krueger's suspension began May 5, 2003, and will conclude at the close of business June 3, 2003. (NASD Case #C9A030011)

**Elias Gabriel McLaughlin (CRD #3180423, Registered Representative, New Orleans, Louisiana)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$152,079.18 and barred from association with any NASD member in any capacity. The fine must be paid before McLaughlin reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, McLaughlin consented to the described sanctions and to the entry of findings that he exercised discretionary transactions in the accounts of public customers without having obtained prior written authorization from the customers and prior written acceptance of the accounts as discretionary by his member firm. (NASD Case #C05030016)

**Edmond Michael Melillo (CRD #2430646, Registered Representative, Berkeley Heights, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD

member in any capacity for two years. The fine must be paid before Melillo reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Melillo consented to the described sanctions and to the entry of the findings that he willfully failed to amend and disclose material facts on his Form U-4. The findings also stated that Melillo failed to respond timely to NASD requests for information.

Melillo's suspension began April 21, 2003, and will conclude at the close of business April 20, 2005. (NASD Case #C9B030013)

**LuVerne Aloys Meyer (CRD #333171, Registered Principal, Sauk Centre, Minnesota)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$21,065.05, including disgorgement of \$16,065.05 in commissions earned, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Meyer consented to the described sanctions and to the entry of findings that he engaged in outside business activities and received \$16,065.05 in commissions without providing prompt written notice to his member firm.

Meyer's suspension will begin May 19, 2003, and will conclude at the close of business June 17, 2003. (NASD Case #C04030018)

**John Anthony Montelbano (CRD #1046715, Registered Principal, New York, New York), Gerard McMahon (CRD #810308, Registered Principal, Belford, New Jersey), and Michael Anthony Galasso, Jr. (CRD #1814376, Registered Principal, Staten Island, New York)** were barred from association with any NASD member in any capacity. Montelbano and McMahon were each fined \$90,000 and suspended from association with any NASD member in any capacity for two years. Galasso was fined \$81,000 and suspended from association with any NASD member in any capacity for 10 business days. The SEC sustained the sanctions following appeal of a National Adjudicatory Council decision.

The SEC affirmed NASD's findings that Montelbano, McMahon, and Galasso violated the antifraud provisions of the Securities Exchange Act of 1934 (Exchange Act) and NASD rules by participating in the manipulation of a stock. NASD also found that Montelbano, McMahon, and Galasso failed to respond truthfully during NASD on-the-record interviews. NASD found that Galasso was responsible for the firm's excessive and fraudulent markups ranging from approximately 6.45 percent to 74.19 percent above the firm's contemporaneous cost. Furthermore, NASD found that during his firm's distribution of the stock, Galasso continuously placed bids for ASWI in violation of Exchange Act Rule 10b-6 (replaced by Exchange Act Regulation M). NASD also found that Montelbano failed to supervise properly the sales personnel of his member firm.

Montelbano's, McMahon's, and Galasso's bars became effective February 5, 2001. (NASD Case C10970145)

**Nancy Murry (CRD #4468654, Registered Representative, O'Fallon, Missouri)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Murry consented to the described sanction and to the entry of findings that she willfully failed to disclose a material fact on her Form U-4. The findings also stated that Murry failed to respond to NASD requests for information. (NASD Case #C04030015)

**Kenneth James O'Connor (CRD #2957084, Registered Principal, Loram, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, O'Connor consented to the described sanction and to the entry of findings that he engaged in a fraudulent scheme to obtain funds from investors through a purported private placement offering. The findings also stated that O'Connor, while operating from a securities "boiler room," solicited investors to purchase units and, in telephone conversations, meetings, and written promotion materials, made false representations and misleading statements. NASD found that the proceeds from the sale of units were used for a variety of undisclosed and improper purposes including payment of commissions to brokers and cold callers, excessive salaries to individuals involved in the scheme, and payment of personal expenses and other expenses necessary to continue the scheme. In addition, NASD found that O'Connor sold units to at least one investor. (NASD Case #CLI030008)

**Joseph Tancreti Pagano, Jr. (CRD #2594494, Registered Representative, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, including disgorgement of \$207.70 in commissions, suspended from association with any NASD member in any capacity for 30 days, and ordered to pay \$750, plus interest, in restitution to public customers. Without admitting or denying the allegations, Pagano consented to the described sanctions and to the entry of findings that he effected transactions in the joint account of public customers without their prior knowledge, authorization, or consent.

Pagano's suspension began May 5, 2003, and will conclude at the close of business June 3, 2003. (NASD Case #C10030018)

**Michael Anthony Palermo, Sr. (CRD #1022544, Registered Representative, Bethpage, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 10 business days. The fine is due and payable before Palermo reassociates with any NASD member in any capacity following the suspension or before requesting relief from any statutory disqualification. Without admitting or

denying the allegations, Palermo consented to the described sanctions and to the entry of findings that he engaged in outside business activities and failed to provide written notice to his member firm.

Palermo's suspension began May 5, 2003, and will conclude at the close of business May 16, 2003. (NASD Case #CLI030007)

**John J. Pergolizzi (CRD #862023, Registered Principal, Little Ferry, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Pergolizzi consented to the described sanction and to the entry of findings that, without authorization, he reversed margin interest charges totaling \$8,273 in personal accounts he maintained with his member firm. (NASD Case #C9B030019)

**Richard Lynn Pugh (CRD #3168652, Registered Representative, Lehi, Utah)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Pugh consented to the described sanction and to the entry of findings that he engaged in private securities transactions without providing prior written notice to his member firm. In addition, NASD found that Pugh failed to respond to NASD requests for information. (NASD Case #C3A030003)

**Michael Joseph Quattrocchi (CRD #2572540, Registered Representative, Omaha, Nebraska)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Quattrocchi consented to the described sanction and to the entry of findings that, without the knowledge or consent of public customers, he converted to his own use and benefit \$84,663.59 in customer funds intended by the customers to be invested for them. The findings also stated that Quattrocchi failed to respond to NASD requests for information. (NASD Case #C04030011)

**Christopher Law Rhinesmith (CRD #2518045, Registered Representative, Duxbury, Massachusetts)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 10 days. The fine must be paid before Rhinesmith reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Rhinesmith consented to the described sanctions and to the entry of findings that he exercised discretionary power in a customer account without prior written authority.

Rhinesmith's suspension began April 21, 2003, and concluded at the close of business April 30, 2003. (NASD Case #C11030009)

**Martin Dennis Ross (CRD #2221937, Registered Representative, Boca Raton, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Ross consented to the described sanctions and to the entry of findings that he placed both buy and sell orders in a common stock in an unsuccessful attempt to establish a market in which others would begin trading the shares at prices that did not reflect genuine customer interest and were not the product of the independent interaction of supply and demand.

Ross' suspension began April 21, 2003, and concluded at the close of business May 9, 2003. (NASD Case #CMS030041)

**Gary Joseph Saner (CRD #2574526, Registered Representative, Wall Township, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Saner consented to the described sanction and to the entry of findings that he forged a public customer's signature on insurance forms without the customer's permission or knowledge. (NASD Case #C9B030012)

**Joseph Sirilla, Jr. (CRD #1128659, Registered Representative, Campbell, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$20,020, including disgorgement of \$17,520 in commissions received, and suspended from association with any NASD member in any capacity for 60 days. The fine must be paid before Sirilla reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Sirilla consented to the described sanctions and to the entry of findings that he engaged in outside business activities for compensation, and failed to provide his member firm with prompt written notice of his activities.

Sirilla's suspension began April 21, 2003, and will conclude at the close of business June 19, 2003. (NASD Case #C8B030007)

**Daniel Verne Smythe (CRD #3207539, Registered Representative, Peralta, New Mexico)** submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Smythe reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Smythe consented to the described sanctions and to the entry of findings that he willfully failed to amend his Form U-4 to disclose material facts.

Smythe's suspension began April 21, 2003, and will conclude at the close of business on April 20, 2004. (NASD Case #C3A030002)

**Marius Constantin Stan (CRD #3080062, Registered Representative, Island Heights, New Jersey)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Stan consented to the described sanction and to the entry of findings that he submitted a health insurance claim to his member firm's health insurance carrier seeking reimbursement totaling \$15,680, falsely overstating the amount of money that he had paid in connection with a medical procedure in which he incurred charges of \$137. (NASD Case #C9B030002)

**Rick Anthony Stephens (CRD #3252198, Registered Representative, Lauderdale Lake, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Stephens consented to the described sanction and to the entry of findings that, without the consent or knowledge of a public customer, Stephens submitted a written request to his member firm to change the address of the customer and to send the customer an ATM card by forging the customer's signature to the written request. The findings also stated that Stephens obtained the ATM card and made unauthorized cash withdrawals totaling \$17,100 from the customer's account. NASD also found that Stephens failed to respond to NASD requests for information. (NASD Case #C07030018)

**Richard Anthony Takacs (CRD #2479382, Registered Principal, Holbrook, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Takacs executed transactions in the accounts of public customers without their prior knowledge, authorization, or consent. NASD also found that Takacs failed to respond truthfully and non-deceptively during an on-the-record interview. In addition, NASD found that Takacs prepared and mailed a letter to public customers without the approval of a designated principal at his member firm. (NASD Case #C10020096)

**Nicholas George Tsikitas (CRD #2871712, Registered Principal, Ashland, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Tsikitas consented to the described sanctions and to the entry of findings that he executed unauthorized purchases in the accounts of public customers.

Tsikitas' suspension began May 5, 2003, and will conclude at the close of business May 16, 2003. (NASD Case #C9A030010)

**William Edward Walenda, Jr. (CRD #1962937, Registered Principal, Voorhees, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Walenda consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. The findings also stated that Walenda affixed, or caused to be affixed, to "switch letters" the purported signature of a public customer without the prior authorization or consent of the customer. (NASD Case #C9A030012)

**Terry Lee Wees (CRD #2917853, Registered Principal, Chula Vista, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Wees consented to the described sanction and to the entry of findings that he sold unsecured promissory notes totaling \$458,832 to public customers and misused the proceeds without the customer's knowledge and consent. The findings also stated that Wees did not provide notice to, or receive permission from, his member firm to engage in such transactions. (NASD Case #C02030018)

**William Wong (CRD #2142254, Registered Principal, Coto de Caza, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for 20 business days. In light of the financial status of Wong, no monetary sanctions have been imposed. Without admitting or denying the allegations, Wong consented to the described sanction and to the entry of findings that he paid a public customer \$18,431 from his personal checking account to settle a complaint, without the knowledge or consent of his member firm.

Wong's suspension began April 21, 2003, and will conclude at the close of business May 16, 2003. (NASD Case #C02030017)

**David Wesley Wyandt (CRD #2307072, Registered Representative, Davis, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Wyandt consented to the described sanction and to the entry of findings that he submitted employee business expense reports to his member firm on which he overstated his actual expenses by including expenses that had already been reimbursed. The findings stated that as a result, Wyandt improperly obtained \$18,600 from his member firm. (NASD Case #C9A030008)

## Decision Issued

The following decision has been issued by the DBCC or the Office or Hearing Officers and has been appealed to or called for review by the NAC as of April 4, 2003. 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*.

**Paul Joseph Benz (CRD #1548330, Registered Principal, Chester, New Jersey)** was fined \$7,500, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by exam as a principal. The sanctions were based on findings that Benz, on behalf of his member firm, utilized the instrumentalities of interstate commerce to engage in the securities business while the firm failed to maintain its minimum net capital requirements. The findings also stated that Benz failed to respond to NASD requests for information.

Benz has appealed this decision to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C01020014)

## Complaints Filed

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

**Joseph Abbondante (CRD #1879052, Registered Representative, Freehold, New Jersey) and Daniel Timothy Pszanka (CRD #2499042, Registered Representative, Denver, Colorado)** were named as respondents in an NASD complaint alleging that they engaged in private securities transactions without providing prior written notice to, or obtaining prior written approval from, their member firm. The complaint also alleges that Abbondante and Pszanka, in connection with the purchases of interests in a limited partnership and inducements to purchase interests in the limited partnership, directly or indirectly, by the use of means or instrumentalities of interstate commerce or of the mails, or of any facility of any national securities exchange, employed artifices, devices, or schemes to defraud; made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made not misleading; engaged in acts, practices, or courses of business that operated or would operate as a fraud or deceit; and/or effected

transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive, or other fraudulent device or contrivance.

In addition, the complaint alleges that Abbondante and Pszanka omitted to disclose material facts and made misrepresentations of material facts in connection with the investments of public customers in a limited partnership. The complaint alleges that Abbondante and Pszanka engaged in an outside business activity without providing written notice to their member firm, and that Pszanka created and provided, and Abbondante caused to be created and knowingly facilitated Pszanka in providing, false investment account statements to public customers that contained purported information with respect to each customer's investment in a limited partnership including, among other things, the amount and location of their principal investments, the performance of their investments, and their returns on investment. The complaint further alleges that Abbondante and Pszanka knew, or should have known, that the statements were false, misleading, deceptive, and without a factual basis. (NASD Case #C10020090)

**Michael Bruce Fishbein (CRD #2182699, Registered Principal, Bronx, New York)** was named as a respondent in an NASD complaint alleging that he threatened a member of his firm with bodily harm. The complaint also alleges that Fishbein effected a purchase transaction in the account of a public customer without the customer's knowledge, authorization, or consent. (NASD Case #C10030022)

**Herbert Amos Jones, Jr. (CRD #2614626, Registered Principal, Bethel Island, California)** was named as a respondent in an NASD complaint alleging that he instructed a public customer to write a \$10,000 check made payable to him to be invested for the sole and exclusive benefit of the customer and instead, without the customer's knowledge or consent, Jones negotiated the check and used the funds for his personal benefit or for some purpose other than the benefit of the customer. The complaint also alleges that Jones failed to respond to NASD requests for information. (NASD Case #C01030007)

**Kevin Scott Jones (CRD #1504897, Registered Representative, Houston, Texas)** was named as a respondent in an NASD complaint alleging that he recommended and effected an unsuitable securities transaction in the amount of \$315,000 for a public customer without having reasonable grounds for believing that the recommendation and resultant transactions were suitable for the customer based on the customer's financial situation and needs. (NASD Case #C05030015)

**Kirlin Securities, Inc. (CRD #21210, Syosset, New York) and Joseph Donald Columbo (CRD #823524, Registered Principal, Melville, New York)** were named as respondents in an NASD complaint alleging that the firm, acting through

Columbo, participated, directly or indirectly, in undertakings involving the sale of interests in Brady Bonds and acted as underwriters when there were no registration statements filed or no exemptions from registration applicable to the Brady Bonds. The complaint also alleges that in preparing and disseminating advertising materials for the Brady Bonds, the firm failed to disclose material facts and omitted material information. The complaint further alleges that the firm, acting through Columbo, dominated and controlled the retail market for the Brady Bonds so that there was no independent, competitive retail market for the securities, and charged its customers excessive markups in excess of 4 percent over the prevailing market price, which resulted in excessive markups of approximately \$1,420,528.

In addition, the complaint alleges that the firm, acting through Columbo, charged its customers fraudulently excessive markups in excess of 19 percent over the prevailing market price, resulting in excessive markups of at least \$44,538. Furthermore, the complaint alleges that the firm failed to conduct adequate supervisory review, and failed to establish and maintain an adequate supervisory system to determine the following: if the firm could sell interests in Brady Bonds without registration, if the firm's advertising materials were reviewed properly before being distributed to the public, and if the bonds were being marked up. Moreover, the complaint alleges that the firm failed to establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of registered representatives and associated persons reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD laws. The complaint also alleges that the firm failed to ensure that the firm's books and records were properly prepared and maintained, and failed to maintain hard or electronic copies of inventory sheets created to provide information about each Brady Bond's coupon rate, date of maturity, current yield, interest, and sales credit given to the registered representative. (NASD Case #CAF030011)

**Paragon Capital Markets, Inc. (CRD #18555, New York, New York), George Bernard Levine (CRD #307904, Registered Principal, Boca Raton, Florida), Danny Jay Levine (CRD #1007419, Registered Principal, East Hanover, New Jersey), and Frank Joseph Argenziano (CRD #1933781, Registered Principal, Massapequa, New York)** were named as respondents in an NASD complaint alleging that they deliberately engaged in a fraudulent scheme in connection with the sale of IPO securities. The complaint also alleges that the firm, through G. Levine and Argenziano, created an illegal tie-in arrangement by requiring brokers to solicit the offering securities as a unit only when customers should have been permitted to purchase common shares and warrants separately. The complaint further alleges that the firm, through G. Levine and Argenziano, engaged in unauthorized trading in public customer accounts by causing IPO purchases to be inputted into their accounts without prior approval. In addition, the complaint

alleges that the firm, through D. Levine, parked IPO securities in customer accounts by deliberately failing to process cancellation requests when submitted to make it falsely appear that the offering was all sold, and to avoid significant losses in the event the securities were taken back into inventory due to the falling market price of the IPO securities.

The complaint also alleges that the firm, through G. Levine and Argenziano, caused its clearing firm to create and mail fraudulent confirmations to clients reflecting purchases of a unit IPO security and subsequent cancellations when, in fact, no legitimate purchases had occurred. Moreover, the complaint alleges that the firm, G. Levine, D. Levine, and Argenziano, by the use of any means or instrumentality of interstate commerce or of the mails, knowingly or recklessly engaged in manipulative or deceptive devices or contrivances in connection with the sale of securities, and knowingly or recklessly effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive, or other fraudulent devices or contrivances. The complaint also alleges that the firm, through G. Levine and Argenziano, failed to disclose required information on transaction confirmations mailed to firm clients. Moreover, the complaint alleges that the firm, through D. Levine, directly or indirectly, bid for purchases or attempted to induce others to bid for or purchase a covered security during a restricted period in violation of Regulation M of the Exchange Act. Finally, the complaint alleges that the firm, through G. Levine and Argenziano, caused the "dummy" ADP security number for a non-existent unit security to be reflected on confirmations, cancellations notices, client account statements, and proprietary account statements, and also caused the entering of sales and cancellations of such sales for nonpayment when no such legitimate sales had ever occurred. (NASD Case #CAF030009)

**Moises Toledo (CRD #4164833, Registered Representative, Highland Beach, Florida)** was named as a respondent in an NASD complaint alleging that, in the course of sales presentations to public customers, he made misrepresentations of fact, omitted to disclose material facts, and made unsubstantiated price predictions. The complaint also alleges that Toledo failed to execute customer sale orders. In addition, the complaint further alleges that Toledo failed to respond to NASD requests to appear for testimony. (NASD Case #CAF030010)

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

**Donald & Co., Securities, Inc.**  
Tinton Falls, New Jersey  
(March 18, 2003)

**Global Access Financial Services  
(a/k/a GlobeTek Solutions, Inc.)**  
Lake Success, New York  
(March 18, 2003)

**Olsen Payne & Company**  
Salt Lake City, Utah  
(March 18, 2003)

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

The following firms were suspended from membership in NASD for failure to comply with formal written requests to submit financial information to NASD. The action was based on the provisions of NASD Rule 8221. The date the suspension commenced is listed after the entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

**Internet Capital Management, Inc.**  
Darien, Connecticut  
(March 6, 2003)

**Marketxt, Inc.**  
New York, New York  
(March 19, 2003)

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

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

**Auten, Opie**  
Fort Worth, Texas  
(March 18, 2003)

**Bealman, Vicki D.**  
Virginia Beach, Virginia  
(March 21, 2003)

**Brocail, Scott E.**  
Springdale, Arkansas  
(March 26, 2003)

**Chanin, Jay E.**  
Cherry Hill, New Jersey  
(April 2, 2003)

**Coleman, Joseph C.**  
Coraopolis, Pennsylvania  
(March 12, 2003)

**Koupas, Harry**  
Dallas, Texas  
(March 12, 2003)

**Lively, Billy Don**  
North Little Rock, Arkansas  
(March 26, 2003)

**Manning, Cathey D.**  
Grand Rapids, Michigan  
(March 26, 2003)

**Peres, Ayax Manuel**  
Vallejo, California  
(March 17, 2003)

**Pero, Belinda**  
Yantic, Connecticut  
(March 26, 2003)

**Rutland, Chris H.**  
Payson, Arizona  
(March 12, 2003)

**Scott, James L.**  
Gardnerville, Nevada  
(March 28, 2003)

**Smith, Gabriele T.**  
Yonkers, New York  
(March 28, 2003)

**Toyin-Oke, Tajudeen T.**  
Randallstown, Maryland  
(March 13, 2003)

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

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

**Altwater, Fredrick R.**  
Bluffton, Ohio  
(April 1, 2003)

**Bautz, Phil D.**  
Madison, Wisconsin  
(March 25, 2003)

**Boston, Michael A.S.**  
Richmond Hill, New York  
(March 13, 2003)

**Bridges, III, William R.**  
Florence, South Carolina  
(March 21, 2003)

**Bruteyn, Jeffrey Charles**  
Dallas, Texas  
(March 26, 2003)

**Burgdorf, Richard B.**  
Birmingham, Alabama  
(March 17, 2003)

**Glikberg, Carmen M.**  
Chicago, Illinois  
(March 18, 2003)

**Gomez, IV, Jose Angel**  
Miami Beach, Florida  
(March 21, 2003)

**Guirand, Gary D.**  
Baldwin, New York  
(March 14, 2003)

**Kiggins, Warren D.**  
Phoenix, Arizona  
(April 4, 2003)

**Roginson, Thomas**  
Los Angeles, California  
(April 1, 2003)

**Strunk, David A.**  
Warren, Michigan  
(April 1, 2003)

**Supinsky, Jeffrey H.**  
Woodbury, New York  
(April 1, 2003)

**Torres, Roger E.**  
Miami, Florida  
(April 7, 2003)

**Vogt, Jr., Ronald William**  
Richmond, Virginia  
(April 7, 2003)

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

**Baldo, Michael**  
Long Island City, New York  
(March 18, 2003)

**Ceparano, Louis C.**  
Melville, New York  
(March 18, 2003)

**Miller, David**  
New York, New York  
(March 18, 2003)

**Rizzo, Richard V.**  
Oceanside, New York  
(March 18, 2003)

**Shteinberg, Ilan**  
Marlboro, New Jersey  
(March 18, 2003)

## **NASD Charges Invemed Associates with Sharing in Customers' Profits from Hot IPOs**

NASD charged Invemed Associates LLC of New York, NY with unlawful profit-sharing activities that took place in late 1999 and early 2000 in connection with "hot" IPOs it sold to its customers.

According to the complaint, Invemed received millions of dollars in inflated commissions from dozens of customers who sought and received allocations of "hot" initial public offerings (IPOs) from the firm. Customers paid the inflated commissions on agency transactions in highly liquid securities, with commissions as high as \$2 per share on large transactions where the typical or ordinary charge would have been approximately 6 cents per share. Additionally, customers paid the firm inflated commissions as high as \$8 per share as they "flipped" their allocated IPO shares, immediately selling in the aftermarket at substantial profits.

These inflated commissions accounted for approximately one-third of the firm's total agency commission revenue during the last quarter of 1999 and the first quarter of 2000. Invemed's sales representatives received approximately 50 percent of commissions generated on trades done in the accounts of their customers. The sales representatives' compensation was entirely based on customer commissions.

From October 1999 through March 2000, Invemed participated as a member of the syndicate or selling group in more than 50 IPOs. Most of these IPOs opened for trading at significant increases from their offering price, with 20 of them more than

doubling in value from the IPO price. That dramatic increase provided substantial profits to customers who sold in the immediate aftermarket. Invemed shared in profits of its customer accounts by receiving inflated commissions from IPO customers on unrelated agency trades which generally were paid close in time to the receipt of the IPO. For example, on December 9, 1999, one customer received 2,000 shares of VA Linux, as well as 2,000 shares of FogDog. If the customer had immediately sold the IPO shares after receiving them, the customer would have profited by more than \$550,000. That day, the customer paid the firm \$140,000 in agency commissions, including 20 cents per share commissions on 700,000 shares of two highly liquid securities.

NASD charges that the profit sharing was evidenced by the pattern of trading in the customer accounts and profit-tracking spreadsheets used by some Invemed brokers. These spreadsheets tracked customers' hypothetical IPO profits and compared the profits with the brokerage commissions the customers had paid.

Evidence of profit sharing was also shown through wash trades done by at least two customers. In these situations, the customers purchased shares of a highly liquid security through Invemed and within minutes or hours sold the same number of shares in that security through Invemed, frequently paying inflated commissions on both sides of the trade. For example, on March 10, 2000, a customer received allocations in two hot IPOs. That same day, the customer bought and sold 10,000 shares of a highly liquid security, paying a commission of 20 cents per share. The customer incurred a loss of approximately \$15,500 on the wash trade, including \$4,000 in commissions. These trades were of no economic benefit to the customer and resulted in immediate losses to the customer, while generating commissions in the form of shared profits for the firm. One customer engaged in more than 12 such wash trades in just over one month's time.

Invemed supervisors and senior managers knew or should have known that their customers were engaged in profit sharing or, at a minimum, were attempting to influence IPO allocation decisions, the complaint charges. For example, the CEO was advised each day of the firm's gross commissions. On the day of the FogDog and VA Linux IPOs, the firm generated approximately \$600,000 in commissions, more than double what the firm had earned in the previous three days combined.

This is the sixth disciplinary action taken by NASD concerning the allocation of IPOs.

Under NASD rules, a firm named in a complaint can file a response and request a hearing before an NASD disciplinary panel. Possible remedies include a fine, censure, suspension, or expulsion from the securities industry, disgorgement of gains associated with the violations, and payment of restitution.

## **NASD Charges Firm, Execs with Trading Ahead of Research and Short-Sale Violations**

NASD charged Metro Trading, Inc., of Deerfield Beach, FL, its current president, Christopher C. Tavares, and a former president, Alfred G. Marchetti, with trading ahead of a firm research report, short-sale violations, and failure to supervise.

In the complaint, NASD charged that in January and February of 2002, Metro Trading unlawfully traded ahead of a research report prepared by Tavares regarding Medi-Hut Co., Inc. (NASDAQ: MHUT). Also during this period, Tavares was investigating Medi Hut's business activities in anticipation of publishing a research report on the company. NASD found that Metro Trading's proprietary market making account actively engaged in short selling of Medi Hut stock just prior to releasing Tavares's negative research report. The firm established a short position by submitting orders through ECNs at a time when Metro Trading's published quotations were unrelated to the contemporaneous market for Medi Hut shares. In addition, Tavares sold short Medi Hut shares in his personal accounts before he disseminated the negative research report.

During its investigation, NASD determined that Marchetti actively executed short-sale transactions in Medi Hut on behalf of Metro Trading knowing that Tavares's negative research report was in process and close to publication. Metro Trading failed to make affirmative determinations of the availability of Medi Hut securities for borrowing prior to executing the short sales on behalf of its proprietary market making account. Given the facts and circumstances surrounding the firm's proprietary short sales, NASD alleged that the transactions were not for bona fide market making purposes and subject to the affirmative determination rule. NASD's affirmative determination rule requires that members ascertain and memorialize that it has the ability to borrow or provide the securities for delivery by settlement date prior to execution of the short-sale transaction. Bona fide market making transactions are exempt from this requirement.

Metro Trading, Tavares, and Marchetti are also charged with supervisory failures, including failing to establish, maintain and enforce written supervisory procedures, and failing to supervise.

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

# Special Notice to Members

MAY 2003

## SUGGESTED ROUTING

Legal & Compliance  
Senior Management

## KEY TOPICS

National Adjudicatory Council

## INFORMATIONAL

### NAC Nominees

NASD Announces Nominees for Regional Industry Member Vacancies on the National Adjudicatory Council

#### Executive Summary

The purpose of this *Special Notice to Members* is to announce the nominees for the National Adjudicatory Council (NAC) for the New York and West Regions. The nominees, nominated for a three-year term beginning in January 2004, are listed in Exhibit I. These nominees will be proposed to NASD's National Nominating Committee in 14 calendar days, unless the election is contested.

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

#### Contested Election Procedures

If an officer, director, or employee of an NASD member in the New York or West Regions has not been proposed for nomination by the Regional Nominating Committee and wants to seek the nomination, he or she should send a written notice to Barbara Z. Sweeney, Corporate Secretary, at the address below within 14 calendar days after the publishing date (May 27) of this *Special Notice*.

Barbara Z. Sweeney  
NASD  
Office of the Corporate Secretary  
1735 K Street, NW  
Washington, DC 20006-1500

03-27

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

### Questions/Further Information

Questions concerning this *Special Notice to Members* may be directed to Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD, at (202) 728-8062 or via e-mail at: [barbara.sweeney@nasd.com](mailto:barbara.sweeney@nasd.com).

### National Adjudicatory Council Membership and Function

#### Membership

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

#### *West Region:*

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

#### *South Region:*

Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Oklahoma, Tennessee, Texas, Florida, Georgia, North Carolina, South

Carolina, Puerto Rico, Virginia, Canal Zone, and the Virgin Islands (Districts 5, 6, and 7)

#### *Central Region:*

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

#### *North Region:*

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

#### *New York:*

New York City and Long Island (District 10)

Two regions (New York and West) have vacancies for this election. NAC members for the other three regions (South, Central, and North) are indicated in Exhibit II, along with the year in which their terms expire.<sup>1</sup>

#### Function

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

- appeals or reviews of disciplinary proceedings, statutory disqualification proceedings, or membership proceedings;
- the review of offers of settlement; letters of acceptance, waiver, and consent; and minor rule violation plan letters;

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- the exercise of exemptive authority; and
  - other proceedings or actions authorized by the Rules of the Association.

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

## Endnote

- 1 On September 20, 2001, the NASD Board of Governors approved an amendment to Article V, Section 5.4 of the NASD Regulation By-Laws changing the term of office of NAC members from two years, with the opportunity to serve consecutive terms, to a single three-year term. This By-Law amendment was approved by the SEC on October 17, 2001. To effect the change from two-year to three-year terms, NASD divided the NAC seats into three transitional classes, as nearly equal in number and as evenly divided between industry and non-industry seats as possible. The purpose of this division is to assure appropriate continuity and orderly turnover during the transitional period. The transitional period will end in January 2004, at which time all members of the NAC will be elected to a single three-year term.

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## EXHIBIT I

### Nominees for NAC Industry Member Vacancies

#### West (Districts 1, 2, and 3)

Neal K. Nakagiri  
Associated Securities Corporation  
Los Angeles, CA

#### New York (District 10)

Judith R. MacDonald  
Rothschild, Inc.  
New York, NY

## EXHIBIT II

### NAC Members with Terms Expiring in January 2005

#### (Central Region)

Douglas L. Kelly  
A.G. Edwards & Sons, Inc.  
St. Louis, MO

#### (South Region)

Barbara L. Weaver  
Legg Mason Wood Walker, Inc.  
New Orleans, LA

### NAC Members with Terms Expiring in January 2006

#### (North Region)

A. Louis Denton  
Philadelphia Corporation for Investment Services  
Philadelphia, PA

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