

# Notices to Members

## December 1999

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**INFORMATIONAL**

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# Employment Arbitration Rules

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SEC Approves New Arbitration Disclosure Rule And Procedures For Employment Arbitration; **Effective Date: January 18, 2000**

**SUGGESTED ROUTING**

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

- Legal & Compliance
- Registered Representatives

**KEY TOPICS**

- Arbitration
- Discrimination
- Employment

**Executive Summary**

On October 27, 1999, the Securities and Exchange Commission (SEC) approved amendments to National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) rules that create a new Rule 10210 Series, containing special rules applicable to the arbitration of employment discrimination claims; add a new Rule 3080, which contains a model disclosure statement to be given to persons who are signing the Form U-4 to apply for registration; and make conforming changes to Rules 10201 and 10202.<sup>1</sup> These rule changes, which will become effective on January 18, 2000, will enhance the dispute resolution process for the handling of employment discrimination claims and expand disclosure to employees concerning the arbitration of disputes.

Included with this *Notice* is Attachment A, the text of the amendments that will become effective on January 18, 2000.

**Questions/Further Information**

Questions regarding this *Notice* may be directed to Linda D. Fienberg, Executive Vice President, Office of Dispute Resolution, NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>), at (202) 728-8407; George H. Friedman, Senior Vice President and Director, Office of Dispute Resolution, NASD Regulation, at (212) 858-4488; or Jean I. Feeney, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-6959.

**Background**

Effective on January 1, 1999, the NASD removed from the Code of Arbitration Procedure (Code) the requirement for registered persons to arbitrate claims of statutory

employment discrimination.<sup>2</sup> In approving that change to Rule 10201, the NASD Board of Governors and the NASD Regulation Board of Directors (the Boards) recommended certain enhancements to the arbitration process for discrimination claims. With the assistance of a working group that included attorneys representing employees, member firm general counsels, and arbitrators with expertise in employment matters to advise on issues relating to the arbitration of employment discrimination claims, NASD Regulation developed a series of rules applicable to the arbitration of statutory employment discrimination claims, and related changes to other NASD rules. These rules, as adopted by the Boards and approved by the SEC, deal with the qualifications of arbitrators hearing claims of employment discrimination; the number of arbitrators to hear such claims; special rules for discovery, awards, and attorneys' fees; coordination of claims filed in court and arbitration; and disclosure to associated persons of the effects of the arbitration clause found in the Form U-4. The new rules are described in detail below.

**Description Of Amendments****Disclosure Statement**

NASD Regulation has adopted a model disclosure statement to be given to persons who are signing the Form U-4 to apply for registration. This disclosure statement explains the nature and effect of the arbitration clause contained in the Form U-4. It does not address any private arbitration agreement that the applicant might enter into with the member firm. Rather, the member is responsible for either making proper disclosure to its employees about its private arbitration agreement, or risking an adverse decision in later litigation concerning any inadequacy in the disclosure.

New Rule 3080, entitled "Disclosure to Associated Persons When Signing a Form U-4," is modeled on the disclosure given to customers when signing predispute arbitration agreements with member firms, as contained in current Rule 3110(f) and proposed amendments thereto that are awaiting SEC approval.<sup>3</sup> Because the rule relates to associated persons, it has been located with other conduct rules that deal with the responsibilities of members relating to associated persons, employees, and other employees. The introductory language of the rule requires members to provide each associated person, whenever the associated person is asked to sign a new or amended Form U-4, with certain specified disclosure language. This means that the disclosure may be given by the same member to the same associated person on more than one occasion during that person's employment, if the associated person has reason to re-sign the Form U-4. The specified disclosure language explains that the Form U-4 contains a predispute arbitration clause, and indicates in which item of the Form U-4 the clause is located.<sup>4</sup> The disclosure language then advises the associated person to read the predispute arbitration clause.

Subparagraph (1) of new Rule 3080 paraphrases the arbitration clause in the Form U-4 and then provides disclosure that the associated person is giving up the right to sue in court except as provided by the rules of the arbitration forum in which a claim may be filed. Subparagraph (2) incorporates the language of Rule 10201 regarding an exception to the arbitration requirement for claims of statutory employment discrimination. Subparagraph (2) also indicates that the rules of other arbitration forums may be different. Subparagraphs (3) through (7) track the language of proposed

amendments to Rule 3110(f)(1), which sets forth similar disclosures to customers. Those subparagraphs inform the associated person that arbitration awards are generally final and binding, that discovery is generally more limited in arbitration than in court, that arbitrators do not have to explain the reasons for their awards, that the panel of arbitrators may include either public or industry (non-public) arbitrators, and that the rules of some arbitration forums may impose time limits for bringing a claim in arbitration.

#### ***New Rule 10210 Series***

The new Rule 10210 Series contains special rules applicable to statutory employment discrimination claims. These rules supplement and, in some instances, supersede the provisions of the Code that currently apply to the arbitration of employment disputes. The special rules do not attempt to set forth all procedures applicable to the arbitration of statutory employment discrimination claims, but only those procedures that relate specifically to such claims and may be different from procedures that apply to other intra-industry claims.

#### ***Qualifications For Neutrals Who Hear Employment Discrimination Cases***

NASD Regulation has on its arbitration roster many arbitrators who have indicated that they have experience or training in employment law, and NASD Regulation currently offers arbitrators training in employment law that is conducted by attorneys experienced in the field of employment law. In addition, NASD Regulation has been preparing a more specialized roster of available arbitrators for intra-industry cases in which statutory discrimination is alleged. As of November 1999, over 200 arbitrators have

been placed on this specialized roster.

New Rule 10211(a) provides that only arbitrators classified as public (non-industry) arbitrators will be selected to consider disputes involving a claim of employment discrimination, including a sexual harassment claim, in violation of a statute. New Rule 10211(a) incorporates by reference the definition of "public arbitrator" in the list selection rule, Rule 10308, which applies both to customer disputes and to intra-industry disputes except where superseded by more specific industry arbitration rules. The definition of "public arbitrator" in Rule 10308 excludes not only securities industry employees and their immediate family members, but also attorneys, accountants, and other professionals who have devoted 20 percent or more of their professional work in the last two years to clients who are engaged in the securities business (as described in Rule 10308). Use of the same definition of public arbitrators throughout the Code provides for more efficient administration of the list selection system.

For chairpersons and single arbitrators, there are additional qualifications in new Rule 10211(b). These qualifications include:

- a law degree;
- membership in the Bar of any jurisdiction;
- substantial familiarity with employment law; and
- ten or more years of legal experience that include at least five years of one of the following:
  - law practice;
  - law school teaching;

- government enforcement of equal employment opportunity (EEO) statutes;
- experience as a judge, arbitrator, or mediator; or
- experience as an EEO officer or in-house counsel of a corporation.

In addition, the chair or single arbitrator may not have represented primarily the views of employees or employers within the past five years. For this purpose, "primarily" is defined to mean 50 percent or more of the arbitrator's business or professional activities within the last five years.

Rule 10211(c) provides that parties may agree, after a dispute arises, to waive any of the special qualifications contained in either paragraph (a) or paragraph (b). Such a waiver is not valid if it is contained in a predispute arbitration agreement.

### **Composition Of Panels**

Until the present rule change, the current arbitration panel composition for statutory discrimination claims and certain other employment claims has been identical to the panel used for customer disputes and consists of either one public (non-industry) arbitrator for single arbitrator cases, or two public arbitrators and one non-public (industry) arbitrator for three arbitrator cases. An all-industry panel is used solely for employment disputes that relate exclusively to claims involving employment contracts, promissory notes, or receipt of commissions.

Under new Rule 10212(a), for cases involving claims of employment discrimination (whether or not other issues are also involved), all arbitrators must be classified as

public. Rule 10212 provides, however, that parties may agree to a different panel composition in a particular case.

New Rule 10212(b) provides a higher maximum dollar limit for single arbitrator cases than is found elsewhere in the Code: a single arbitrator will hear claims of \$100,000 or less. This higher amount reduces the hearing costs for the parties and results in more efficient allocation of qualified employment arbitrators. New Rule 10212(c) provides that claims for more than \$100,000 will be assigned to a three-person panel unless the parties agree to have their case determined by a single arbitrator. A conforming amendment is being made to Rule 10202, the general intra-industry panel composition rule, to include a reference to the above special panel composition rule.

### **Discovery**

New Rule 10213 provides that, in considering the need for depositions, arbitrators should consider the relevancy of the information sought from the persons to be deposed and the issues of time and expense. Existing Rule 10321, which deals with pre-hearing proceedings, is cross-referenced in new Rule 10213(b) to make clear that its provisions also apply to employment discrimination disputes. Paragraphs (d) and (e) of Rule 10321 set forth procedures for deciding unresolved issues either at the pre-hearing conference or by appointment of a selected arbitrator.

### **Attorneys' Fees**

Although the Code is silent with respect to attorneys' fees, such fees may be awarded under current practice.<sup>5</sup> Normally, parties will brief the arbitrators on applicable law providing for the award of attorneys'

fees in their cases. In view of provisions in the federal civil rights laws that specifically provide for the award of attorneys' fees, NASD Regulation has adopted Rule 10215, which provides that the arbitrator has authority to provide for reasonable attorneys' fee reimbursement, in whole or in part, as part of the remedy in accordance with applicable law. This accords with Title VII of the Civil Rights Act of 1964, which authorizes a court, in its discretion, to allow the prevailing party "a reasonable attorney's fee" as part of the costs.<sup>6</sup> The intent of new Rule 10215 is to allow the award of attorneys' fees if applicable law permits such an award.

### **Awards**

Rule 10330(e) presently requires certain information to be contained in an award. Under current NASD Regulation practice, parties also may request the arbitrators to provide reasons for their decision, and the arbitrators have discretion to grant or deny the request.<sup>7</sup> New Rule 10214 has been added to supplement Rule 10330(e) for claims of employment discrimination. Rule 10214 provides that arbitrators will be empowered to award any relief that would be available in court under the law, and sets forth the information that must be contained in the arbitrator's award. Such information includes a summary of the issues, including the types of disputes, the damages or other relief requested and awarded, a statement of any other issues resolved, and a statement regarding the disposition of any statutory claims.

### **Bifurcation**

NASD Regulation has added Rule 10216 to address concerns over the possible splitting or "bifurcation" of employment cases, in which the discrimination claims would proceed in court, while other employment claims that are subject to

mandatory arbitration would proceed in arbitration. Such bifurcation of statutory and common law claims could result in the separation of claims that are often joined together and based on the same alleged facts, which would create a financial burden on employees and members, delay the resolution of claims, and cause scheduling and discovery disputes.

Therefore, NASD Regulation has adopted a new rule on coordination of claims that may be filed in court and those that are normally required to be arbitrated under NASD rules. Currently, if the parties agree to resolve all related claims in court, then the matter need not be submitted to arbitration. New Rule 10216 includes a pre-filing procedure in which the claimant may certify to the Director of Arbitration that he or she communicated with the potential respondent about the possibility of filing all claims in court initially, in order to save the expense of arbitration fees and attorney fees to draft arbitration claim papers. If the potential respondent does not agree to consolidate all claims in court, and an arbitration claim is then filed, Rule 10216 provides several methods for coordinating claims filed in court and in arbitration. Similarly, if a discrimination claim is filed in court and related claims subject to mandatory arbitration are filed in arbitration, a respondent in the arbitration proceeding

has the option to move to combine all claims in court. The rule provides several other opportunities for a party to move to compel that a claim be consolidated with other claims in court. Any claims not accepted by the court under any of these methods, however, would continue to be arbitrable.

In conjunction with the new bifurcation rule, a change has been made to Rule 10201 to add a reference to Rule 10216. This exception is necessary because, under Rule 10216, some claims that might otherwise be required to be arbitrated may be brought in court, at the respondent's option.

### Endnotes

<sup>1</sup>Exchange Act Rel. No. 42061 (Oct. 27, 1999) (File No. SR-NASD-99-08), 64 Fed. Reg. 59815 (Nov. 3, 1999).

<sup>2</sup>That rule change did not affect private arbitration agreements that might exist between employees and member firms.

<sup>3</sup>File No. SR-NASD-98-74.

<sup>4</sup>The member will be responsible for updating this item number on new disclosure statements if it changes in later versions of the Form U-4.

<sup>5</sup>A guide for arbitrators drafted by the Securities Industry Conference on Arbitration (SICA) provides as follows: "Generally, par-

ties to an arbitration are responsible for their personal costs associated with bringing or defending an arbitration action. Exceptions to the rule do exist. Parties should be prepared to argue the statutory or contractual basis that permits an award of attorneys' fees. The arbitrators should consider referring to the authority relied upon if attorneys' fees are awarded." *The Arbitrator's Manual* (October 1996). SICA is a group composed of representatives of the self-regulatory organizations (SROs) that provide arbitration forums; public investors; and the securities industry.

<sup>6</sup>42 U.S.C. Section 2000e-5(k) (1998).

<sup>7</sup>A booklet prepared by SICA and provided to all claimants explains this industry-wide practice as follows: "Arbitrators are not required to write opinions or provide reasons for the award. A party, however, may request an opinion. This request should be made no later than the hearing date." *Arbitration Procedures* (October 1996) (also available via the Internet under the title, *Arbitration Procedures for Investors*, on the NASD Regulation Arbitration/Mediation page at [www.nasdr.com](http://www.nasdr.com)). In a 1989 Order approving arbitration rule changes by several SROs, the SEC decided not to require written opinions in awards but expressed the view that arbitrators could voluntarily prepare written opinions. Exchange Act Rel. No. 26805, Part III. H. (May 10, 1989) (File Nos. SR-NYSE-88-29, SR-NYSE-88-8, SR-NASD-88-29, SR-NASD-88-51, SR-NASD-89-19; and SR-AMEX-88-29), 54 Fed. Reg. 21144, 21151-52 (May 16, 1989).

**ATTACHMENT A**

**Text Of Amendments**

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

**3000. RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS, EMPLOYEES, AND OTHERS' EMPLOYEES**

\* \* \*

**3080. Disclosure to Associated Persons When Signing Form U-4**

A member shall provide an associated person with the following written statement whenever the associated person is asked to sign a new or amended Form U-4.

The Form U-4 contains a predispute arbitration clause. It is in item 5 on page 4 of the Form U-4. You should read that clause now. Before signing the Form U-4, you should understand the following:

(1) You are agreeing to arbitrate any dispute, claim or controversy that may arise between you and your firm, or a customer, or any other person, that is required to be arbitrated under the rules of the self-regulatory organizations with which you are registering. This means you are giving up the right to sue a member, customer, or another associated person in court, including the right to a trial by jury, except as provided by the rules of the arbitration forum in which a claim is filed.

(2) A claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute is not required to be arbitrated under NASD rules. Such a claim may be arbitrated at the NASD only if the parties have agreed to arbitrate it, either

before or after the dispute arose. The rules of other arbitration forums may be different.

(3) Arbitration awards are generally final and binding; a party's ability to have a court reverse or modify an arbitration award is very limited.

(4) The ability of the parties to obtain documents, witness statements and other discovery is generally more limited in arbitration than in court proceedings.

(5) The arbitrators do not have to explain the reason(s) for their award.

(6) The panel of arbitrators may include arbitrators who were or are affiliated with the securities industry, or public arbitrators, as provided by the rules of the arbitration forum in which a claim is filed.

(7) The rules of some arbitration forums may impose time limits for bringing a claim in arbitration. In some cases, a claim that is ineligible for arbitration may be brought in court.

\* \* \*

**10000. CODE OF ARBITRATION PROCEDURE**

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**10200. INDUSTRY AND CLEARING CONTROVERSIES**

**10201. Required Submission**

(a) Except as provided in paragraph (b) or Rule 10216, a dispute, claim, or controversy eligible for submission under the Rule 10100 Series between or among members and/or associated persons, and/or certain others, arising in connection with

the business of such member(s) or in connection with the activities of such associated person(s), or arising out of the employment or termination of employment of such associated person(s) with such member, shall be arbitrated under this Code, at the instance of:

- (1) a member against another member;
- (2) a member against a person associated with a member or a person associated with a member against a member; and
- (3) a person associated with a member against a person associated with a member.

\* \* \*

**10202. Composition of Panels**

(a) In disputes subject to arbitration that arise out of the employment or termination of employment of an associated person, and that relate exclusively to disputes involving employment contracts, promissory notes or receipt of commissions, the panel of arbitrators shall be appointed as provided by paragraph (b)(1) or (2) or Rule 10203, whichever is applicable. In all other disputes arising out of the employment or termination of employment of an associated person, the panel of arbitrators shall be appointed as provided by Rule 10212, 10302 or [Rule] 10308, whichever is applicable.

\* \* \*

**10210. Statutory Employment Discrimination Claims**

The Rule 10210 Series shall apply only to disputes that include a claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute. The

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Rule 10210 Series shall supersede any inconsistent Rules contained in this Code.

### **10211. Special Arbitrator Qualifications for Employment Discrimination Disputes**

#### **(a) Minimum Qualifications for All Arbitrators**

Only arbitrators classified as public arbitrators as provided in Rule 10308 shall be selected to consider disputes involving a claim of employment discrimination, including a sexual harassment claim, in violation of a statute.

#### **(b) Single Arbitrators or Chairs of Three-Person Panels**

(1) Arbitrators who are selected to serve as single arbitrators or as chairs of three-person panels should have the following additional qualifications:

(A) law degree (Juris Doctor or equivalent);

(B) membership in the Bar of any jurisdiction;

(C) substantial familiarity with employment law; and

(D) ten or more years of legal experience, of which at least five years must be in either:

(i) law practice;

(ii) law school teaching;

(iii) government enforcement of equal employment opportunity statutes;

(iv) experience as a judge, arbitrator, or mediator; or

(v) experience as an equal employment opportunity offi-

cer or in-house counsel of a corporation.

(2) In addition, a chair or single arbitrator with the above experience may not have represented primarily the views of employers or of employees within the last five years. For purposes of this Rule, the term "primarily" shall be interpreted to mean 50% or more of the arbitrator's business or professional activities within the last five years.

#### **(c) Waiver of Special Qualifications**

If all parties agree, after a dispute arises, they may waive any of the qualifications set forth in paragraph (a) or (b) above.

### **10212. Composition of Panels**

For disputes involving a claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute:

(a) Each panel shall consist of either a single public arbitrator or three public arbitrators qualified under Rule 10211, unless the parties agree to a different panel composition.

(b) A single arbitrator shall be appointed to hear claims for \$100,000 or less.

(c) A panel of three arbitrators shall be appointed to hear claims for more than \$100,000, unless the parties agree to have their case determined by a single arbitrator.

### **10213. Discovery**

(a) Necessary pre-hearing depositions consistent with the expedited nature of arbitration shall be available.

(b) The provisions of Rule 10321 shall apply to proceedings under this Rule 10210 Series.

### **10214. Awards**

The arbitrator(s) shall be empowered to award any relief that would be available in court under the law. The arbitrator(s) shall issue an award setting forth a summary of the issues, including the type(s) of dispute(s), the damages or other relief requested and awarded, a statement of any other issues resolved, and a statement regarding the disposition of any statutory claim(s).

### **10215. Attorneys' Fees**

The arbitrator(s) shall have the authority to provide for reasonable attorneys' fee reimbursement, in whole or in part, as part of the remedy in accordance with applicable law.

### **10216. Coordination of Claims Filed in Court and in Arbitration**

#### **(a) Option to Combine Related Claims in Court**

(1) (A) If a current or former associated person of a member files a statutory discrimination claim in court against a member or its associated persons, and asserts related claims in arbitration at the Association against some or all of the same parties, a respondent who is named in both proceedings shall have the option to move to compel the claimant to bring the related arbitration claims in the same court proceeding in which the statutory discrimination claim is pending, to the full extent to which the court will accept jurisdiction over the related claims.

(B) The respondent shall notify the claimant in writing, before the time to answer under Rule 10314 has expired, that it is exercising this option and shall file a copy of such notification with the Director. If the respondent files an answer without having exercised this option, it shall have waived its right to move to compel the claimant to assert related claims in court, except as provided in paragraph (b).

(2) (A) If a member or current or former associated person of a member ("party") has a pending claim in arbitration against a current or former associated person of a member and the current or former associated person thereafter asserts a related statutory employment discrimination claim in court against the party, the party shall have the option to assert its pending arbitration claims and any counterclaims in court.

(B) The party shall notify the current or former associated person in writing, before filing an answer to the complaint in court, that it is exercising this option and shall file a copy of such notification with the Director. If the party files an answer in court without having exercised this option, it shall have waived its right to assert the pending arbitration claim in court.

(C) The party may not exercise this option after the first hearing has begun on the arbitration claim.

**(b) Option Extended When Claim is Amended**

(1) If the claimant files an amended Statement of Claim adding new claims not asserted in the

original Statement of Claim, a respondent named in the amended Statement of Claim shall have the right to move to compel the claimant to assert all related claims in the same court proceeding in which the statutory discrimination claim is pending, to the full extent that the court will accept jurisdiction over the related claims, even if those related claims were asserted in the original Statement of Claim.

(2) The respondent shall notify the claimant in writing, before the time to answer the amended Statement of Claim under Rule 10314 has expired, that it is exercising this option and shall file a copy of such notification with the Director. If the respondent files an answer to the amended Statement of Claim without having exercised this option, it shall have waived its right to move to compel the claimant to assert related claims in court.

**(c) Requirement to Combine All Related Claims**

If a party elects to require a current or former associated person to assert all related claims in court, the party shall assert in the same court proceeding all related claims that it has against the associated person to the full extent to which the court will accept jurisdiction over the related claims.

**(d) Right of Respondent to Remain in Arbitration**

(1) If there are multiple respondents and a respondent has exercised an option under paragraph (a) or (b), but another respondent wishes to have the claims against it remain in arbitration, then any remaining party may apply for a stay of the arbitration proceeding.

(2) The arbitration shall be stayed unless the arbitration panel determines that the stay will result in substantial prejudice to one or more of the parties. If a panel has not been appointed, the Director shall appoint a single arbitrator to consider the application for a stay. Such single arbitrator shall be selected using the Neutral List Selection System (as defined in Rule 10308) and is not required to have the special employment arbitrator qualifications described in Rule 10211.

**(e) Pre-Filing Certification**

(1) Prior to or concurrently with filing a Statement of Claim, a claimant may file with the Director a certification that it had communicated unsuccessfully with the respondent concerning the consolidation of all claims in court prior to filing a Statement of Claim, in an effort to save the expense of arbitration fees. A copy of such certification shall be sent to the respondent at the same time and in the same manner as the filing with the Director.

(2) If, after a certification has been filed, all the respondents later exercise the option to consolidate all claims in court, the Director will return the claimant's filing fee and any hearing session deposits for hearings that have not been held, but will retain the member surcharge and any accrued member process fees. If there are any remaining respondents, the filing fee and any hearing deposits will be adjusted to correspond to the claims against the remaining respondents.

**(f) Motion to Compel Arbitration**

If a member or a current or former associated person of a member files in court a claim against a member or a current or former

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associated person of a member that includes matters that are subject to mandatory arbitration, either by the rules of the Association or by private agreement, the defending party may move to compel arbitration of the claims that are subject to mandatory arbitration.

### **(g) Definitions**

For purposes of this Rule:

(1) The term “related claim” shall mean any claim that arises out of the employment or termination of employment of an associated person.

(2) The term “statutory discrimination claim” means a claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute.

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**INFORMATIONAL**

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**Ombudsman**

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**NASD Office Of The  
Ombudsman Clarifies Its  
Role****SUGGESTED ROUTING**

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

- Advertising/Investment Companies
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- Legal & Compliance
- Registration
- Senior Management
- Trading & Market Making

**KEY TOPICS**

- Ombudsman

**Executive Summary**

The National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) Office of the Ombudsman staff has helped resolve many issues and concerns raised by members and their associated persons, issuers and their associated persons, and investors. With a staff of four full-time Ombudspersons, the Office has been able to better serve the steady growth in the number of concerns that are brought to its attention.

The NASD would like to remind members that the Ombudsman's role does not displace the NASD's existing procedures for handling customer complaints, members' disciplinary grievances, arbitration matters, or issuer concerns. The Ombudsman staff reviews concerns in an objective and confidential manner to resolve matters that fall outside established forums and to ensure that existing structural operations are functioning equitably.

**Questions/Further Information**

Questions regarding this *Notice* should be directed to the Office of the Ombudsman, at (301) 212-2515, or toll free at (888) 700-0028.

**Background**

In mid-1996, the NASD created the Office of the Ombudsman (the Office) for the NASD and its subsidiaries, NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) and The Nasdaq Stock Market, Inc. (Nasdaq<sup>®</sup>).

The NASD created the Office in response to recommendations made by the NASD Select Commit-

tee on Structure and Governance (see *Notices to Members 95-84, 95-101, 95-102, and 96-35*) that an independent office be established to receive and address "concerns and complaints, whether anonymous or not, from any source (within or outside of the NASD) concerning the operations, enforcement, or other activities of the NASD, NASD Regulation, or Nasdaq, or any staff members."

The Office's purview was expanded to include the American Stock Exchange<sup>®</sup> (Amex<sup>®</sup>), including member firms and their employees, upon completion of the NASD/Amex merger.

**Description**

When an established complaint or appellate process does not exist, Ombudsman staff can serve a dispute resolution function by suggesting actions or policies that are intended to be equitable to all parties. One of the major functions of the Office is to provide confidential assistance to parties inside and outside the NASD regarding a complaint or a concern. The Ombudsman staff will help all parties identify and evaluate options for appropriate actions and remain neutral in doing so. Where an established complaint or appellate process exists, the Ombudsman staff will identify the process, explain it in general terms, and direct the caller to the appropriate office.

In all situations, the Ombudsman's role is to remain neutral. It represents neither the party expressing a concern nor the part of the organization responsible for the process or procedure that causes concern.

**Matters That May Be Reviewed*****Inconsistent Decisions By NASD Staff***

Complaints regarding decisions made or actions taken by NASD staff that may be inconsistent, biased, or result in disparate treatment may be directed to the Office. These complaints may be based on discretionary acts by NASD staff for which an established appellate channel does not exist. The Ombudsman staff will process each complaint received, review or conduct an informal investigation of the allegations, and recommend appropriate action, if warranted.

For issues in which an established complaint or appellate process exists, at its conclusion, concerns about the process may be reviewed and, when necessary, informally investigated.

**Weak Procedures**

The Office will review complaints of weaknesses in NASD controls, practices, or procedures submitted by persons who, for whatever reason, do not want to, or believe they cannot, report such weaknesses to NASD management or who wish to remain anonymous. This could include, for example, continued failure of an NASD manager to respond to public customers, member firms, or issuers' needs; or the failure of an NASD department to address matters for which it is responsible, or has not carried out a procedure, rule, or regulation correctly.

**Matters That Will Not Be Reviewed**

Complaints will be directed to the appropriate office in those cases where established procedures currently exist regarding application of

rules, policies, procedures, or interpretations. These complaints may deal with various topics and allegations, e.g., Committee or Hearing Panel action, applicability of a rule or a procedure, how an interpretation is applied, etc.

Complaints from member firms and/or their associated persons regarding disciplinary rulings, from issuers regarding listing proceedings, and from member firms regarding application of existing rules by market operations staff, prosecutorial bias, bias by a Hearing Panel, or a conflict of interest by a Hearing Panel member are subject to review by the existing NASD appellate procedures and processes. However, after the appellate process has been exhausted, the Ombudsman will review any systemic issue brought to its attention.

Where a structured dispute resolution and/or appellate process currently exists, that process should continue to be used by parties seeking a redress. Accordingly, in such cases the Ombudsman's role will be limited to informing persons of the existence of the appropriate process for resolution and monitoring the outcome. However, in such cases, Ombudsman staff is authorized to conduct independent reviews of complaints involving particular NASD staff, departments, processes, or procedures.

**Arbitration And Mediation**

Complaints from parties in arbitration or mediation dealing with arbitrators' rulings, conduct, or awards will not be the focus of the Office. The arbitration staff currently investigates and responds to complaints regarding the arbitration and mediation processes. The Ombudsman staff will only be available for reviewing complaints regarding allegations of NASD staff miscon-

duct, separate from the merits of the arbitration claim. The Ombudsman staff does not have the authority to change an arbitration ruling.

**Complaints Regarding Conduct Of Members Or Their Associated Persons**

The Office will advise persons who claim to have suffered monetary injury as a result of the conduct of member firms or their associated persons to pursue the matter through arbitration. When a complaint alleges possible violations of rules that the NASD is responsible for enforcing, the Office will also recommend that the complaining party report the matter to the appropriate NASD Regulation District Office for investigation and possible disciplinary action.

Complaints that are within the jurisdiction of another department or organization will be referred by the Office to those areas that have the jurisdiction and expertise to handle them. If the complainant is referred internally to another NASD department, Ombudsman staff will follow up to ensure the appropriate department responds in a timely manner.

**Board Rulemaking And Policy Decisions**

Because avenues exist for interested persons to express their views on proposed rules under consideration by the NASD Board of Governors or the Directors of NASD Regulation or Nasdaq, the Office does not handle concerns or complaints relating to this area. Persons who wish to participate in the policy formulation process are strongly encouraged to submit comments when proposed rules are published for comment by the NASD and/or the Securities and Exchange Commission.

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## **NASD Notice to Members 99-97**

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### **How To Contact The Office**

If members, associated persons, investors, issuers, or others have a complaint or comment regarding an action by the NASD as described in this *Notice*, they can contact the Office of the Ombudsman, at (301) 212-2515, or (888) 700-0028;

e-mail: *ombuds@nasd.com*, or  
write to:

NASD  
Office of the Ombudsman  
P.O. Box 9492  
Gaithersburg, MD 20898-9492

The inquiries may be anonymous and will be treated confidentially.

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# NASD

## Member Benefits Programs

**Member Price for an 8 oz.  
Next Morning Letter Express:**

**\$10.50\*** No minimum  
usage  
required

**\$9.50** If you use an  
Airborne  
Express  
Drop Box

Save even more if you average 20 or more shipments per month. Call for pricing!



## NASD Air Express Program Reduce Overhead Expenses

**Save up to 44% on overnight  
shipping with Airborne Express.**

### Provides:

- Service to every street address in the U.S.
- Free on-call pickup from most locations
- Delivery the next business morning
  - Computerized package tracking
  - 24-hour, toll-free customer service
  - Service to more than 200 countries worldwide
  - Additional discounts available for high volume shippers

### Offers a full range of service choices:

- Same Day
- Overnight Express
- Next Afternoon
- Second Day
- Flight-Ready<sup>SM</sup>—prepaid with no weight limits

**Call (800) MEMBERS (636-2377) for a  
FREE Airborne Express Starter kit.**

To explore your other valued NASD member benefits,  
call (301) 590-6525 or visit us at [www.nasd.com](http://www.nasd.com), click on  
"Membership" and then click on "Benefits of Membership."

\* Upon enrollment each member receives detailed rate information on all shipment weights. Rates subject to change.

**INFORMATIONAL**

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**Short Sales**

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NASD Regulation Reiterates That Members Must Comply With All Short Sale Rules When Receiving Orders Through Electronic Order Systems Or The Internet And Reiterates The Operation Of The Affirmative Determination Rule

**SUGGESTED ROUTING**

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

- Individual Investor
- Internal Audit
- Legal & Compliance
- Operations
- Senior Management
- Technology
- Trading & Market Making

**KEY TOPICS**

- Affirmative Determination
- Internet Trading
- NASD Conduct Rules 3350 and 3370
- Short Sales

**Executive Summary**

The purpose of this *Notice* is to reiterate the long-standing position of NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) and Nasdaq<sup>®</sup> that member firms must comply with the rules concerning short sales regardless of how a short sale order is received, e.g., through the telephone, an electronic transmission, the Internet, or otherwise. Accordingly, firms must comply with the bid test, make affirmative determinations, and identify short sales in the Automated Confirmation Transaction Service<sup>SM</sup> (ACT<sup>SM</sup>) for all proprietary and customer short sale orders that are received electronically through proprietary electronic order routing systems, the Internet, or otherwise.

**Questions/Further Information**

Questions concerning National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) Rule 3350 (Bid Test Rule) should be directed to the Office of General Counsel, The Nasdaq Stock Market, Inc. (The Nasdaq Stock Market<sup>®</sup>), at (202) 728-8294; or the Legal Section, Market Regulation, NASD Regulation, at (301) 590-6410. Questions concerning NASD Rule 3370 (Affirmative Determination Rule) should be directed to the Office of General Counsel, NASD Regulation, at (202) 728-8071; or the Legal Section, Market Regulation, NASD Regulation, at (301) 590-6410.

**Discussion**

Many members receive short sale orders electronically through proprietary electronic order routing systems and through the Internet from customers with online accounts. With this *Notice*, NASD Regulation and Nasdaq reiterate the long-standing position that, absent an exemption, firms must comply with

the short sale rules when effecting customer short sale orders, regardless of whether the order is received by telephone or electronically through a proprietary electronic order routing system, the Internet, or otherwise. Failure to do so will result in a violation of the short sale rules and possible disciplinary action.

As a result of the significant increase in online trading, member firms and customers have sought guidance from the NASD concerning the application of the short sale rules to certain specific situations referred to as "double selling," "over selling," and "mistaken sale not long." (Hereinafter collectively referred to as "inadvertent short sales.") Specifically, these situations include, among others:

- (1) a customer placing an online sell order to sell a long position in his/her account and, when the order is not immediately executed, entering a second sell order for the same shares resulting in the execution of both orders;
- (2) a customer canceling a limit order to sell and replacing it with a market order before confirmation of cancellation of the first order, with both orders eventually being executed because of delays in processing the order cancellation; or
- (3) a customer accidentally entering two sell orders for the same shares or entering a sell order for shares when he/she intended to enter buy orders.

All of these scenarios result in the customer causing the member to effect a short sale for the customer even though the customer apparently did not intend to sell short.

Notwithstanding the fact that the customer may not intend to sell short, a member that offers online trading services to its customers must program such systems to ensure that the member is complying with all trading and market-making rules, including the short sale rules. In other words, when the above referenced situations occur, members' systems should consider the stock positions in customer accounts and the number and status of all orders and cancellation instructions. Member firm automated systems should execute such short sales in compliance with the short sale rules, and NASDR<sup>SM</sup> and Nasdaq recommend that firms design their systems to provide customers with notice when they may have placed an "inadvertent" short sale. In sum, the means of receipt of a short sale and the "inadvertent" nature of a short sale in no way eliminate or reduce the obligations of member firms to comply with the short sale rules.

### **Application Of Short Sale Rules To Orders Placed Over The Internet**

The Bid Test Rule provides that, absent an exemption, no member shall effect a short sale for the account of a customer or for its own account in a Nasdaq National Market<sup>®</sup> security at or below the current best (inside) bid when the current best (inside) bid as displayed by The Nasdaq Stock Market is below the preceding best (inside) bid in the security. When a customer short sale order is received electronically or through the Internet, the member must effect such orders in compliance with the Bid Test Rule. Moreover, firms must effect short sales in compliance

with the Bid Test Rule regardless of whether the short sale is an "inadvertent" short sale from the customer's perspective.<sup>1</sup>

Similarly, pursuant to NASD Rule 6130(d)(6), a transaction report entered into ACT that reports the execution of such an order must include a symbol that identifies the transaction as a short sale. As stated above, firms must comply with this rule regardless of the manner in which customer short sales are received and whether the short sales are inadvertent from the customer's perspective.

NASD Conduct Rule 3370 regulates both customer and proprietary short sales. As to customer short sales, NASD Conduct Rule 3370(b)(2)(A) states, in relevant part, that "[n]o member or person associated with a member shall accept a 'short' sale order for any customer in any security unless the member or person associated with a member makes an affirmative determination that the member will receive delivery of the security from the customer or that the member can borrow the security on behalf of the customer for delivery by settlement date." Under this provision, the affirmative determination is a prerequisite for accepting a customer's short sale order. Thus, firms must make the required affirmative determination before the customer's short sale order can be accepted and executed. A member firm must conduct the requisite affirmative determination regardless of whether the order is received electronically or through the Internet or whether the order was placed "inadvertently" by the customer.<sup>2</sup>

NASDR also notes that the obligation for making an affirmative deter-

mination and complying with the Bid Test Rule rests with member firms and may not be shifted to customers. For instance, members may not satisfy the Affirmative Determination Rule for short sales by merely giving warnings to customers that they are required to make good delivery of the securities or that they will be financially responsible for any losses incurred from covering short sales.

### **NASD Regulation Reiterates Operation Of The Affirmative Determination Rule**

NASD Regulation also reiterates that, absent an exemption, an affirmative determination must be made before executing a proprietary short sale for each and every short sale. A member can **not** implement procedures whereby it only conducts an affirmative determination for proprietary short sales if the firm maintains a short position overnight (that is, if the firm is flat in a certain security by the end of the trading day it will not conduct an affirmative determination). Such a procedure conflicts with the Rule's requirement that a firm make an affirmative determination before executing a proprietary short sale and would circumvent the objectives of the Affirmative Determination Rule that are designed to help prevent situations where there is a shortage of deliverable stock or a failure to deliver. Accordingly, firms are required to ensure that securities are available to cover a proprietary short position before executing the short sale. To make an affirmative determination only if a short position will be maintained overnight would be a direct violation of the Affirmative Determination Rule.<sup>3</sup>

### Endnotes

<sup>1</sup>NASDR and Nasdaq also reiterate that firms must effect short rules in exchange-listed securities received electronically, via the Internet, or otherwise in compliance with the Securities Exchange Act Rule 10a-1.

<sup>2</sup>NASD Rule 3370(b)(4) provides that there is no mandated method by which firms must comply with the affirmative determination rule. Accordingly, members may design automated systems that obtain and record

the information required by Rule 3370 for short sales. Alternatively, members may direct customers who attempt to place short sale orders electronically or through the Internet to speak with a registered representative by telephone in order to make the affirmative determination.

<sup>3</sup>Likewise, firms may not wait until the end of the day to determine whether an affirmative determination is required for customer short sales. Firms are required to receive assurances that securities are available to cover a

customer's potential short position before effecting the customer's short sale order.

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**INFORMATIONAL**

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# Displaying Customer Limit Orders

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## NASD Reiterates Obligations To Display Customer Limit Orders Pursuant To SEC Rule 11Ac1-4

**SUGGESTED ROUTING**

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

- Legal & Compliance
- Senior Management
- Systems
- Trading & Market Making

**KEY TOPICS**

- Limit Orders
- Order Handling Rules
- SEC Rule 11Ac1-4 (Display Rule)

**Executive Summary**

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

**Questions/Further Information**

Questions concerning this *Notice* may be directed to Bob Aber, Senior Vice President and General Counsel, The Nasdaq Stock Market, Inc., at (202) 728-8290; or the Market Regulation Department Legal Section, NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>), at (301) 590-6410.

**Discussion**

In August 1996, the SEC adopted its Order Handling Rules, which included the Display Rule governing the display of customer limit orders. The Display Rule requires Market Makers to display the full price and size of qualifying limit orders in their quotes, subject to certain enumerated exceptions. Once a customer limit order is obligated to be publicly displayed in accordance with the Display Rule, the Display Rule requires that such a customer limit order be displayed "immediately," unless a specific exception to the rule applies. The SEC has indicated that a Market Maker "must display the order as soon as is practicable after receipt which, under normal market conditions, would require display no later than 30 seconds after receipt".<sup>1</sup>

Firms are afforded a brief opportunity, pursuant to the exceptions contained in the Display Rule<sup>2</sup>, to determine whether to display, execute, or route a customer limit order, but under no circumstances can a firm intentionally delay—or rely on an automated system that is programmed to delay—the display of limit orders as a matter of course. As to the specific time parameter in which a Market Maker must act to display, execute, or route a customer limit order, firms should take such action as soon as possible, but no later than 30 seconds after receipt. The 30-second period is an outer limit and under normal market conditions, Market Makers should take such action well before the termination of the 30-second period for most of their customer limit orders.

In determining under what circumstances Market Makers have violated the Display Rule, notwithstanding the fact that a Market Maker has displayed the customer limit orders within 30 seconds after receipt, a number of factors will be evaluated. The following factors should be taken into consideration when evaluating the immediacy with which a customer limit order was displayed:

- the volume of customer limit orders in a particular issue;
- the amount of contemporaneous transactions in the issue by the Market Maker; and
- the volatility of the issue.

To the extent that a firm has determined as a matter of business practice always to display customer limit orders (or otherwise automated the handling of its limit orders such that no human action is

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required or involved in the handling of the order), the firm should take action immediately without delay (*i.e.*, within a matter of seconds depending upon the capacity of the firm's system or limit order queues) and any systematic delay in the handling of the orders, regardless of how long, would constitute a violation of the Display Rule. Given the operational differences among firms and the different market attributes of particular securities, however, there is no "bright line, absolute" standard governing the number of seconds a Market Maker has to complete its choice of displaying, executing, or routing a customer limit order. Accordingly, a firm may operate an automated system that defaults to display

customer limit orders within 30 seconds of receipt, so long as the firm makes every effort to display the limit orders as soon as possible manually or otherwise.

### Endnotes

<sup>1</sup>Order Execution Obligations, 61 Fed. Reg. 48290 (1996) at 48304.

<sup>2</sup>The requirements of the Display Rule do not apply to any customer limit order that:

- is executed upon receipt of the order;
- a customer expressly requests not be displayed;
- is an odd-lot order;

- is a block size order, unless the customer requests that the order be displayed;
- is delivered immediately upon receipt to a qualifying system or ECN;
- is delivered immediately upon receipt to another Market Maker that will display the order or otherwise comply with the rule; or
- is an 'all or none' order.

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### INFORMATIONAL

# Dispute Resolution Subsidiary

## SEC Approves Creation Of Dispute Resolution Subsidiary And Related By-Laws And Rule Changes

### SUGGESTED ROUTING

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

- Legal & Compliance
- Senior Management

### KEY TOPICS

- Arbitration
- Dispute Resolution
- Mediation

### Executive Summary

The Securities and Exchange Commission (SEC) has approved creation of a subsidiary of the National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) to handle the dispute resolution program that is currently part of NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>). The subsidiary is expected to become operational in the spring of 2000.

### Questions/Further Information

Questions regarding this *Notice* may be directed to Linda D. Fienberg, Executive Vice President, Office of Dispute Resolution, NASD Regulation, at (202) 728-8407; George H. Friedman, Senior Vice President and Director, Office of Dispute Resolution, NASD Regulation, at (212) 858-4488; or Jean I. Feeney, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-6959.

### Discussion

On September 30, 1999, the SEC approved creation of a dispute resolution subsidiary, to be known as NASD Dispute Resolution, Inc. (NASD Dispute Resolution), to take over the dispute resolution functions that are now performed by the Office of Dispute Resolution within NASD Regulation.<sup>1</sup> Specifically, the SEC approved new By-Laws for the subsidiary, and related amendments to the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries,

the NASD Regulation By-Laws, and the Rules of the Association. A copy of the SEC Approval Order, which contains a description of the amendments, is attached. The changes will not take effect until NASD Dispute Resolution becomes operational.

The NASD believes that creation of the new subsidiary will recognize the importance of its dispute resolution program and further strengthen the independence and credibility of the arbitration and mediation functions. The subsidiary will be subject to the same SEC oversight as the NASD, NASD Regulation, and The Nasdaq-Amex Market Group<sup>SM</sup>.

NASD Dispute Resolution must now qualify to do business in all jurisdictions in which it will operate. Therefore, it is not expected to begin operation as a separate subsidiary until the spring of 2000. Until that time, the Office of Dispute Resolution will remain part of NASD Regulation.

### Endnote

<sup>1</sup>Exchange Act Release No. 41971 (File No. SR-NASD-99-21) (September 30, 1999), 64 *Federal Register* 55793 (October 14, 1999).

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# Audio Tape Order Form

## NASD Regulation, Inc. • Advertising Regulation Seminar

### October 14-15, 1999 • Washington, DC

- 109901 General Session
- 109902 Nuts & Bolts
- 109903 General Brokerage Products
- 109904 Fundamentals Of Mutual Funds And Variable Insurance Products
- 109905 Internet And Online Brokerage

- 109906 Current Issues: Mutual Funds And Variable Insurance Products
- 109907 Case Studies
- 109908 Hands-On Exercise
- 109909 Open Forum
- 109910 General Brokerage Sales Practices

*Please Check Selection Numbers*

**Purchase Prices:**

Number of Individual Sessions \_\_\_\_\_ x \$ 12.00 = \$ \_\_\_\_\_  
 Complete Set of Seminar recordings \_\_\_\_\_ x \$ 108.00 = \$ \_\_\_\_\_

**Session Charges:**

\$ \_\_\_\_\_

**Sales Taxes:** Maryland Shipping Addresses Only

\$ \_\_\_\_\_ x 5% = \$ \_\_\_\_\_

**Shipping Charges:**

\$2.25 for the 1st session \$ 2.25

\$1.50 for each additional session (\$11.00 maximum shipping charge) # \_\_\_\_\_ x \$1.50 = \$ \_\_\_\_\_

\$13.50 extra shipping charge for orders outside of the US Postal Service \$ \_\_\_\_\_

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**US Dollars Only**

**Grand Total \$** \_\_\_\_\_

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Company \_\_\_\_\_

Street Address \_\_\_\_\_ MS/FI/Suite/Apt. # \_\_\_\_\_ City \_\_\_\_\_

State \_\_\_\_\_ Zip Code \_\_\_\_\_ Day Phone \_\_\_\_\_

Fax \_\_\_\_\_ E-mail \_\_\_\_\_

**For Mail or Fax Charge Card Orders:**

Visa     MasterCard     Discover     American Express     Check (payable to A.V.E.R. Associates)

Cardholder Name \_\_\_\_\_ Card Number \_\_\_\_\_

Card Expiration Date \_\_\_\_\_ Cardholder Signature \_\_\_\_\_

Mail or Fax completed form and payment to:

**A.V.E.R. Associates, 6974 Ducketts Lane, Elkridge, MD 21075, Phone 410-796-8940, Fax 410-796-8962**

Received \_\_\_\_\_ Auth # & Date \_\_\_\_\_ Shipped \_\_\_\_\_ Updated \_\_\_\_\_

**INFORMATIONAL**

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**Web-Based  
Regulatory  
Applications**

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**NASD Regulation To  
Launch Additional Form  
Filing Regulatory  
Applications****SUGGESTED ROUTING**

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

- Executive Representatives
- Legal & Compliance
- Operations
- Senior Management
- Systems

**KEY TOPICS**

- Forms/Electronic Filing

**Executive Summary**

NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) will deploy the following four additional Web-Based Form Filing Regulatory Applications to National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) members during the first quarter of 2000.

- Bluesheets (NASD Procedural Rules 8210, 8211, and 8213);
- Customer Complaints (NASD Conduct Rule 3070);
- Reg T/15c3-3 Extension Requests; and
- Shorts Interest Reporting (NASD Conduct Rule 3360).

These regulatory applications will allow firms to use the same entitlement user account and password used to access Web-Based FOCUS—the first of the form filing applications launched a few months ago. Like Web-Based FOCUS, firms will no longer need to load software or file via Sprint Telenet or the Securities Industry Automation Corporation (SIAC), but instead can access all of the form filing applications with one Internet address:

*<https://regulationformfiling.nasdr.com>.*

Firms must use these new Web-Based applications beginning first quarter of 2000. The old filing methods will no longer be available.

**Questions/Further Information**

For further information or if you have questions about the new Web-Based form filing applications, call (800) 321-NASD, or send an e-mail to:

*[nasdregformfiling@nasd.com](mailto:nasdregformfiling@nasd.com).*

**Questions And Answers  
About The New Web-Based  
Applications*****Who would be required to file using these form filing applications?***

If your firm is designated to NASD Regulation for regulatory oversight, then your firm is required to file Customer Complaints, RegT/15c3-3 Extension Requests, and Shorts Interest Reporting to the NASD utilizing these applications. The Bluesheets application can be used by all NASD members that receive Bluesheet requests from the NASD pursuant to NASD Procedural Rules 8210, 8211, and 8213.

***How do I prepare for the new form filing regulatory applications?***

Your firm must be entitled to use any of the new form filing regulatory applications. Contact your firm's Web-Based FOCUS Account Administrator to request the additional entitlements. The Account Administrator—that would have been identified through the Web-Based FOCUS entitlement process—can request additional user entitlements online via the Entitlement Administration Tool of the Web-Based FOCUS application.

***What if I am a Web-Based FOCUS Account Administrator and will also be the Account Administrator for the other new form filing regulatory applications?***

The firm must submit a Regulation Applications Administrator Entitlement Form for *each Account Administrator* that is requesting additional entitlement privileges.

## NASD Notice to Members 99-101

**What if my firm would like to have a separate Account Administrator for each form filing application?**

The member firm has the option to appoint separate Account Administrators for each application. It is recommended that each Account Administrator have a backup or alternate. For new Account Administrators, firms must

submit a Regulation Applications User Accounts Acknowledgment Form (UAAF) and Regulation Applications Administrator Entitlement Form. Firms should have received copies of these forms from NASD Regulation during the Web-Based FOCUS entitlement process. If you need another copy of these forms, call (800) 321-NASD, or send an e-mail to [nasdregformfiling@nasd.com](mailto:nasdregformfiling@nasd.com).

**Are the system requirements for these new applications different than for Web-Based FOCUS ?**

The system requirements for form filing regulatory applications are the same as Web-Based FOCUS.

See below for system requirements.

<b>System Requirements</b>			
<b>Minimum Client Required</b>		<b>Recommended Client</b>	
<b>Hardware:</b>	Pentium x90MHz 16MB	<b>Hardware:</b>	Pentium x133MHz 32MB
<b>Operating System:</b>	Windows 95 Windows NT 4.0	<b>Operating System:</b>	Windows 95 / 98 Windows NT 4.0
<b>Modem:</b>	28.8KB	<b>Modem:</b>	56KB
<b>Web Browser:</b>	Internet Explorer 4.01 SP2 Netscape 4.05	<b>Web Browser:</b>	Internet Explorer 4.01 SP2 Netscape 4.05
<b>Web Browser Specifics:</b>	Javascript enabled (this is usually the default setting)*	<b>Web Browser Specifics:</b>	Javascript enabled (this is usually the default setting)*
<b>Screen Resolution:</b>	800 x 600	<b>Screen Resolution:</b>	1024 x 768

\* The system will not function without Javascript enabled.

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**INFORMATIONAL**

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**Reg T And SEC Rule 15c3-3 Reason Codes**

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NASD Announces Changes To Regulation T And SEC Rule 15c3-3 Extension Request Reason Codes; **Effective Date: February 7, 2000**

**SUGGESTED ROUTING**

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

- Legal & Compliance
- Operations
- Senior Management

**KEY TOPICS**

- Regulation T
- SEC Rule 15c3-3

**Executive Summary**

The National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) is making several changes to its Extension Request Reason Codes regarding Federal Reserve Board Regulation T and Securities and Exchange Commission (SEC) Rule 15c3-3. The changes include adding codes and aligning some NASD codes with New York Stock Exchange (NYSE) codes; the changes will take effect on February 7, 2000.

The charts in Attachment A outline the reason codes and the changes.

**Questions/Further Information**

Questions regarding this *Notice to Members* may be directed to Susan DeMando, Regional Compliance Supervisor, Member Regulation, NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) at (202) 728-8411.

**Background**

The Federal Reserve Board's Regulation T and SEC Rule 15c3-3 provide for the possibility of extensions where investors have not promptly met their obligations relative to a securities transaction.

Regulation T pertains to an investor's obligation when a security is purchased. Specifically, an investor is given a maximum of five business days to pay for securities purchased in a cash or margin account. If payment due exceeds \$1,000 and is not received by the end of this time period, the broker/dealer must either liquidate the position or apply for and receive an extension from its designated examining authority.

SEC Rule 15c3-3 pertains to a customer's obligation when securities are sold, other than short

sales. SEC Rule 15c3-3 requires that if a security sold long has not been delivered within 10 business days after the settlement date, the broker/dealer must either buy the customer in or apply for and receive an extension from its designated examining authority.

Clearing firms are reminded of their obligations under the Net Capital Rule relative to Regulation T and outstanding deposits and/or margin as described in SEC Rule 15c3-1 (c)(2)(iv)(B). In addition, should a customer fail to meet his/her responsibilities to deliver a security and that failure results in a clearing firm fail-to-deliver, the Net Capital Rule requires charges under certain conditions. These charges are outlined in SEC Rule 15c3-1 (c)(2)(ix).

**Key Features**

Following are key features of the current reason codes and some changes:

- Under Regulation T, we are adding reason code 001 ("contacting customer"). This reason code is available one time only for a given trade date and is available for a maximum of seven calendar days. If a customer needs an additional extension related to that trade date, the firm will have to select a new reason code. The reason code can be used starting February 7, 2000.
- Regulation T reason code 021 ("other") may only be assigned by NASD staff. A member firm may not input "other" as a valid reason code. A firm needing a Regulation T extension for reasons other than those provided for in reason codes 001-009, 012, 014, 015<sup>1</sup>, 017-020 will need to request and

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receive NASD approval and input of the code "other". To facilitate such a request, a firm must contact their District Office. *The use of reason code 021 will be allowed only in extreme and unavoidable circumstances.*

- Rule 15c3-3 reason code 050 ("other") may only be assigned by NASD staff. A member firm may not input "other" as a valid reason code. A firm needing a Rule 15c3-3 extension for reasons other than those provided for in reason codes 040-045, 047-049 and 052<sup>2</sup> will need to request and receive NASD approval and input of the code "other". To facilitate such

a request, a firm must contact their District Office. *The use of reason code 050 will be allowed only in extreme and unavoidable circumstances.*

- For Regulation T extensions, a customer will still be limited to a maximum of five request dates per rolling 12-month period for certain reason codes. For Rule 15c3-3 extensions, a customer will be permitted nine (increased from the current five) request dates per rolling 12-month period.

### Endnotes

<sup>1</sup>Regulation T reason code 016 ("Acts of God") may also only be used by NASD.

However, it is not a reason code that can be applied on an individual customer basis. Acts of God are limited to regional difficulties like earthquake, flood, etc.; when granted, this reason code applies to affected customers in a geographic area, not to individual customers.

<sup>2</sup>SEC Rule 15c3-3 reason codes 046 ("Strike or Christmas") and 051 ("Acts of God") are only assigned by NASD and can not be requested on behalf of an individual customer.

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**Attachment A**

<b>Regulation T Extension Request Reason Codes</b>							
<b>Reason Code</b>	<b>Reason Text</b>	<b>Days Permitted</b>	<b>Limit of 5 per Customer</b>	<b>Limit per Reason Code</b>	<b>Final Reason Code</b>	<b>NASD Only</b>	<b>Business Or Calendar Days</b>
001	Contacting Customer	7	Y	1	N	N	C
002	Check Is In The Mail	7	Y	1	Y	N	C
003	Authorization To Transfer Funds	7	Y	1	Y	N	C
004	Awaiting Collateral	7	Y	1	Y	N	C
005	Rcpt Of Sec Sold Offset Purchase	7	Y	1	Y	N	C
006	Legal Documents	7	Y	2	Y	N	C
007	Unacceptable Check	7	Y	1	Y	N	C
008	Foreign Sec. Settle.	7	Y	1	Y	N	B
009	Customer Ill	7	Y	2	Y	N	C
012	COD-DK-Outside U.S.	7	N	1	Y	N	C
014	COD-DK-In U.S.	2	N	1	Y	N	B
015	COD-Fail-35 Days	14	N	2	Y	N	C
016	Acts Of God	14	N	0	N	Y	C
017	Coming From Another Broker	14	N	2	Y	N	C
018	Death In Family	14	Y	1	Y	N	C
019	Awaiting Appt Of Executor	14	Y	2	Y	N	C
020	Transfer cash to another a/c	0	N	1	N	N	C
021	Other	14	N	1	N	Y	C

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### SEC Rule 15c3-3 Extension Request Reason Codes

Reason Code	Reason Text	Days Permitted	Limit of 9 per Customer	Limit per Reason Code	Final Reason Code	NASD Only	Business Or Calendar Days
040	Security In Transit	14	N	2	Y	N	C
041	Death Of Seller	14	Y	2	Y	N	C
042	Can't Buy In, Sec Short Supply	14	N	5	Y	N	C
043	Dividend Sold Before Payable Date	14	Y	2	Y	N	C
044	Still In Foreign Deposit	14	Y	2	Y	N	C
045	Sec Exchange Or Merger	14	Y	2	Y	N	C
046	Strike or Xmas	14	N	0	N	Y	C
047	Coming From Another Broker	14	N	2	Y	N	C
048	Customer Ill Or Hospitalized	14	Y	2	Y	N	C
049	Lost Certificate	30	N	5	N	N	C
050	Other	14	N	0	N	Y	C
051	Acts Of God	14	N	0	N	Y	C
052	Foreign Settlements	10	N	2	Y	N	C

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### These Regulation T and SEC Rule 15c3-3 reason codes have been changed.

NASD Code	<u>Old Description</u> Reg-T Codes	<u>New Description</u> Reg-T Codes
021	Confirm sent to wrong address	Other
	15c3-3 Codes	15c3-3 Codes
050	Lost Certificate: Customer (Combined into 049 Lost Certificate)	Other
052	Other	Foreign Settlements

### These Regulation T and SEC Rule 15c3-3 reason codes have been added.

NASD Code	<u>Description</u> Reg-T Codes
008	Foreign Security Settlement
020	Transfer Cash to Another Account
	15c3-3 Codes
046	Strike or Christmas

### These Regulation T reason codes have been deleted.

NASD Code	<u>Description</u>
022	Corrected Confirm Requested
023	Duplicate Confirm Requested
024	Cust Out Of Town-No Return Dt
025	Cust Out Of Town-Return Dt
026	Bank In Receivership
027	Cust Away On Business-Ret Dt
028	Confirm Sent To Wrong Address

# NASD Member Benefits

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**INFORMATIONAL**

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# Investment Companies And Variable Contracts

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SEC Approves Rule Change Relating To Sales Charges For Investment Companies And Variable Contracts; **Effective Date: April 1, 2000**

**SUGGESTED ROUTING**

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

- Legal & Compliance
- Mutual Fund
- Registered Representatives
- Senior Management
- Training
- Variable Contracts

**KEY TOPICS**

- Investment Companies
- Mutual Funds
- NASD Rules 2820 And 2830
- Variable Contracts

**Executive Summary**

On October 20, 1999, the Securities and Exchange Commission (SEC) approved amendments to National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) Rules 2820 (Variable Contracts Rule) and 2830 (Investment Company Rule) that regulate the sales charges imposed by investment companies and variable annuity contracts sold by NASD members. Generally, the amendments revise the Investment Company Rule to:

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

The amendments revise the Variable Contracts Rule to eliminate the specific sales charge limitations in the rule and a filing requirement relating to changes in sales charges. The amendments are effective on April 1, 2000. The text of the amendments is included in Attachment A.

**Questions/Further Information**

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

Regulation, NASD Regulation, at (202) 728-8233.

**Amendments To The Investment Company Rule Funds Of Funds**

The National Securities Markets Improvement Act of 1996 (NSMIA) amended the Investment Company Act of 1940 (1940 Act) to, among other things, expand the ability of mutual fund sponsors to create "fund of funds"<sup>1</sup> structures. At the time NSMIA was enacted, the Investment Company Rule did not specifically address two-tier fund of fund structures in which both the acquiring fund and the underlying fund impose sales charges. We have amended the Investment Company Rule to ensure that, if both levels of funds in a fund of funds structure impose sales charges, the combined sales charges do not exceed the maximum percentage limits currently contained in the rule.

The amendments permit the acquiring fund, the underlying fund, or both, to impose asset-based sales charges that in the aggregate do not exceed 0.75 percent of average net assets, and service fees that in the aggregate do not exceed 0.25 percent. Aggregate front-end and deferred sales charges in any transaction are limited to 7.25 percent of the amount invested, or 6.25 percent if either the acquiring fund or the underlying fund pays a service fee.

The amendments impose the rule's restrictions on the use of the terms "no load" or "no sales charge" on the acquiring fund, the underlying fund, and those funds in combination. The amendments require funds in a fund of funds structure that impose asset-based sales charges to make their remaining amount calculations on

an individual basis. The amendments do not, however, require funds of funds to make this calculation on an aggregate basis.

### ***Deferred Sales Loads***

In 1996, the SEC amended Rule 6c-10 under the 1940 Act to allow certain types of deferred sales charges, such as back-end and installment loads. The amendments conform the definition of "deferred sales charge" in the Investment Company Rule to the definition of "deferred sales load" in Rule 6c-10.<sup>2</sup> Thus, "deferred sales charge" is now defined as "any amount properly chargeable to sales or promotional expenses that is paid by a shareholder after purchase but before or upon redemption." This amendment makes clear that members may offer funds that impose deferred sales charges permitted under Rule 6c-10, subject to the sales charge limits imposed by the Investment Company Rule.

### ***Loads On Reinvested Dividends***

The amendments to the Investment Company Rule generally prohibit members from offering or selling the shares of an investment company if it has a front-end or deferred sales charge imposed on shares purchased through the reinvestment of dividends. The prohibition of sales loads on reinvested dividends will not apply to any investment company whose registration statement under the Securities Act of 1933 (1933 Act) was or will be declared effective prior to April 1, 2000. This exception effectively "grandfathers" all existing mutual funds and unit investment trusts (UITs), as well as

those mutual funds and UITs whose 1933 Act registration statements become effective prior to April 1, 2000.<sup>3</sup> New mutual funds and UITs that are declared effective under the 1933 Act (including new funds or UITs created pursuant to a post-effective amendment to an existing registration statement under the Investment Company Act of 1940) on or after April 1, 2000, are subject to the prohibition.

### ***CDSL Calculations***

The amendments to the Investment Company Rule reinstate redemption order requirements for shares subject to CDSLs that were eliminated by the SEC's 1996 amendments to its Rule 6c-10. As amended, the Investment Company Rule prohibits members from offering or selling the shares of an investment company subject to a CDSL unless the CDSL is calculated so that shares not subject to the CDSL are redeemed first, and other shares are then redeemed in the order purchased. This first-in-first-out (FIFO) redemption order requirement generally ensures that shareholder transactions are subject to the lowest applicable CDSL. The amendments do allow a redemption order other than FIFO, however, if it would result in the redeeming shareholder paying a lower CDSL.

### ***Prospectus Disclosure***

Prior to these amendments, the Investment Company Rule prohibited a member from offering or selling shares of an investment company with an asset-based sales charge unless its prospectus disclosed that long-term shareholders may pay more than

the economic equivalent of the maximum front-end sales charges permitted in the rule. In March 1998, the SEC adopted significant revisions to mutual fund prospectus disclosure requirements, one of which was a disclosure requirement related to asset-based sales charges. In light of this SEC requirement, NASD Regulation is eliminating this disclosure requirement in the Investment Company Rule.

### ***Amendments To The Variable Contracts Rule***

In 1996, NSMIA fundamentally changed the way the SEC regulates sales charges for variable insurance contracts by eliminating specific limits on fees and imposing a reasonableness standard on aggregate fees. This reasonableness standard is to be administered by the SEC.

In light of these amendments, NASD Regulation is eliminating the maximum sales charge limitations in the Variable Contracts Rule. The amendments also make a conforming change to eliminate the requirement to file the details of any changes in a variable annuity's sales charges with the Advertising/Investment Companies Regulation Department.

### ***Effective Date Of Amendments***

The amendments to the Variable Contracts Rule and Investment Company Rule are effective on April 1, 2000.

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### Endnotes

<sup>1</sup>“Fund of funds” is defined as an investment company whose investments in other registered investment companies exceed the limits permitted under Section 12(d)(1)(A) of the 1940 Act. Section 12(d)(1)(A) of the 1940 Act permits an investment company to invest in up to three percent of the

outstanding voting shares of another investment company, provided that the value of such shares represents less than five percent of the acquiring fund’s total assets, and the acquiring fund’s investments in all other funds represent less than 10 percent of the acquiring fund’s total assets.

<sup>2</sup>See 17 C.F.R. § 270.6c-10(b)(3).

<sup>3</sup>To the extent that footnote 7 of the SEC’s order approving the amendments suggests that they do not “grandfather” existing investment companies, that inference is incorrect.

**ATTACHMENT A****Text Of Amendments To Rules 2820 And 2830**

*(Note: New text is underlined; deletions are bracketed.)*

**Rule 2820 Variable Contracts of an Insurance Company**

(a) - (b) No change

[(c) Sales Charges]

[No member shall participate in the offering or in the sale of variable annuity contracts if the purchase payment includes a sales charge which is excessive:]

[(1) Under contracts providing for multiple payments a sales charge shall not be deemed to be excessive if the sales charge stated in the prospectus does not exceed 8.5% of the total payments to be made thereon as of a date not later than the end of the twelfth year of such payments, provided that if a contract be issued for any stipulated shorter payment period, the sales charge under such contract shall not exceed 8.5% of the total payments thereunder for such period.]

[(2) Under contracts providing for single payments a sales charge shall not be deemed to be excessive if the prospectus sets forth a scale of reducing sales charges related to the amount of the purchase payment which is not greater than the following schedule:

First \$25,000 - 8.5% of purchase payment

Next \$25,000 - 7.5% of purchase payment

Over \$50,000 - 6.5% of purchase payment]

[(3) Under contracts where sales charges and other deductions for purchase payments are not stated separately in the prospectus the total deductions from purchase payments (excluding those for insurance premiums and premium taxes) shall be treated as a sales charge for purposes of this rule and shall not be deemed to be excessive if they do not exceed the percentages for multiple and single payment contracts described in paragraphs (1) and (2) above.]

[(4) Every member who is an underwriter and/or issuer of variable annuities shall file with Advertising/Investment Companies Regulation Department, prior to implementation, the details of any changes or proposed changes in the sales charges of such variable annuities, if the changes or proposed changes would increase the effective sales charge on any transaction. Such filings should be clearly identified as an "Amendment to Variable Annuity Sales Charges." ]

[(d)] (c) Receipt of Payment

No member shall participate in the offering or in the sale of a variable contract on any basis other than at a value to be determined following receipt of payment therefor in accordance with the provisions of the contract, and, if applicable, the prospectus, the Investment Company Act of 1940 and applicable rules thereunder. Payments need not be considered as received until the contract application has been accepted by the insurance company, except that

by mutual agreement [it] they may be considered to have been received for the risk of the purchaser when actually received.

[(e)] (d) Transmittal

Every member who receives applications and/or purchase payments for variable contracts shall transmit promptly to the issuer all such applications and at least that portion of the purchase payment required to be credited to the contract.

[(f)] (e) Selling Agreement

No member who is a principal underwriter as defined in the Investment Company Act of 1940 may sell variable contracts through another broker/dealer unless (1) such broker/dealer is a member, and (2) there is a sales agreement in effect between the parties. Such sales agreement must provide that the sales commission be returned to the issuing insurance company if the variable contract is tendered for redemption within seven business days after acceptance of the contract application.

[(g)] (f) Redemption

No member shall participate in the offering or in the sale of a variable contract unless the insurance company, upon receipt of a request in proper form for partial or total redemption in accordance with the provisions of the contract undertakes to make prompt payment of the amounts requested and payable under the contract in accordance with the terms thereof, and, if applicable, the prospectus, the Investment Company Act of 1940 and applicable rule thereunder.

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### [(h)] (g) Member Compensation

In connection with the sale and distribution of variable contracts:

(1) Except as described below, no associated person of a member shall accept any compensation from anyone other than the member with which the person is associated. This requirement will not prohibit arrangements where a non-member company pays compensation directly to associated persons of the member, provided that:

(A) the arrangement is agreed to by the member;

(B) the member relies on an appropriate rule, regulation, interpretive release, interpretive letter, or "no-action" letter issued by the Securities and Exchange Commission that applies to the specific fact situation of the arrangement;

(C) the receipt by associated persons of such compensation is treated as compensation received by the member for purposes of NASD rules; and

(D) the recordkeeping requirement in subparagraph [(h)](g)(3) is satisfied.

(2) No member or person associated with a member shall accept any compensation from an offeror which is in the form of securities of any kind.

(3) Except for items as described in subparagraphs [(h)](g)(4)(A) and (B), a member shall maintain records of all compensation received by the member or its associated persons from offerors.

The records shall include the names of the offerors, the names of the associated persons, the amount of cash, the nature and, if known, the value of non-cash compensation received.

(4) No member or person associated with a member shall directly or indirectly accept or make payments or offers of payments of any non-cash compensation, except as provided in this provision. Notwithstanding the provisions of subparagraph [(h)](g)(1), the following non-cash compensation arrangements are permitted:

(A) Gifts that do not exceed an annual amount per person fixed periodically by the Board of Governors\* and are not preconditioned on achievement of a sales target.

(B) An occasional meal, a ticket to a sporting event or the theater, or comparable entertainment which is neither so frequent nor so extensive as to raise any question of propriety and is not preconditioned on achievement of a sales target.

(C) Payment or reimbursement by offerors in connection with meetings held by an offeror or by a member for the purpose of training or education of associated persons of a member, provided that:

(i) the recordkeeping requirement in subparagraph [(h)](g)(3) is satisfied;

(ii) associated persons obtain the member's prior approval to attend the meeting and attendance by a member's

associated persons is not preconditioned by the member on the achievement of a sales target or any other incentives pursuant to a non-cash compensation arrangement permitted by subparagraph [(h)](g)(4)(D);

(iii) the location is appropriate to the purpose of the meeting, which shall mean an office of the offeror or the member, or a facility located in the vicinity of such office, or a regional location with respect to regional meetings;

(iv) the payment or reimbursement is not applied to the expenses of guests of the associated person; and

(v) the payment or reimbursement by the offeror is not preconditioned by the offeror on the achievement of a sales target or any other non-cash compensation arrangement permitted by subparagraph [(h)](g)(4)(D).

(D) Non-cash compensation arrangements between a member and its associated persons or a non-member company and its sales personnel who are associated persons of an affiliated member, provided that:

(i) the member's or non-member's non-cash compensation arrangement, if it includes variable contracts, is based on the total production of associated persons with respect to all variable contracts distributed by the member;

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\*The current annual amount fixed by the Board of Governors is \$100.

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(ii) the non-cash compensation arrangement requires that the credit received for each variable contract is equally weighted;

(iii) no unaffiliated non-member company or other unaffiliated member directly or indirectly participates in the member's or non-member's organization of a permissible non-cash compensation arrangement; and

(iv) the recordkeeping requirement in subparagraph [(h)](g)(3) is satisfied.

(E) Contributions by a non-member company or other member to a non-cash compensation arrangement between a member and its associated persons, or contributions by a member to a non-cash compensation arrangement of a non-member, provided that the arrangement meets the criteria in subparagraph [(h)](g)(4)(D).

### Rule 2830 Investment Company Securities

#### (a) Application

This Rule shall apply exclusively to the activities of members in connection with the securities of companies registered under the Investment Company Act of 1940 ("the 1940 Act"); provided, however, that Rule 2820 shall apply, in lieu of this Rule, to members' activities in connection with "variable contracts" as defined therein.

#### (b) Definitions

(1) The terms "affiliated member," "compensation," "cash compensation," "non-cash

compensation" and "offeror" as used in paragraph (l) of this section shall have the following meanings:

"Affiliated Member" shall mean a member which, directly or indirectly, controls, is controlled by, or is under common control with a non-member company.

"Compensation" shall mean cash compensation and non-cash compensation.

"Cash compensation" shall mean any discount, concession, fee, service fee, commission, asset-based sales charge, loan, override or cash employee benefit received in connection with the sale and distribution of investment company securities.

"Non-cash compensation" shall mean any form of compensation received in connection with the sale and distribution of investment company securities that is not cash compensation, including but not limited to merchandise, gifts and prizes, travel expenses, meals and lodging.

"Offeror" shall mean an investment company, an adviser to an investment company, a fund administrator, an underwriter and any affiliated person (as defined in Section 2(a)(3) of the [Investment Company Act of 1940] 1940 Act) of such entities.

(2) "Brokerage commissions," as used in paragraph (k), shall not be limited to commissions on agency transactions but shall include underwriting discounts or concessions and fees to members in connection with tender offers.

(3) "Covered account," as used in paragraph (k), shall mean (A) any other investment company or other account managed by the investment adviser of such investment company, or (B) any other account from which brokerage commissions are received or expected as a result of the request or direction of any principal underwriter of such investment company or of any affiliated person (as defined in the [Investment Company Act of 1940] 1940 Act) of such investment company or of such underwriter, or of any affiliated person of an affiliated person of such investment company.

(4) "Person" shall mean "person" as defined in the [Investment Company Act of 1940] 1940 Act.

(5) "Prime rate," as used in paragraph (d), shall mean the most preferential interest rate on corporate loans at large U.S. money center commercial banks.

(6) "Public offering price" shall mean a public offering price as set forth in the prospectus of the issuing company.

(7) "Rights of accumulation," as used in paragraph (d), shall mean a scale of reducing sales charges in which the sales charge applicable to the securities being purchased is based upon the aggregate quantity of securities previously purchased or acquired and then owned plus the securities being purchased.

The quantity of securities owned shall be based upon:

(A) The current value of such securities (measured by either net asset value or maximum offering price); or

(B) Total purchases of such securities at actual offering prices; or

(C) The higher of the current value or the total purchases of such securities.

The quantity of securities owned may also include redeemable securities of other registered investment companies having the same principal underwriter.

(8) "Sales Charge" and "sales charges," as used in paragraph (d), shall mean all charges or fees that are paid to finance sales or sales promotion expenses, including front-end deferred and asset-based sales charges, excluding charges and fees for ministerial, recordkeeping or administrative activities and investment management fees. For purposes of this Rule, members may rely on the sales-related fees and charges disclosed in the prospectus of an investment company.

(A) An "asset-based sales charge" is a sales charge that is deducted from the net assets of an investment company and does not include a service fee.

(B) A "deferred sales charge" is [a sales charge that is deducted from the proceeds of the redemption of shares by an investor, excluding any such charges that are (i) nominal and are for services in connection with a redemption or (ii) discourage short-term trading, that are not used to finance sales-related expenses, and that are credited to the net assets of the investment company] any amount properly chargeable to sales or

promotional expenses that is paid by a shareholder after purchase but before or upon redemption.

(C) A "front-end sales charge" is a sales charge that is included in the public offering price of the shares of an investment company.

(9) "Service fees," as used in paragraph (d), shall mean payments by an investment company for personal service and/or the maintenance of shareholder accounts.

(10) The terms "underwriter," "principal underwriter," "redeemable security," "periodic payment plan," "open-end management investment company," and "unit investment trust," shall have the same definitions used in the [Investment Company Act of 1940] 1940 Act.

(11) A "fund of funds" is an investment company that acquires securities issued by any other investment company registered under the 1940 Act in excess of the amounts permitted under paragraph (A) of Section 12(d)(1) of the 1940 Act. An "acquiring company" in a fund of funds is the investment company that purchases or otherwise acquires the securities of another investment company, and an "acquired company" is the investment company whose securities are acquired.

(12) "Investment companies in a single complex" are any two or more companies that hold themselves out to investors as related companies for purposes of investment and investor services.

(c) Conditions of Discounts to Dealers

No member who is an underwriter of the securities of an investment company shall sell any such security to any dealer or broker at any price other than a public offering price unless such sale is in conformance with Rule 2420 and, if the security is issued by an open-end management company or by a unit investment trust which invests primarily in securities issued by other investment companies, unless a sales agreement shall set forth the concessions to be received by the dealer or broker.

(d) Sales Charge

No member shall offer or sell the shares of any open-end investment company or any "single payment" investment plan issued by a unit investment trust (collectively "investment companies") registered under the [Investment Company Act of 1940] 1940 Act if the sales charges described in the prospectus are excessive. Aggregate sales charges shall be deemed excessive if they do not conform to the following provisions:

(1) Investment Companies Without an Asset-Based Sales Charge

(A) Aggregate front-end and/[or] deferred sales charges described in the prospectus which may be imposed by an investment company without an asset-based sales charge shall not exceed 8.5% of the offering price.

[(B) (i) Dividend reinvestment may be made available at net asset value per share to any person who requests such reinvestment.

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(ii) If dividend reinvestment is not made available as specified in subparagraph (B)(i) above, the maximum aggregate sales charge shall not exceed 7.25% of offering price.]

[(C)](B)(i) Rights of accumulation (cumulative quantity discounts) may be made available to any person in accordance with one of the alternative quantity discount schedules provided in subparagraph [(D)](C)(i) below, as in effect on the date the right is exercised.

(ii) If rights of accumulation are not made available on terms at least as favorable as those specified in subparagraph (C)(i) the maximum aggregate sales charge shall not exceed[.:]

[(a)] 8.0% of offering price, [if the provisions of subparagraph (B)(i) are met; or

(b) 6.75% of offering price if the provisions of subparagraph (B)(i) are not met.]

[(D)](C)(i) Quantity discounts, if offered, shall be made available on single purchases by any person in accordance with one of the following two alternatives:

a. A maximum aggregate sales charge of 7.75% on purchases of \$10,000 or more and a maximum aggregate sales charge of 6.25% on purchases of \$25,000 or more, or

b. A maximum aggregate sales charge of 7.50% on

purchases of \$15,000 or more and a maximum aggregate sales charge of 6.25% on purchases of \$25,000 or more.

(ii) If quantity discounts are not made available on terms at least as favorable as those specified in subparagraph [(D)](C)(i) the maximum aggregate sales charge shall not exceed:

a. 7.75% of offering price if the provisions of subparagraph[s (B)(i) and (C)(i)] (B) are met.

b. 7.25% of offering price if [the provisions of subparagraph (B)(i) are met but] the provisions of subparagraph [(C)(i)](B) are not met.

[c. 6.50% of offering price if the provisions of subparagraph (C) (i) are met but the provision of subparagraph (B)(i) are not met.]

[d. 6.25% of offering price if the provisions of subparagraphs (B)(i) and (C)(i) are not met.]

[(E)] (D) If an investment company without an asset-based sales charge pays a service fee, the maximum aggregate sales charge shall not exceed 7.25% of the offering price.

[(F) If an investment company without an asset-based sales charge reinvests dividends at offering price, it shall not offer or pay a service fee unless it offers quantity discounts and rights of accumulation and the maximum aggregate sales

charge does not exceed 6.25% of the offering price.]

(2) Investment Companies With an Asset-Based Sales Charge

(A) Except as provided in subparagraphs (C) and (D), the aggregate asset-based, front-end and deferred sales charges described in the prospectus which may be imposed by an investment company with an asset-based sales charge, if the investment company has adopted a plan under which service fees are paid, shall not exceed 6.25% of total new gross sales (excluding sales from the reinvestment of distributions and exchanges of shares between investment companies in a single complex, between classes [of shares] of an investment company with multiple classes of shares or between series [shares] of a series investment company) plus interest charges on such amount equal to the prime rate plus one percent per annum. The maximum front-end or deferred sales charge resulting from any transaction shall be 6.25% of the amount invested.

(B) Except as provided in subparagraphs (C) and (D), if an investment company with an asset-based sales charge does not pay a service fee, the aggregate asset-based, front-end and deferred sales charges described in the prospectus shall not exceed 7.25% of total new gross sales (excluding sales from the reinvestment of distributions and exchanges of shares between investment companies in a single complex, between classes [of shares] of an investment company with multiple classes of shares or between series [shares] of a

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series investment company) plus interest charges on such amount equal to the prime rate plus one percent per annum. The maximum front-end or deferred sales charge resulting from any transaction shall be 7.25% of the amount invested.

(C) The maximum aggregate sales charge on total new gross sales set forth in subparagraphs (A) and (B) may be increased by an amount calculated by applying the appropriate percentages of 6.25% or 7.25% of total new gross sales which occurred after an investment company first adopted an asset-based sales charge until July 7, 1993, plus interest charges on such amount equal to the prime rate plus one percent per annum less any front-end, asset-based or deferred sales charges on such sales or net assets resulting from such sales.

(D) The maximum aggregate sales charges of an investment company in a single complex, a class or share issued by an investment company with multiple classes of shares or a separate series of a series investment company, may be increased to include sales of exchanged shares provided that such increase is deducted from the maximum aggregate sales charges of the investment company, class or series which redeemed the shares for the purpose of such exchanges.

(E) No member shall offer or sell the shares of an investment company with an asset-based sales charge if:

(i) The amount of the asset-based sales charge exceeds .75 of 1% per annum of the

average annual net assets of the investment company; or

(ii) Any deferred sales charges deducted from the proceeds of a redemption after the maximum cap, described in subparagraphs (A), (B), (C) and (D) hereof, has been attained are not credited to the investment company.

### (3) Fund of Funds

(A) If neither an acquiring company nor an acquired company in a fund of funds structure has an asset-based sales charge, the maximum aggregate front-end and deferred sales charges that may be imposed by the acquiring company, the acquired company and those companies in combination, shall not exceed the rates provided in paragraph (d)(1).

(B) Any acquiring company or acquired company in a fund of funds structure that has an asset-based sales charge shall individually comply with the requirements of paragraph (d)(2), provided:

(i) If the acquiring and acquired companies are in a single complex and the acquired fund has an asset-based sales charge, sales made to the acquiring fund shall be excluded from total gross new sales for purposes of acquired fund's calculations under subparagraphs (d)(2)(A) through (d)(2)(D); and

(ii) If both the acquiring and acquired companies have an asset-based sales charge: (a) the maximum aggregate

asset-based sales charge imposed by the acquiring company, the acquired company and those companies in combination, shall not exceed the rate provided in subparagraph (d)(2)(E)(i); and (b) the maximum aggregate front-end or deferred sales charges shall not exceed 7.25% of the amount invested, or 6.25% if either company pays a service fee.

(C) The rates described in subparagraphs (d)(4) and (d)(5) shall apply to the acquiring company, the acquired company and those companies in combination. The limitations of subparagraph (d)(6) shall apply to the acquiring company and the acquired company individually.

[(3)](4) No member or person associated with a member shall, either orally or in writing, describe an investment as being "no load" or as having "no sales charge" if the investment company has a front-end or deferred sales charge or [whose] its total charges against net assets to provide for sales related expenses and/or service fees exceed .25 of 1% of average net asset per annum.

[(4) No member or person associated with a member shall offer or sell the securities of an investment company with an asset-based sales charge unless its prospectus discloses that long-term shareholders may pay more than the economic equivalent of the maximum front-end sales charges permitted by this Rule. Such disclosure shall be adjacent to the fee table in the front section of a prospectus. This subparagraph shall not

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apply to money market mutual funds which have asset-based sales charges equal to or less than .25 of 1% of average net assets per annum.]

(5) No member or person associated with a member shall offer or sell the securities of an investment company if the service fees paid by the investment company, as disclosed in the prospectus, exceed .25 of 1% of its average annual net assets or if a service fee paid by the investment company, as disclosed in the prospectus, to any person who sells its shares exceeds .25 of 1% of the average annual net asset value of such shares.

(6) No member or person associated with a member shall

offer or sell the securities of an investment company if:

(A) The investment company has a deferred sales charge paid upon redemption that declines over the period of a shareholder's investment ("contingent deferred sales load"), unless the contingent deferred sales load is calculated as if the shares or amounts representing shares not subject to the load are redeemed first, and other shares or amounts representing shares are then redeemed in the order purchased, provided that another order of redemption may be used if such order would result in the redeeming shareholder paying a lower contingent deferred sales load; or

(B) The investment company has a front-end or deferred sales charge imposed on shares, or amounts representing shares, that are purchased through the reinvestment of dividends, unless the registration statement registering the investment company's securities under the Securities Act of 1933 became effective prior to April 1, 2000.

(e) - (l) No change.

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**ACTION REQUIRED**

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**SOES Order Sizes**

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Maximum SOES Order Sizes Set To Change January 10, 2000

**SUGGESTED ROUTING**

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

- Legal & Compliance
- Operations
- Systems
- Trading

**KEY TOPICS**

- SOES Maximum Order Sizes

**Executive Summary**

Effective January 10, 2000, the maximum Small Order Execution System<sup>SM</sup> (SOES<sup>SM</sup>) order sizes for 534 Nasdaq National Market<sup>®</sup> (NNM) securities will be revised in accordance with National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) Rule 4710(g).

In previous quarters, Nasdaq<sup>®</sup> has implemented the reclassification on the first trading day of the quarter; because Nasdaq Market Operations is planning to suspend the processing of data changes from December 27, 1999, through January 3, 2000—as part of the transition to the Year 2000 (Y2K)—Nasdaq is implementing the instant reclassification on January 10, 2000, instead of January 3, 2000.

For more information, please contact Nasdaq Market Operations at (203) 378-0284.

**Description**

Under Rule 4710, the maximum SOES order size for an NNM security is 1,000, 500, or 200 shares, depending on the trading characteristics of the security. The Nasdaq Workstation II<sup>®</sup> (NWII) indicates the maximum SOES order size for each NNM security. The indicator “NM10,” “NM5,” or “NM2” displayed in NWII corresponds to a maximum SOES order size of 1,000, 500, or 200 shares, respectively.

The criteria for establishing maximum SOES order sizes are as follows:

- (1) a 1,000-share maximum order size shall apply to NNM securities on SOES with an average daily non-block volume of 3,000 shares or more a day, a bid price of less than or equal to \$100, and three or more Market Makers;

- (2) a 500-share maximum order size shall apply to NNM securities on SOES with an average daily non-block volume of 1,000 shares or more a day, a bid price of less than or equal to \$150, and two or more Market Makers; and
- (3) a 200-share maximum order size shall apply to NNM securities with an average daily non-block volume of less than 1,000 shares a day, a bid price of less than or equal to \$250, and two or more Market Makers.

In accordance with Rule 4710, Nasdaq periodically reviews the maximum SOES order size applicable to each NNM security to determine if the trading characteristics of the issue have changed so as to warrant an adjustment. Such a review was conducted using data as of October 31, 1999, pursuant to the aforementioned standards. The maximum SOES order-size changes called for by this review are being implemented with three exceptions.

- First, issues were not permitted to move more than one size level. For example, if an issue was previously categorized in the 1,000-share level, it would not be permitted to move to the 200-share level, even if the formula calculated that such a move was warranted. The issue could move only one level to the 500-share level as a result of any single review.
- Second, for securities priced below \$1 where the reranking called for a reduction in the level, the maximum SOES order size was not reduced.
- Third, for the top 50 Nasdaq securities based on market capitalization, the maximum SOES order sizes were not reduced, regardless of whether the reranking called for a reduction.

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In addition, with respect to initial public offerings (IPOs), the SOES order-size reranking procedures provide that a security must first be traded on Nasdaq for at least 45 days before it is eligible to be reclassified.

Thus, IPOs listed on Nasdaq within the 45 days prior to October 31, 1999, were not subject to SOES order-size reranking procedures.

Following is a listing of the 534 NNM issues that will have the maxi-

imum SOES order size changed on January 10, 2000.

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### Maximum SOES Order Size Changes In NNM Securities All Issues In Alphabetical Order By Symbol (Effective January 10, 2000)

Symbol	Security Name	Old Level	New Level	Symbol	Security Name	Old Level	New Level
<b>A</b>				AVIIZ	AVI BIOPHARMA WTS	200	500
ABANP	ABI CAP TRUST PFD	500	200	AWEB	AUTOWEB.COM INC	500	1000
ABBKP	ABINGTON TR PFD	500	200	<b>B</b>			
ABDR	ABACUS DIRECT CP	1000	500	BANF	BANCFIRST CP	1000	500
ABFSP	ARKANSAS BEST	1000	500	BBDC	BRANTLEY CAP CORP	500	1000
ABTL	AUTOBYTEL.COM INC	500	1000	BBSI	BARRETT BUSINESS	1000	500
ACDO	ACCREDO HEALTH INC	500	1000	BCIS	BANCINSURANCE CP	500	1000
ACRU	ACCRUE SOFTWARE INC	200	500	BEOS	BE INCORPORATED	200	500
ADBL	AUDIBLE INC	200	500	BESI	B E SEMICON ORD	500	200
ADECY	ADECCO SA ADR	500	1000	BGST	BIGSTAR ENTERTNMENT	200	500
ADFC	ADFORCE INC	500	1000	BIDS	BID.COM INTL INC	500	1000
AFCO	APPLIED FILMS CORP	1000	500	BIGE	BIG ENTERTAIN INC	500	1000
AIII	AUTOLOGIC INFO INT	500	200	BIGT	PINNACLE HLDGS INC	500	1000
AIRO	AIRONET WIRELESS	200	500	BIORY	BIORA AB ADR	500	1000
ALNC	ALLIANCE FINL CP	500	1000	BIZZ	BIZNESSONLINE.COM	500	1000
ALOT	ASTRO MED INC	1000	500	BKCT	BANCORP CONN INC	1000	500
ALOY	ALLOY ONLINE INC	500	1000	BKUNZ	BANKUNITED CAP II	1000	500
AMBCP	AMER BNCP CAP TR	500	200	BLCA	BOREL BK & TR (CA)	200	500
AMNB	AMER NATL BANKSHS	500	1000	BMCCP	BANDO MCGLOC PFD A	200	500
AMTD	AMERITRADE HLDG A	500	1000	BMRN	BIOMARIN PHARMACEUT	200	500
ANBC	A N B CP	500	1000	BNBN	BARNESANDNOBLE.COM	200	500
ANDR	ANDERSEN GROUP INC	1000	500	BNCC	BNCCORP INC	1000	500
ANTV	ANTENNA TV SA ADR	500	1000	BNHNA	BENIHANA INC A	500	1000
APGRW	ARCH COMMUN GRP WTS	200	500	BOUT	ABOUT.COM INC	500	1000
APLN	ATPLAN INC	200	500	BPAO	BALDWIN PIANO ORGA	500	1000
APNT	APPNET SYSTEMS	200	500	BPUR	BIOPURE CORP CL A	200	500
ARBA	ARIBA INC	200	500	BRID	BRIDGFORD FOODS CP	1000	500
ARDNA	ARDEN GROUP CL A	500	200	BRNC	BRAUN CONSULTING SE	200	500
AREM	AREMISSOFT CORP	500	1000	BSRR	BANK OF THE SIERRA	200	500
ARGY	ARGOSY ED GRP CL A	500	1000	BTEK	BALTEK CP	1000	500
ARTG	ART TECH GROUP	200	500	BUCA	BUCA INC	500	1000
ASKJ	ASK JEEVES INC	200	500	BUCK	BUCKHEAD AMERICA	500	200
ASWX	ACTIVE SOFTWARE INC	200	500	BVSN	BROADVISION INC	1000	500
ATHY	APPLIEDTHEORY CP SR	500	1000	BWEB	BACKWEB TECH LTD	200	500
ATLPP	ATLANTIC PFD CAP CP	1000	500	BWFC	BANK WEST FIN CORP	1000	500
AUDC	AUDICODES LTD	200	500	BWINA	BALDWIN LYONS CL A	200	500

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Symbol	Security Name	Old Level	New Level	Symbol	Security Name	Old Level	New Level
<b>C</b>				CSYI	CIRCUIT SYSTEMS IN	1000	500
CAII	CAPITAL ASSOC	500	1000	CTCH	COMMTOUCH SOFTWR LTD	200	500
CAIS	CAIS INTERNET INC	200	500	CTIX	CHEAP TICKETS INC	500	1000
CAND	CANDIES INC	1000	500	CYBA	CYBEAR INC	200	500
CARI	CAREINSITE INC	200	500	CYBS	CYBERSOURCE CORP	200	500
CAVB	CAVALRY BANCORP	1000	500	<b>D</b>			
CBDR	CAREERBUILDER INC	500	1000	DABR	DAVID'S BRIDAL INC	200	500
CBLT	COBALT GROUP INC	200	500	DCLK	DOUBLECLICK INC	1000	500
CBSAO	COASTAL BCP PFD A	500	200	DECC	D & E COMMUNICATIO	1000	500
CCBG	CAPITAL CITY BANK	500	1000	DELT	DELTA GALIL INDS ADS	500	1000
CCBP	COMM BANCORP INC	500	200	DEST	DESTIA COMMUNICATNS	500	1000
CCHE	CLINICHEM A	500	1000	DEVC	DEVCON INTL CP	1000	500
CCRT	COMPUCREDIT CORP	500	1000	DFXI	DIRECT FOCUS INC	500	1000
CDCY	COMPUDYNE CORP	200	500	DGAS	DELTA NATURAL GAS	500	1000
CDOT	COMPS.COM INC	500	1000	DIGX	DIGEX, INC CL A	200	500
CEBK	CENTRAL CO OP BANK	500	1000	DITC	DITECH COMM CORP	200	500
CEDC	CENTRAL EURO DIS	500	1000	DOCD	DOCDATA NV	1000	500
CENI	CONESTOGA ENTRPR I	500	1000	DOMZ	DOMINGUEZ SVCS CP	1000	500
CERI	CAPITAL ENVIR RES	200	500	DRRAP	DURA AUTO CAP TR	1000	500
CFBC	COMMUNITY FIRST BN	1000	500	DSCM	DRUGSTORE.COM INC	200	500
CFBI	CAROLINA FIRST BNCSH	500	1000	DTLK	DATALINK CORP	200	500
CFCI	C F C INTL INC	500	1000	DXCPP	DYNEX CAPITAL PFD A	500	1000
CFFI	C&F FINANCIAL CP	200	500	<b>E</b>			
CFFN	CAPITOL FEDERAL FINL	500	1000	ECCO	EARTHCARE CO	200	500
CFNC	CAROLINA FINCORP	1000	500	EDCO	EDISON CONTROL CP	200	500
CHINA	CHINA.COM CORP CL A	200	500	EDGR	EDGAR ONLINE INC	200	500
CHLN	CHALONE WINE GP LT	1000	500	EELN	E-LOAN INC	200	500
CIBN	CALIFORNIA IND BNC	200	500	EFNT	EFFICIENT NETWORKS	200	500
CINS	CIRCLE INCOME SHAR	1000	500	EGLO	EGLOBE INC	200	500
CLBK	COMMERCIAL BANKSHR	500	200	EGOV	NATL INFO CONSORTIUM	200	500
CLGYW	CELLEGY PHARM INC WT	500	1000	EGPT	EAGLE POINT SFTWR	1000	500
CLRN	CLARENT CORP	200	500	ELBI	ELDORADO BANCSHARES	500	1000
CMBC	COMMUNITY BANKCORP	500	1000	EMCC	EUROPEAN MICRO HLD	500	1000
CMDX	CHEMDEX CORP	200	500	EMCO	ENGINEERING MEASUR	1000	500
CMETS	CONTL MORTGAGE EQUIT	500	1000	EMLX	EMULEX CP	500	1000
CMRC	COMMERCE ONE INC	200	500	EMUS	EMUSIC.COM INC	200	500
CMTN	COPPER MOUNTN NTWKS	500	1000	ENGA	ENGAGE TECH INC	200	500
CNBKP	CENTURY BCP CAP TR	1000	500	EQSB	EQUITABLE FED SAV	1000	500
CNRM	CINRAM INTL INC	500	200	ESBF	ESB FINANCIAL	500	1000
CNSW	CONTINUUS SOFTWR	200	500	ESBFP	PENNFIRST PFD	500	200
CONV	CONVERGENT COMMS INC	200	500	ESPS	ESPS INC	200	500
COVB	COVEST BANCSHARES	1000	500	ETHCY	ETHICAL HLDGS	1000	500
CPIH	CHINA PROSP ADR	1000	500	ETYS	ETOYS INC	200	500
CPTH	CRITICAL PATH INC	500	1000	EXBD	CORP EXEC BOARD CO	500	1000
CREO	CREO PRODUCTS	200	500	EXDS	EXODUS COMMUN	500	1000
CRGO	MOTOR CARGO INDS	1000	500	EXNT	IXNET INC	200	500
CRNS	CRONOS GROUP THE	500	1000	EXTR	EXTREME NETWORKS	500	1000
CRRC	COURIER CP	1000	500				
CRSB	CRUSADER HLDG CORP	500	1000				

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Symbol	Security Name	Old Level	New Level	Symbol	Security Name	Old Level	New Level
<b>F</b>				<b>H</b>			
FASH	FASHIONMALL.COM	200	500	HARL	HARLEYSVILLE SAV B	500	200
FBEI	FIRST BNCP OF IND	500	1000	HAVA	HARVARD IND NEW	500	1000
FBNW	FIRSTBANK CORP	1000	500	HAVNP	HAVEN CAP TR II	200	500
FCFCO	FIRSTCITY SPCL PFD	500	1000	HBFW	HOME BANCORP	1000	500
FCFN	FIRST COMM FIN CP	200	500	HCBK	HUDSON CITY BNCP INC	200	500
FCOM	FOCAL COMMUNICATIONS	200	500	HDVS	H. D. VEST INC	1000	500
FCST	FLYCAST COMMUN CP	500	1000	HEAR	MPATH INTERACTIVE	200	500
FFBK	FLORIDAFIRST BNCP	500	1000	HECO	HALLWOOD ENERGY CP	200	500
FFES	FIRST FED S L E.HT	500	1000	HECOP	HALLWOOD EN PFD A	200	500
FFFLP	FIDELITY CAP TR I	1000	500	HIBNY	HIBERNIA FDS PLC ADR	500	1000
FFIV	F5 NETWORKS INC	200	500	HIBWF	HIBERNIA FOODS WTS C	500	200
FFLC	FFLC BNCP INC	1000	500	HIBZF	HIBERNIA FOODS WTS D	500	200
FFSX	FIRST FED BKSHS	500	1000	HIFN	HI/FN INC	1000	500
FISI	FINANCIAL INSTITUTNS	200	500	HITS	MUSICMAKER.COM INC	200	500
FKAN	FIRST KANSAS FIN	1000	500	HLFC	HOME LOAN FINL CP	1000	500
FLAS	FLASHNET COMMUNICATN	500	1000	HLIT	HARMONIC LIGHTWAV	1000	500
FLCHF	FLETCHER'S FINE FOOD	200	500	HMLK	HEMLOCK FED FIN CO	1000	500
FLGSP	FLAGSTAR CAP PFD A	1000	500	HOLT	HOLT'S CIGAR HLDGS	1000	500
FLWS	1-800-FLOWERS.COM	200	500	HOMS	HOMESTORE.COM INC	200	500
FMARP	MARINER CAP TR PFD	500	200	HOOV	HOOVER'S INC	200	500
FMCO	F M S FINANCIAL CP	1000	500	HOTJ	HOTJOBS.COM LTD SE	200	500
FMFC	FIRST M & F CORP	200	500	HSAC	HIGH SPEED ACCESS	200	500
FNBP	FNB CORP	500	200	HSII	HEIDRICK & STRUGGLES	500	1000
FNLC	FIRST NAT LINCOLN CP	200	500	HTBK	HERITAGE COMMERCE	500	1000
FREE	FREESERVE ADS	200	500	<b>I</b>			
FRPP	F R P PROPERTIES I	1000	500	IBHVF	INTL BRIQUETTES	200	500
FSBC	1ST STATE BNCP INC	500	1000	ICCI	INSIGHT COMM CO CL A	200	500
FSTH	FIRST SO BCSHS INC	200	500	ICGE	INTERNET CAP GRP	200	500
FTFN	FIRST FIN CP (RI)	500	200	ICTS	I C T S INTL NV	1000	500
FTNB	FULTON BANCORP INC	1000	500	IGLD	INTERNET GOLD-GOLDEN	200	500
<b>G</b>				IJI	INTERNET INIT JAP AD	200	500
GAFC	GREATER ATL FINCL CP	200	500	IIXL	IXL ENTERPRISES INC	200	500
GBCOB	GREIF BROS CP CL B	200	500	ILIF	INTELLIGENT LIFE	500	1000
GBNK	GASTON FED BANCP	1000	500	INDBP	INDEP CAP TR I PFD	500	200
GENBB	GENESEE CP B	500	1000	INFA	INFORMATICA CORP SR	500	1000
GENI	GENESISINTERMEDIA.CO	200	500	INIT	INTERLIANT INC	200	500
GFLS	GREATER COMMUNITY	500	1000	INSW	INSWEB CORP	200	500
GLDBP	GBCI CAP TR PFD	500	200	INTI	INET TECHNOLOGIES	200	500
GMAI	GREG MANNING AUCTI	500	1000	INTM	INTERNET.COM CORP	200	500
GNCNF	GORAN CAPITAL INC	500	1000	INTW	INTERWORLD CORP	200	500
GOSB	GSB FINANCIAL CORP	1000	500	IPIX	INTERACTIVE PICTURES	200	500
GOTO	GOTO.COM INC	200	500	IPSW	IPSWICH BANC	1000	500
GSPN	GLOBESPAN INC	200	500	ISKO	ISCO INC	1000	500
GZEA	G Z A GEOENVIRON	500	1000	ISLD	DIGITAL ISLAND INC	200	500
GZSP	GENZYME SURGICAL	200	500	ITRA	INTRAWARE INC	500	1000

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Symbol	Security Name	Old Level	New Level	Symbol	Security Name	Old Level	New Level
IUBC	INDIANA UNITED BNC	500	1000	MCNS	MEDICONSULT.COM INC	500	1000
IVGN	INVITROGEN CORP	500	1000	MCSW	MISSION CRIT SFTWR	200	500
IVIL	IVILLAGE INC	500	1000	MDCM	MORTGAGE.COM INC	200	500
<b>J</b>				MDRX	ALLSCRIPTS INC	200	500
JAMSO	JAMESON PFD S	500	1000	MEMH	MEEMIC HOLDINGS INC	200	500
JFAX	JFAX.COM INC	200	500	MFCB	MICHIGAN FINL CP	1000	500
JPSP	JPS PACKAGING CO	1000	500	MFLR	MAYFLOWER CO OP BK	200	500
JWEB	JUNO ONLINE SVCS	200	500	MIGI	MERIDIAN INS GP IN	1000	500
JXVL	JACKSONVILLE BANCO	500	1000	MIHL	MIH LIMITED CL A	500	1000
<b>K</b>				MKSI	MKS INSTRUMENTS INC	500	1000
KAYE	KAYE GROUP INC	1000	500	MKTY	MICRO THERAPEUTICS	500	1000
KELYB	KELLY SERVICES CL	200	500	MLAN	MIDLAND CO	200	500
KOOP	DRKOOP.COM INC	200	500	MLTX	MULTEX.COM INC	500	1000
KOSS	KOSS CP	1000	500	MMXI	MEDIA METRIX INC	500	1000
KRSC	KAISER VENTURES	1000	500	MNES	MINE SAFETY APPLS	1000	500
KTCO	KENAN TRANSPORT CO	500	200	MOIL	MAYNARD OIL CO	500	1000
<b>L</b>				MORP	MOORE PRODUCTS CO	1000	500
LABN	LAKE ARIEL BNCP IN	500	1000	MPPP	MP3.COM IN	200	500
LATD	LATITUDE COMMUNICTNS	500	1000	MQST	MAPQUEST.COM INC	500	1000
LAUN	LAUNCH MEDIA INC	500	1000	MRBA	MARIMBA INC SR	500	1000
LBRT	LIBERATE TECHNOLOGS	200	500	MSFTP	MICROSOFT CV PFD	1000	500
LDIG	TCI MUSIC CL A	500	1000	MTEX	MANNATECH INC	500	1000
LFED	LEEDS FED SAV BANK	500	1000	MTXCP	MATRIX BNCP CAP TR	200	500
LFIN	LOCAL FINL CORP	200	500	MUEL	MUELLER PAUL CO	500	200
LIBB	LIBERTY BANCORP	1000	500	MVBIP	MVBI CAPITAL TR PFD	200	500
LIBHB	LIBERTY HOMES INC B	500	200	<b>N</b>			
LIHRY	LIHIR GOLD LTD ADR	200	500	NASC	NETWORK ACCESS SL	200	500
LOAX	LOG ON AMERICA INC	500	1000	NBSI	NORTH BSCHS INC	500	200
LPNT	LIFEPOINT HOSP	500	1000	NCNX	NUCENTRIX BROADBAND	200	500
LQID	LIQUID AUDIO INC	200	500	NECS	NETCOM AB ADR	500	200
LTCHP	LITCHFIELD CAP TR I	200	500	NERAY	NERA AS ADR	1000	500
LTNX	LITRONIC INC	200	500	NESY	NEON SYSTEMS INC	500	1000
LUND	LUND INTL HLDGS	1000	500	NETE	NETEGRITY INC	500	1000
<b>M</b>				NETO	NETOBJECTS INC	500	1000
MAIL	MAIL.COM INC CL A	200	500	NETP	NET PERCEPTIONS INC	500	1000
MAKR	MAKER COMMUNICATIONS	500	1000	NFNT	NFRONT INC	200	500
MARSA	MARSH SUPERMARKETS A	500	1000	NHHC	NATL HOME HLTH CAR	1000	500
MASB	MASSBANK CP	1000	500	NHTBP	NHTB CAPITAL TRUST I	200	500
MAXC	MAXCO INC	500	1000	NMHC	NATL MED HEALTH CARD	200	500
MAXE	MAX ERMAS RESTR IN	1000	500	NMTXZ	NOVAMETRIX WTS B	200	500
MBWM	MERCANTILE BANK CORP	200	500	NOBL	NOBLE INTL LTD	200	500
MCMC	MCM CAPITAL GRP INC	200	500	NPBCP	NPB CAPITAL TR PFD	200	500
				NPLS	NETWORK PLUS CORP	200	500
				NPNT	NORTHPOINT COMM GRP	500	1000
				NSEC	NATL SECURITY GP I	500	200
				NTCT	NETSCOUT SYSTEMS INC	200	500
				NTIA	NETIA HOLDINGS SA	200	500
				NTIQ	NETIQ CORP	200	500
				NTOP	NET2PHONE INC	200	500

## NASDAQ Notice to Members 99-104

Symbol	Security Name	Old Level	New Level	Symbol	Security Name	Old Level	New Level
NTVN	NETIVATION.COM INC	200	500	PRFN	PRISM FINCL CORP	200	500
NTWO	N2H2 INC	200	500	PRSF	PORTAL SOFTWARE INC	500	1000
NVDC	NAVIDEC INC	200	500	PRSW	PERSISTENCE SOFTWARE	200	500
NWGN	NEWGEN RESULTS CORP	200	500	PSBI	PSB BANCORP INC	1000	500
NWLIA	NATL WESTERN LIFE	1000	500	PSFC	PEOPLES-SIDNEY FIN	1000	500
NXCD	NEXTCARD INC	500	1000	PSIXP	PSINET CV PFD C	500	1000
NXRA	NEXTERA ENTERPRIS A	200	500	PTRY	PANTRY INC (THE)	200	500
<b>O</b>				PVCC	P V C CONTAINER CP	1000	500
OBAS	OPTIBASE LTD	500	1000	PVTB	PRIVATEBANCORP INC	200	500
OBIE	OBIE MEDIA CORP	500	1000	PVTL	PIVOTAL CORP	200	500
ODFL	OLD DOMINION FREIG	1000	500	PXCM	PROXICOM INC	500	1000
OHSL	O H S L FINL CORP	500	1000	<b>Q</b>			
OKSBO	SBI CAP TR PFD	500	200	QDELW	QUIDEL CP WTS 2000	1000	500
ONCOZ	ON COMMAND WTS B	200	500	QKKA	QUOKKA SPORTS INC	200	500
ONEM	ONEMAIN.COM INC SE	500	1000	QLGC	QLOGIC CP	500	1000
ONES	ONESOURCE INFO SVCS	200	500	QSFT	QUEST SOFTWARE INC	200	500
ONHN	ONHEALTH NTWK	500	1000	QUOT	QUOTESMITH .COM INC	200	500
OPTLW	OPTISYSTEMS SOL WTS	1000	500	<b>R</b>			
ORCC	ONLINE RES & COMM	200	500	RAMP	RAMP NETWORKS INC	200	500
OSBC	OLD SECOND BNCP IN	500	1000	RAZF	RAZORFISH INC	500	1000
OWOS	OWOSSO CP	1000	500	RBAK	REDBACK NETWORKS INC	200	500
OYOG	OYO GEOPSPACE CP	1000	500	RBOW	RAINBOW RENTALS	1000	500
OZRPK	OZARK CAP TR PFD	200	500	RBPAA	ROYAL BSCHS OF PA A	1000	500
<b>P</b>				REPBP	RBI CAP TR I PFD	1000	500
PASA	QUEPASA.COM INC	200	500	RGCO	RGC RESOURCES	500	200
PBCI	PAMRAPO BNCP INC	1000	500	RGFCP	R&G FIN CP PFD A	200	500
PBIZ	PRIVATE BUSINESS INC	200	500	RHAT	RED HAT INC	200	500
PBKBP	PEOPLES CAP TR PFD	500	200	RIDG	RIDGEVIEW INC	1000	500
PCAG	PRIMACOM AG ADS	500	1000	RMIX	US CONCRETE INC	200	500
PCHM	PHARMCHEM LABS INC	1000	500	ROIA	RADIO ONE INC	500	1000
PCLN	PRICELINE.COM INC	500	1000	ROWE	ROWECOM INC	500	1000
PCOR	PCORDER.COM INC	500	1000	RPCLF	REVENUE PROP LTD	200	500
PDYN	PARADYNE NETWORKS	200	500	RSII	RECKSON SERVICE INDS	200	500
PEBK	PEOPLES BANCORP	200	500	RTHM	RHYTHMS NETCONNECT	500	1000
PEEK	PEEKSKILL FIN CP	500	1000	RUBO	RUBIO'S RESTAURANTS	200	500
PFACP	PRO-FAC COOP PFD A	1000	500	RUSM	RUSSEL METALS INC	500	200
PFSBP	PENNFED CAP TR I	500	200	RVST	RAVISENT TECHNOLOG	200	500
PHXI	PHOENIX INTL LIFE	500	1000	RVWD	RAVENSWOOD WINERY	500	1000
PKSI	PRIMUS KNOWLEDGE	200	500	<b>S</b>			
PKTR	PACKETEER INC	200	500	SALM	SALEM COMMUN CORP	200	500
PLAN	OPEN PLAN SYS INC	500	1000	SALN	SALON.COM	200	500
PLFC	PULASKI FURNITURE	500	1000	SAVO	SCHULTZ SAV O STOR	1000	500
PLXT	PLX TECHNOLOGY INC	500	1000	SBAC	SBA COMM CP CL A	200	500
PNNW	PENNICHUCK CP	500	1000	SBHC	SECURITY BK HLDG C	1000	500
PNTE	POINTE FINCL CORP	1000	500	SBSI	SOUTHSIDE BANCSHS	500	1000
PPLS	PEOPLES BK CP	500	1000				



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**NASD Notice to Members 99-104**

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<b>Symbol</b>	<b>Security Name</b>	<b>Old Level</b>	<b>New Level</b>	<b>Symbol</b>	<b>Security Name</b>	<b>Old Level</b>	<b>New Level</b>
<b>W</b>				<b>X</b>			
WATFZ	WATERFORD PLC ADR UT	500	200	XING	QIAO XING UNIV TEL	500	1000
WAVX	WAVE SYSTEMS D9	500	1000	<b>Y</b>			
WBPRO	WESTERNBANK PFD B	200	500	<b>Z</b>			
WBSTP	WEBSTER PFD CAP B	200	500	YAVY	YADKIN VALLEY BK&TR	500	1000
WCSTF	WESCAST INDS INC A	200	500	<b>Z</b>			
WEBT	WEBTRENDS CORP	500	1000	ZANY	ZANY BRAINY INC	200	500
WFHC	WOMEN FIRST HLTHCR	200	500	ZHOM	ZARING NATIONAL CO	1000	500
WGAT	WORLDGATE COMMUNICAT	500	1000	ZIPL	ZIPLINK INC	200	500
WGRD	WATCHGUARD TECH INC	200	500	ZOOX	GADZOOX NETWORKS INC	200	500
WITC	WIT CAPITAL GROUP	200	500				
WOFC	WESTERN OHIO FIN	1000	500				
WSBA	WESTERN SIERRA BNCP	200	500				
WSBK	WILSHIRE STATE BK	500	1000				
WSII	WASTE SYSTEMS	500	1000				
WVCM	WAVECOM S A ADR	200	500				

**INFORMATIONAL**

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**Trade Date—  
Settlement Date**

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**Trade Date—Settlement  
Date Schedule For 2000****SUGGESTED ROUTING**

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

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

**KEY TOPIC**

- Trade Date—Settlement Date Schedule

**Martin Luther King, Jr., Day: Trade Date—Settlement Date Schedule**

The Nasdaq Stock Market® and the securities exchanges will be closed on Monday, January 17, 2000, in observance of Martin Luther King, Jr., Day. “Regular way” transactions made on the business days noted below will be subject to the following schedule:

<u>Trade Date</u>	<u>Settlement Date</u>	<u>Reg. T Date*</u>
Jan. 11	Jan. 14	Jan. 19
12	18	20
13	19	21
14	20	24
17	Markets Closed	—
18	21	25

**Presidents Day: Trade Date—Settlement Date Schedule**

The Nasdaq Stock Market and the securities exchanges will be closed on Monday, February 21, 2000, in observance of Presidents Day. “Regular way” transactions made on the business days noted below will be subject to the following schedule:

<u>Trade Date</u>	<u>Settlement Date</u>	<u>Reg. T Date*</u>
Feb. 15	Feb. 18	Feb. 23
16	22	24
17	23	25
18	24	28
21	Markets Closed	—
22	25	29

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## NASD Notice to Members 99-105

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### Good Friday: Trade Date—Settlement Date Schedule

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

<u>Trade Date</u>	<u>Settlement Date</u>	<u>Reg. T Date*</u>
April 17	April 20	April 25
18	24	26
19	25	27
20	26	28
21	Markets Closed	—
24	27	May 1

### Memorial Day: Trade Date—Settlement Date Schedule

The Nasdaq Stock Market and the securities exchanges will be closed on Monday, May 29, 2000, in observance of Memorial Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

<u>Trade Date</u>	<u>Settlement Date</u>	<u>Reg. T Date*</u>
May 23	May 26	May 31
24	30	June 1
25	31	2
26	June 1	5
29	Markets Closed	—
30	2	6

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## NASD Notice to Members 99-105

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### Independence Day: Trade Date—Settlement Date Schedule

The Nasdaq Stock Market and the securities exchanges will be closed on Tuesday, July 4, 2000, in observance of Independence Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

<u>Trade Date</u>	<u>Settlement Date</u>	<u>Reg. T Date*</u>
June 28	July 3	July 6
29	5	7
30	6	10
July 3	7	11
4	Markets Closed	—
5	10	12

### Labor Day: Trade Date—Settlement Date Schedule

The Nasdaq Stock Market and the securities exchanges will be closed on Monday, September 4, 2000, in observance of Labor Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

<u>Trade Date</u>	<u>Settlement Date</u>	<u>Reg. T Date*</u>
Aug. 29	Sept. 1	Sept. 6
30	5	7
31	6	8
Sept. 1	7	11
4	Markets Closed	—
5	8	12

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## NASD Notice to Members 99-105

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### Columbus Day: Trade Date—Settlement Date Schedule

The schedule of trade dates-settlement dates below reflects the observance by the financial community of Columbus Day, Monday, October 9, 2000. On this day, The Nasdaq Stock Market and the securities exchanges will be open for trading. However, it will not be a settlement date because many of the nation's banking institutions will be closed.

<u>Trade Date</u>	<u>Settlement Date</u>	<u>Reg. T Date*</u>
Oct. 3	Oct. 6	Oct. 10
4	10	11
5	11	12
6	12	13
9	12	16
10	13	17

**Note:** October 9, 2000, is considered a business day for receiving customers' payments under Regulation T of the Federal Reserve Board.

Transactions made on Monday, October 9, will be combined with transactions made on the previous business day, October 6, for settlement on October 12. Securities will not be quoted ex-dividend, and settlements, marks to the market, reclamations, and buy-ins and sell-outs, as provided in the Uniform Practice Code, will not be made and/or exercised on October 9.

### Thanksgiving Day: Trade Date—Settlement Date Schedule

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

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

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## NASD Notice to Members 99-105

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### Christmas Day And New Years Day: Trade Date—Settlement Date Schedule

The Nasdaq Stock Market and the securities exchanges will be closed on Monday, December 25, 2000, in observance of Christmas Day, and Monday, January 1, 2001, in observance of New Years Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

<u>Trade Date</u>	<u>Settlement Date</u>	<u>Reg. T Date*</u>
Dec. 19	Dec. 22	Dec. 27
20	26	28
21	27	29
22	28	Jan. 2, 2001
25	Markets Closed	—
26	29	3
27	Jan. 2, 2001	4
28	3	5
29	4	8
Jan. 1, 2001	Markets Closed	—
2	5	9

Brokers, dealers, and municipal securities dealers should use the foregoing settlement dates for purposes of clearing and settling transactions pursuant to the National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) Uniform Practice Code, the Municipal Securities Rulemaking Board Rule G-12 on Uniform Practice, and the General and Floor Rules of the Rules of the Board of Governors of the American Stock Exchange<sup>®</sup>.

Questions regarding the application of those settlement dates to a particular situation may be directed to the NASD Uniform Practice Department at (203) 375-9609.

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

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**INFORMATIONAL**

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**NASD Holiday Schedule**

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**NASD 2000 Holiday Schedule****SUGGESTED ROUTING**

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

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

**KEY TOPICS**

- Holiday Schedule

The National Association of Securities Dealers, Inc. (NASD®) will observe the following holiday schedule for 2000:

January 17	Martin Luther King Jr. Day (Observed)
February 21	Presidents Day
April 21	Good Friday
May 29	Memorial Day
July 4	Independence Day
September 4	Labor Day
November 23	Thanksgiving Day
December 25	Christmas Day

Questions regarding this holiday schedule may be directed to NASD Human Resources, at (301) 590-6821.

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<input type="radio"/> 1099A06 Case Studies	<input type="radio"/> 1099S06 Market Regulation Compliance Issues	<input type="radio"/> 1099S18 Year 2000 Issues
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## NASD Notice to Members 99-107

### INFORMATIONAL

## FIPS Changes

Fixed Income Pricing  
System Additions,  
Changes, And Deletions  
As Of October 22, 1999

### SUGGESTED ROUTING

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

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

### KEY TOPIC

- FIPS

As of October 22, 1999, the following bonds were added to the Fixed Income Pricing System<sup>SM</sup> (FIPS<sup>®</sup>).

Symbol	Name	Coupon	Maturity
ADLA.GP	Adelphia Communications Corp.	9.375	11/15/09
AROI.GA	Asarco Inc.	7.375	02/01/03
AROI.GB	Asarco Inc.	7.875	04/15/13
AROI.GC	Asarco Inc.	7.000	12/01/01
AROI.GD	Asarco Inc.	8.500	05/01/25
ARWC.GA	Arch Escrow Corp.	13.750	04/15/08
BRCG.GA	Bresnan Comms Group LLC	8.000	02/01/09
BRCG.GB	Bresnan Comms Group LLC	9.250	02/01/09
CDRD.GB	CD Radio Inc.	14.500	05/15/09
CELU.GA	Centennial Cellular Oper Co. LLC	10.750	12/15/08
CLBL.GA	Classic Cable Inc.	9.875	08/01/08
CLBL.GB	Classic Cable Inc. Ser B	9.375	08/01/09
CLCU.GA	Classic Communications Inc.	13.250	08/01/09
CODE.GB	Costilla Energy Inc.	10.250	10/01/06
COSE.GA	Costilla Energy Inc.	10.250	10/01/06
COSE.GA	Costilla Energy Inc.	10.250	10/01/06
FOMR.GC	Formica Corp. Ser B	10.875	03/01/09
FTO.GB	Frontier Oil Corp.	11.750	11/15/09
HLMS.GB	Holmes Products Corp.	9.875	11/15/07
HLYW.GB	Hollywood Entertainment Corp.	10.625	08/15/04
HRSG.GC	Horseshoe Gaming Hldg LLC	8.625	05/15/09
ITX.GB	IT Group Inc. Ser B	11.250	04/01/09
LEH.GA	Lehman Bros. Holding Inc.	0.000	11/10/04
LVGC.GA	Leviathan Gas Pl/Fin Corp. Ser B	10.375	06/01/09
MECU.GB	Mediacom LLC/Captl Corp.	7.875	02/15/11
MFNX.GB	Metromedia Fiber Network Inc.	10.000	12/15/09
MJCN.GA	Majestic Star Casino LLC	10.875	07/01/06
MUZH.GA	Muzak Holdings LLC/Fin	13.000	03/14/10
MZKL.GA	Muzak LLC	9.875	03/15/09
NS.GB	National Steel Corp.	9.875	03/01/09
OH.GA	Oakwood Homes Corp.	8.000	06/01/07
OH.GB	Oakwood Homes Corp.	8.000	06/01/07
OH.GC	Oakwood Homes Corp.	8.125	03/01/09
OH.GD	Oakwood Homes Corp.	7.875	03/04/04
OXHP.GA	Oxford Health Plans Inc.	11.000	05/15/15
PAUF.GA	Port Arthur Finance Corp.	12.500	01/15/09
POAN.GB	Protection One Alarm Monitoring Inc.	7.375	08/15/05
PRTL.GD	Primus Telecommunication Group, Inc.	12.750	10/15/99
RAD.GA	Rite Aid Corp.	6.875	08/15/13
RAD.GB	Rite Aid Corp.	7.625	04/15/05
RAD.GC	Rite Aid Corp.	6.700	12/15/01
RAD.GD	Rite Aid Corp.	7.125	01/15/07
RAD.GE	Rite Aid Corp.	7.700	02/15/27
SBSA.GC	Spanish Broadcasting Sys Inc.	9.625	11/01/09
SCDL.GA	Scherer (R.P.) Corp Del	6.750	02/01/04
SCGD.GA	SCG Holding Corp.	12.000	08/01/09

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**NASD Notice to Members 99-107**

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<b>Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
SQHM.GA	Susquehanna Media Co.	8.500	05/15/09
STBR.GC	Stater Brothers Holdings Inc.	10.750	08/15/06
SVRN.GC	Sovereign Bancorp. Inc.	10.250	05/15/04
SVRN.GD	Sovereign Bancorp. Inc.	10.500	11/15/06
TNUS.GA	Trinet Corp. Realty Trust Inc.	7.300	05/15/01
TNUS.GB	Trinet Corp. Realty Trust Inc.	7.950	05/15/01
TNUS.GC	Trinet Corp. Realty Trust Inc.	7.700	07/15/17
UNDU.GA	United Industries Corp.	9.875	04/01/09
USTU.GA	USA Capital Trust I Ser B	9.500	03/15/29
VL.GA	Vlasic Foods Intl Inc. Ser B	10.250	07/01/09
WGR.GA	Western Gas Resources Inc.	10.000	06/15/09
XLG.GA	Excel Legacy Corp.	10.000	11/04/04

As of October 22, 1999, the following bonds were deleted from FIPS.

<b>Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
AZR.GB	Aztar Corp.	13.750	10/01/04
COSE.GA	Costilla Energy Inc.	10.250	10/01/06
COSE.GB	Costilla Energy Inc.	10.250	10/01/06
CSEH.GA	Charter Commun So East Hldg	14.000	03/15/07
FCY.GA	Furon Co.	8.125	03/01/08
FST.GB	Forest Oil Corp.	11.250	09/01/03
HRSG.GA	Horseshoe Gaming LLC	12.750	11/01/99
MHGN.GA	Mohegan Tribal Gaming	13.50	11/15/02
MRPO.GA	Moran Transportation Co.	11.75	11/15/04
ORX.GH	Oryx Energy Co.	8.125	10/15/05
ORX.GI	Oryx Energy Co.	9.325	07/15/04
RESL.GA	Republic Engineered Steels Inc.	9.875	12/05/01
SCAN.GA	Alliance Imaging Inc.	9.625	12/15/05
SCAN.GB	Alliance Imaging Inc.	0.000	12/15/05
SPBR.GA	Spanish Broadcasting Sys Inc.	11.000	03/15/04
SRKT.GA	Star Markets Co.	13.000	11/01/04
WELB.GB	Welbilt Corp.	12.250	11/01/99
WYMN.GA	Wyman-Gordon Co.	10.750	03/15/03

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## NASD Notice to Members 99-107

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As of October 22, 1999, changes were made to the symbols of the following FIPS bonds.

<b>New Symbol</b>	<b>Old Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
AHI.GB	HAUL.GA	Allied Holdings Inc.	8.625	10/01/07
CDB.GA	CBRN.GA	Canandiagua Brands Inc.	8.750	12/15/03
CDB.GB	CBRN.GA	Canandiagua Brands Inc.	8.750	12/15/03
CDRD.GA	CDRA.GA	CD Radio Inc.	12.875	12/01/07
CDRD.GB	CDRA.GB	CD Radio Inc.	14.500	05/15/09
GTS.GA	GTSG.GA	Global Telesystems Group Inc.	9.875	02/15/05
HORT.GA	HORU.GA	Hines Horticulture Inc.	11.750	10/15/05
HS.GA	CHSE.GA	CHS Electronics Inc.	9.875	04/15/05
HWK.GA	HWCO.GA	Hawk Corp.	10.250	12/01/03
IRM.GA	IMTN.GA	Iron Mountain Inc. Del.	10.125	10/01/06
IRM.GB	IMTN.GB	Iron Mountain Inc. Del.	8.750	09/30/09
IRM.GC	IMTN.GC	Iron Mountain Inc. Del.	8.250	07/01/11
NCS.GA	NCIB.GA	NCI Building Systems	9.250	05/01/09
QHGI.GA	QRUM.GA	Quorum Health Grp. Inc.	11.875	12/15/02
QHGI.GB	QRUM.GB	Quorum Health Grp Inc.	8.750	11/01/05
SBSA.GB	SPBR.GB	Spanish Broadcasting Sys Inc.	12.500	06/15/02
WYG.GB	WYMN.GB	Wyamn-Gordon Co.	8.000	12/15/07

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

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

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# Disciplinary Actions

## Disciplinary Actions Reported For December

NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) has taken disciplinary actions against the following firms and individuals for violations of National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). Unless otherwise indicated, suspensions will begin with the opening of business on Monday, December 20, 1999. The information relating to matters contained in this *Notice* is current as of the end of November 24, 1999.

### Firm Suspended

**Coleman & Company Securities, Inc. (CRD #1486, New York, New York)** was fined \$200,000, suspended from participating in any underwritings for three months, and thereafter suspended for an additional nine months from acting as a lead managing underwriter. As a condition to resuming any underwriting activity, the firm was also ordered to retain a consultant acceptable to the NASD during its initial three-month suspension and to revise its compliance manual in accordance with the consultant's recommendations. The sanctions were based on findings that the firm unjustifiably terminated a firm commitment underwriting because the price of the stock fell in the aftermarket, purchasers failed to affirm their orders, and the firm had insufficient capital to purchase the offered shares. **(NASD Case #CAF980022)**

### Firm Fined, Individual Sanctioned

**D.E. Frey & Company, Inc. (CRD #23595, Denver, Colorado)** and **Dale Edward Frey (CRD #214216, Registered Principal, Englewood,**

**Colorado)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$37,500, jointly and severally. The firm was fined an additional \$12,500 and required to provide to the NASD periodic written reports detailing the changes to the firm's written supervisory, operations, and compliance procedures that have been implemented. Frey was also suspended from association with any NASD member in any principal capacity for one month. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm, acting through its former financial and operations principal and through Frey, received funds intended for investment in private placements of securities and failed to promptly deposit the funds in an escrow account until a minimum sales contingency had been satisfied. The firm, acting through Frey, permitted persons to function at various times in principal capacities with the firm prior to qualifying by exam to function in principal capacities. The findings also stated that the firm, acting through a person formerly associated with a branch office and its former president, failed to establish a qualifying account to receive and hold investor funds in connection with private placements of securities that were subject to a minimum sales contingency, permitted the funds to be deposited to an account controlled by the issuer of the securities, and failed to return promptly investor funds when the minimum sales contingency had not been met. In addition, the firm, acting through various associated persons and Frey, failed to properly supervise a person in a manner reasonably designed to achieve compliance with applicable laws, rules, and regulations. The firm, acting through persons responsible for compliance, also failed to estab-

lish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with all applicable securities laws, rules, and regulations. **(NASD Case #C3A990062)**

### **Firms And Individuals Fined**

**EGS Securities Corporation (CRD #28347, New York, New York)** and **Arthur L. Goetchius (CRD #1374251, Registered Principal, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$12,500, jointly and severally. The firm was also fined an additional \$2,500, jointly and severally, with another individual. Without admitting or denying the allegations, the firm and Goetchius consented to the described sanctions and to the entry of findings that the firm, acting through Goetchius, violated the terms of its Restriction Agreement in that the firm opened and operated a branch office in addition to another branch office at a different location without providing prior written notification to the NASD. The findings also stated that the firm, acting through Goetchius, failed to file a response to the NASD with respect to an inquiry regarding its sale of securities in an initial public offering (IPO) that traded at a premium in the immediate aftermarket and failed to file an accurate Free-Riding and Withholding Questionnaire with the NASD regarding the firm's participation in another IPO that traded at a premium in the immediate aftermarket. The firm, acting through Goetchius, also failed to prepare, maintain, and enforce adequate and accurate written supervisory procedures concerning supervision of underwriting activity and reallocation of "hot issue" IPO shares sold to "restricted" individuals. In addition, the firm, acting through another respondent,

failed to properly supervise an individual who was not registered with the NASD. **(NASD Case #C10990175)**

**Essex National Securities, Inc. (CRD #25454, New York, New York)** and **Jeffrey Deloy Powell (CRD #1805180, Registered Principal, Napa, California)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$15,000, jointly and severally. The firm was also ordered to disgorge \$49,225.51 to the NASD and fined \$5,000, jointly and severally, with another individual. Without admitting or denying the allegations, the firm and Powell consented to the described sanctions and to the entry of findings that the firm, acting through Powell, violated a Restriction Agreement with the NASD when it acted as a participant in an IPO and failed to establish and maintain a system of supervision that would have prevented the firm from violating the IPO Restriction Agreement. The findings also stated that the firm, acting through Powell, permitted individuals to act in capacities that required registration as general securities representatives when they had been deemed "inactive" because they had failed to timely complete the Regulatory Element of the NASD's Continuing Education Rules. The firm, acting through another individual, also received payments for the purchase of shares offered in the IPO. **(NASD Case #C10990193)**

**Montrose Capital Management, Ltd. (CRD #40799, New York, New York)** and **Michael Edward Wallace (CRD #2328485, Registered Principal, Yardley, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$10,000, jointly and severally, and the firm was fined an additional

\$5,000. Without admitting or denying the allegations, the firm and Wallace consented to the described sanctions and to the entry of findings that the firm, acting through Wallace, failed to maintain its minimum required net capital while conducting a securities business and failed to submit an Annual Filing of Audited Financial Statements to the NASD in a timely manner. **(NASD Case #C10990186)**

**Sunpoint Securities, Inc. (CRD #25442, Longview, Texas)** and **Van Roberson Lewis III (CRD #1562328, Registered Principal, Henderson, Texas)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured; fined \$7,500, jointly and severally; and ordered to disgorge \$6,400, jointly and severally. Without admitting or denying the allegations, the firm and Lewis consented to the described sanctions and to the entry of findings that the firm, acting by and through Lewis, effected the sale of securities even though the sale violated the terms of the private placement memorandum under which they were sold in that they caused the maximum offering amount set forth in the private placement memorandum to be exceeded. **(NASD Case #C06990018)**

### **Firms Fined**

**Advantage Capital Corporation (CRD #146, Houston, Texas)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to establish, maintain, and enforce proper supervisory procedures governing on-site examinations of branch offices. The findings also stated that the firm failed to

conduct branch office inspections according to specific cycles. **(NASD Case #C05990040)**

**Auerbach, Pollak & Richardson, Inc. (CRD #29824, Stamford, Connecticut)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$30,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to maintain the required minimum net capital. The findings disclosed that the firm, by being one of the guarantors to a credit agreement of its parent corporation with a bank, failed to include the amount guaranteed in the computation of aggregate indebtedness and as a charge in the computation of its net capital. **(NASD Case #C11990048)**

**Cowen & Company n.k.a. Financial Square Partners (CRD #1541, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to properly report transactions involving high yield corporate debt securities in accordance with the reporting requirements for Fixed Income Pricing System<sup>SM</sup> (FIPS<sup>®</sup>) broker/dealers. The findings also stated that the firm, in its capacity as lead underwriter, failed to timely settle syndicate accounts following the syndicate settlement date. In response to NASD requests for information, the firm failed to complete Free-Riding and Withholding Questionnaires in a timely manner and failed to establish, maintain, and enforce proper supervisory procedures governing the reporting of FIPS transactions, the timely settle-

ment of syndicate expenses, and the completion of Free-Riding and Withholding Questionnaires. **(NASD Case #C05990050)**

**Fahnestock & Company, Inc. (CRD #249, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$14,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to contemporaneously execute, or partially execute, a customer limit order after trading in the same security for its own account that would have satisfied the customer limit order. The findings also stated that the firm executed transactions and failed to use reasonable diligence to ascertain the best inter-dealer markets so that the resultant prices to the customers were as favorable as possible under prevailing market conditions. The firm also failed to disclose that the price for a security in a customer confirmation was an average price and failed to disclose that it was acting in the capacity of a Market Maker in other customer confirmations. In addition, the firm failed to immediately display customer limit orders when the orders were at a price that would have improved the firm's bid or offer in each security related to those orders or when the full size of the orders was priced equal to the firm's bid or offer and the national best bid or offer and the orders represented more than a *de minimus* change in relation to the size associated with the firm's bid or offer in each security. The firm also failed to establish and maintain written supervisory procedures reasonably designed to achieve compliance with annual reviews, markups and markdowns, registration of trading personnel, Small Order Execution System<sup>SM</sup>

(SOES<sup>SM</sup>) order eligibility, and harassment as described in the Securities and Exchange Commission (SEC) 21(a) Report. **(NASD Case #CMS990129)**

**Fleet Enterprises, Inc. (CRD #17434, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to maintain and update the Uniform Application for Broker/Dealer Registration (Form BD) by failing to update and identify the firm's contact employee. The findings also stated that the firm failed to respond to NASD requests for documents and/or information in a timely manner. **(NASD Case #C10990173)**

**J. Alexander Securities, Inc. (CRD #7809, Los Angeles, California)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to 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 report transactions to the Automated Confirmation Transaction Service<sup>SM</sup> (ACT<sup>SM</sup>) properly and in a timely manner. In transactions involving non-Nasdaq<sup>®</sup> securities, the firm failed to record quotes for over-the-counter (OTC) Market Makers. The findings also stated that the firm failed to properly maintain brokerage order memoranda and failed to establish and maintain written supervisory procedures reasonably designed to achieve compliance with regard to trade reporting, best execution, limit order protection, order handling, and anti-competitive practices. **(NASD Case #CMS990138)**

**Kaufman Bros., L.P. (CRD #37909, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to 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 failed to timely file with the NASD completed Free-Riding Questionnaires associated with securities offerings and failed to have current information on file when it sold shares of IPOs in accordance with the NASD Board of Governors Free-Riding and Withholding Interpretation. The findings also stated that the firm failed to immediately display customer limit orders in Nasdaq securities in its public quotation when the customer's orders were at prices that would have improved the bid or offer of the firm in the securities or when the full size of the orders were priced equal to the bid or offer of the firm and the national best bid or offer for the securities and represented more than a *de minimus* change in relation to the size associated with the bid or offer of the firm in the securities. The firm failed to disclose the reported trade price on written notifications of securities transactions and also incorrectly reported transactions in securities in that the firm failed to include a symbol indicating that the transaction constituted a short sale. In addition, the firm failed to have written procedures in place to address compliance with the "Free-Riding and Withholding" Interpretation of the NASD Board of Governors. **(NASD Case #C06990019)**

**La Jolla Capital Corporation (CRD #24341, San Diego, California)** was censured, fined \$100,000, and required to retain an independent consultant to audit and monitor the firm's compliance program for two years. The SEC upheld the

NASD sanctions following appeal of a February 1998 NAC decision. The findings stated that the firm and its president, Harold Bailey Gallison, Jr., failed to properly establish, maintain, and enforce written supervisory procedures concerning registered personnel in a branch office. **(NASD Case # CMS950110)**

**Laidlaw Global Securities, Inc. (CRD #19018, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed and neglected to process order tickets properly, to report transactions through ACT properly, and to record or adequately match execution times with each execution on order tickets. The findings also stated that the firm failed and neglected to record that it had made an affirmative determination that it would receive delivery of the security or that it could borrow the stock for customer short-sale transactions and failed to denote "short sale" on order tickets for transactions executed by the firm. The firm also failed to denote on customer confirmations that the net price to the customer was an "average price." **(NASD Case #C05990049)**

**McLaughlin, Piven, Vogel Securities, Inc. (CRD #7404, New York, New York)** was censured, fined \$10,000, and ordered to pay \$1,414, plus pre-judgment interest, in restitution to public customers. The sanctions were based on findings that the firm, acting through an individual, charged retail customers excessive markdowns on transactions involving the purchase of municipal bonds. **(NASD Case #C02980073)**

**Rice, Voelker, L.L.C. (CRD #39838, Mandeville, Louisiana)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report transactions in Nasdaq National Market® (NNM) securities to ACT in a timely manner and to include a ".SLD" modifier or to include the time of execution for transactions executed outside normal market hours. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with trade reporting rules. **(NASD Case #CMS990135)**

**SG Cowen Securities Corporation (CRD #7616, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$29,500, and required to pay \$42,496, plus interest, in restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to contemporaneously execute customer limit orders in Nasdaq securities after it traded each of the securities related to those orders for its own market-making account at a price that would have satisfied each of the orders. The findings also stated that the firm executed customer transactions without using reasonable diligence to ascertain the best prevailing inter-dealer market for each relevant security so that the resultant price to the customer was as favorable as possible under prevailing market conditions. The firm also incorrectly reported to ACT its capacity in a transaction in an NNM security and failed to accept or

decline transactions in eligible securities in a timely manner. The firm also failed to immediately display customer limit orders when the orders were at a price that would have improved the firm's bid or offer in each security related to those orders or when the full size of the orders was priced equal to the firm's bid or offer and the national best bid or offer and the orders represented more than a *de minimus* change in relation to the size associated with the firm's bid or offer in each security. In addition, the firm failed to properly maintain brokerage order memoranda and failed to establish, maintain, and/or enforce adequate supervisory procedures reasonably designed to achieve compliance with applicable securities laws, rules, and regulations. **(NASD Case #CMS990139)**

**Sharpe Capital, Inc. (CRD #18452, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$25,000, and ordered to pay \$3,071.88, plus interest, in restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to contemporaneously execute, or partially execute, customer limit orders after trading in the same security for its own account at prices that would have satisfied the customer limit orders and failed to use reasonable diligence in the execution of transactions to ascertain the best inter-dealer markets so that the resultant prices to the customers were as favorable as possible under prevailing market conditions. The findings also stated that the firm failed to disclose information in customer confirmations and entered a priced order into an electronic communications network which was deemed to be a bid or offer without

communicating account information to the NASD. The firm also failed to display customer limit orders immediately when the orders were at a price that would have improved the firm's bid or offer in each security related to those orders, or when the full size of the orders were priced equal to the firm's bid or offer and the national best bid or offer and the orders represented more than a *de minimus* change in relation to the size associated with the firm's bid or offer in each security. In addition, the firm failed to properly maintain customer order memoranda, customer confirmations, and limit order records and failed to establish and maintain written supervisory procedures reasonably designed to achieve compliance with NASD rules and regulations. **(NASD Case #CMS990141)**

**Tasin & Company, Inc. (CRD #30709, Hauppauge, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$48,450. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report, or to report accurately, to the NASD statistical summary information regarding customer complaints, customer settlements, and disciplinary action by states against the firm's registered representatives. The findings also stated that the firm failed to update its bid/ask to reflect the limit order price and failed to update the full limit order size in its quote in securities in which the firm made a market. The firm also engaged in inaccurate trade reporting or failed to accept or decline trades in a timely manner. In addition, the firm allowed an individual to perform the duties of a registered person when he had not completed the Regulatory Element of the Continuing Education requirement and failed to

establish, maintain, and enforce compliance and supervisory systems and procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and rules regarding trade reporting, continuing education, and customer complaints. **(NASD Case #C10990183)**

**The Robinson-Humphrey Company, LLC (CRD #723, Atlanta, Georgia)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, in connection with new stock issues, the firm failed to obtain, in writing, required information concerning the beneficial owners of investment partnership accounts, corporate accounts, or money manager accounts. **(NASD Case #C07990073)**

**Westfalia Investments, Inc. (CRD #19606, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to 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 failed to create written records for proprietary short-sale orders showing the present location of the securities in question, whether they were in good deliverable form and the customer's ability to deliver them to the firm within three business days, or the identity of the individual and firm contacted who offered assurance that the shares would be delivered or that they were available for borrowing by settlement date and the number of shares needed to cover the short sales. The findings also stated that the firm failed to include a symbol indicating that transactions were

sell short or sell short exempt in the firm's ACT reports for short-sale transactions. In addition, the firm effected short sales for NNM securities at or below the current best inside bid when the current best inside bid as displayed by the NNM was below the preceding best inside bid in the security. The firm also effected short sales for securities registered on a national securities exchange at or below the price at which the last sale was reported pursuant to an effective transaction reporting plan. In addition, the firm failed to establish, maintain, and enforce written procedures reasonably designed to achieve compliance with the NASD's rules including short sales and written records. The firm also failed to maintain records documenting the content of its Firm Element Continuing Education Program and completion of each program by covered registered persons. **(NASD Case #C10990179)**

### **Individuals Barred Or Suspended**

**Hussein Otham Ali (CRD #2777826, Registered Representative, Crofton, Maryland)** was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Ali failed to respond to NASD requests for information. **(NASD Case #C9A990027)**

**Joseph Anthony Ballard (CRD #2609456, Registered Principal, Flushing, New York)** was fined \$35,000, suspended from association with any NASD member in any capacity for six months for failing to prevent unregistered persons from conducting a securities business, and barred from association with any NASD member in any capacity for failing to appear for an NASD interview. The sanctions were

based on findings that Ballard allowed unregistered persons to solicit or conduct business in securities at the branch at which he was manager. The findings also stated that Ballard failed to respond to NASD requests to appear for an on-the-record interview. **(NASD Case #C10990084)**

**Scott Patrick Baumgarte (CRD #2912856, Registered Representative, Ellenville, New York)** was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Baumgarte submitted fictitious applications for traditional life insurance policies to his member firm. **(NASD Case #C11990026)**

**William Marco Birch (CRD #2388464, Registered Representative, London, England)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$50,000 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Birch consented to the described sanctions and to the entry of findings that he falsified firm records by effecting improper entries in his proprietary trading book and in a fellow associated person's proprietary trading book, without the knowledge or consent of the person. **(NASD Case #C10990182)**

**Robert John Brancatella (CRD #1988805, Registered Representative, Westfield, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$5,000, suspended from association with any NASD member in any capacity for five business days, and required to requalify by passing either the Series 7 or Series 55 exam. If Brancatella fails to pass either of the

exams, he cannot function in any registered capacity or engage in any activities that require registration in any capacity. Without admitting or denying the allegations, Brancatella consented to the described sanctions and to the entry of findings that he caused purported orders that did not constitute valid or legitimate transactions to be entered into his member firm's internal trading systems in an effort to conceal unrealized losses he had incurred through trading in a security that had declined precipitously in price. **(NASD Case #C10990174)**

**Clyde Joseph Bruff (CRD #824940, Registered Principal, Oakland, California)** was censured and barred from association with any NASD member in any capacity. The United States Court of Appeals for the Ninth Circuit denied Bruff's petition for review of a 1998 SEC decision affirming NASD's findings that he engaged in unsuitably excessive trading in the account of a public customer. **(NASD Case #C01960005)**

**Robert Steven Calavetta (CRD #2399753, Registered Representative, Staten Island, New York)** was fined \$30,000, suspended from association with any NASD member in any capacity for 10 business days for an unauthorized transaction, and barred from association with any NASD member in any capacity for failure to appear. The sanctions were based on findings that Calavetta executed an unauthorized purchase of stock in the account of a public customer and failed to respond to NASD requests to appear for an on-the-record interview. **(NASD Case #C10990054)**

**Philip Campbell (CRD #3005745, Associated Person, Seffner, Florida)** submitted a Letter of Acceptance, Waiver, and Consent

pursuant to which he was fined \$200,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Campbell consented to the described sanctions and to the entry of findings that he caused \$40,000 to be redeemed from a public customer's mutual fund account and transferred to a personal bank account over which he maintained control without obtaining authorization from the customer. **(NASD Case #C07990064)**

**Robert Joseph Capolino, Jr. (CRD #2336156, Registered Representative, Pembroke, Florida)** was fined \$50,000, barred from association with any NASD member, in any capacity, and ordered to disgorge \$81,055.25 in ill-gotten earnings. The sanctions were based on findings that Capolino used an impostor to take the Series 7 exam on his behalf and failed to respond to NASD requests to appear for on-the-record interviews. **(NASD Case #C10990017)**

**Michael Daniel Cleary (CRD #2692653, Registered Representative, New York, New York)** submitted an Offer of Settlement pursuant to which he was fined \$2,500, plus interest, suspended from association with any NASD member in any capacity for two years, and ordered to pay \$8,591 in restitution to public customers. In the event Cleary becomes associated with a member firm after his suspension, he shall not be permitted to continue such association unless the firm has adopted and implemented for a 12-month period compliance programs and procedures which include monitoring Cleary's conversations and correspondence with public customers, providing the phone number of the compliance department to Cleary's customers in the event of any questions or

problems, and reviewing his order tickets and account documentation. Without admitting or denying the allegations, Cleary consented to the described sanctions and to the entry of findings that he effected transactions in customer accounts without the knowledge or consent of the customers, failed to follow customer instructions to sell securities, and made false or misleading statements to a customer concerning his account. The findings also stated that Cleary allowed an individual to use his account executive number to effect securities transactions when he knew, or should have known, that the individual was not registered with the NASD. In addition, Cleary entered false or misleading information on his Form U-4 and failed to timely respond to NASD requests for information and to appear for an on-the-record interview. **(NASD Case #C10990056)**

**Michael Allen Cohen (CRD #2227316, Registered Representative, Parsippany, New Jersey)** submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Cohen consented to the described sanctions and to the entry of findings that he falsely advised public customers that they would be required to pay him application or contract fees to process insurance policy applications or to purchase annuities and, instead, put the fee payments to his personal use. **(NASD Case #C10970077)**

**Richard Frank Dambakly (CRD #2397176, Registered Principal, Brooklyn, New York)** was fined \$25,000, suspended from association with any NASD member in any capacity for one year, and barred from association in any principal capacity. The sanctions were based

on findings that Dambakly participated in the issuance of promissory notes without giving his member firm prior written notification. **(NASD Case #C3A980077)**

**Richard Michael Eisenmenger (CRD #76637, Registered Principal, McHenry, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Eisenmenger consented to the described sanctions and to the entry of findings that he declined to testify in an NASD investigation. **(NASD Case #C8A990077)**

**David Brand Eppner (CRD #1494286, Registered Principal, West Hartford, Connecticut)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$1,425,000, barred from association with any NASD member in any capacity, and ordered to pay \$282,613.21, plus interest, in restitution to public customers. Without admitting or denying the allegations, Eppner consented to the described sanctions and to the entry of findings that he improperly converted \$282,613.21 belonging to public customers for his own use and benefit. **(NASD Case #C11990044)**

**Herbert Feinman (CRD #205702, Registered Representative, Jacksonville, Florida)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Feinman consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information. **(NASD Case #C07990069)**

**Donald Ray Gates (CRD #1233902, Registered Representative, Cabot, Arkansas)** was censured, fined \$25,000, suspended from association with any NASD member in any capacity for six months, and required to requalify in any capacity. The SEC modified the NASD sanctions following appeal of a November 1998 NAC decision. The findings stated that Gates engaged in transactions while not registered with the NASD or with the state where the customer resided. **(NASD Case #C05930020)**

**Cosmo C. Giancaspro (CRD #2215961, Registered Representative, Bridgewater, New Jersey)** submitted an Offer of Settlement pursuant to which he was fined \$10,000 and barred from association with any NASD member in any capacity with the right to reapply for association in four years. Without admitting or denying the allegations, Giancaspro consented to the described sanctions and to the entry of findings that he signed a public customer's name to annuity policies, their corresponding disclosure statements, and an investor profile form, enabling Giancaspro to purchase fixed annuities for the customer, without her knowledge or consent. Giancaspro received approximately \$433 in commissions based on the unauthorized fixed annuity purchases. **(NASD Case #C9B990024)**

**Thomas Robert Goulet (CRD #1657522, Registered Representative, Boston, Massachusetts)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Goulet consented to the described sanctions and to the entry of findings that he engaged in private securities transactions with-

out prior written notice to, or approval from, his member firm. The findings also stated that Goulet misused approximately \$141,200 in customer funds intended for investment in limited partnerships in that he deposited the funds in his business operating account which he commingled with his personal funds and used for his own benefit, without the knowledge or consent of the firm or his customers. **(NASD Case #C11990046)**

**Xavier Van Gray (CRD #2856501, Associated Person, Jersey City, New Jersey)** was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Gray failed to respond to NASD requests for information. **(NASD Case #C10990046)**

**Clyde Wayne Gregory (CRD #1221352, Registered Representative, Madison, Alabama)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$250,000, barred from association with any NASD member in any capacity, and required to pay \$660,384.35, plus interest, in restitution. Without admitting or denying the allegations, Gregory consented to the described sanctions and to the entry of findings that he received checks from public customers totaling \$660,384.35 for the purpose of investing in securities, failed to invest the funds, and instead purchased securities or life insurance policies on the lives of the customers with a portion of the funds, and placed the difference into a money market bank account or into other businesses he owned or controlled without the customers' knowledge or consent. The findings also stated that, in an effort to conceal his failure to follow customer instructions, Gregory provided false and misleading account statements to the customers. In one instance,

Gregory also provided a false and misleading Certificate of Application. Gregory also failed to respond timely and completely to NASD requests for information and documents. **(NASD Case #C05990048)**

**Jan Hagenfrederiksen (CRD #732392, Registered Representative, Harrisburg, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$300,000, barred from association with any NASD member in any capacity, and required to pay \$58,900, plus interest, in restitution to public customers. Without admitting or denying the allegations, Hagenfrederiksen consented to the described sanctions and to the entry of findings that he participated in private securities transactions consisting of promissory notes and failed to provide his member firm prior written notice of the proposed transactions and his proposed role therein. The findings also stated that Hagenfrederiksen made untrue statements of material fact, failed to disclose material facts to the purchasers of the securities, and used at least \$40,000 of the funds raised from the sale of promissory notes for his exclusive benefit. **(NASD Case #C9A990053)**

**Deborah Jean Harvey (CRD #3071808, Associated Person, Huber Heights, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 days. Without admitting or denying the allegations, Harvey consented to the described sanctions and to the entry of findings that she submitted to her member firm a materially false or inaccurate Form U-4 that failed to disclose her previous conviction for passing counterfeit currency. **(NASD Case #C8B990033)**

**Bryan Patrick Higgins (CRD #2521437, Registered Principal, Long Island City, New York)** was fined \$9,725 and suspended from association with any NASD member in any capacity for 60 days. The sanctions were based on findings that Higgins failed to complete the Regulatory Element of the Continuing Education Program and conducted a securities business while his registration was inactive. **(NASD Case #C3A990025)**

**James Mirven Hinderliter, III (CRD #2573867, Registered Representative, Shirley, New York)** was fined \$50,913.15 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hinderliter received cash payments totaling \$182.63 from a public customer as premium payments for life insurance policies, failed to apply the funds towards the premiums, and converted the funds for his personal benefit. The findings also stated that Hinderliter failed to respond to NASD requests for information. **(NASD Case #C9B990003)**

**Thomas Allen Homan (CRD #2906822, Registered Representative, Muskegon, Michigan)** was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Homan failed to respond to NASD requests for information. **(NASD Case #C8A990047)**

**Gary Patrick Honodel (CRD #1478456, Registered Principal, Colorado Springs, Colorado)** was fined \$111,100, suspended from association with any NASD member in any capacity for six months for engaging in private securities transactions, barred from association with any NASD member in any capacity for misuse of customer funds, and ordered to pay \$15,000,

plus interest, in restitution to a public customer. The sanctions were based on findings that Honodel solicited a public customer to invest \$15,000 in a purported fund or partnership. The customer submitted a check to Honodel's member firm with instructions that it be deposited into a particular account for which the number was for a personal account belonging to Honodel. Thereafter, the customer's funds deposited in Honodel's personal account were commingled with other funds and used by Honodel for his own benefit. The findings also stated that Honodel received compensation for soliciting customers to invest in securities outside of the regular course of his employment with member firms with which he was registered. In addition, Honodel failed to provide prior written notice to his firms of his intent to participate in private securities transactions or to obtain permission from the firms to engage in the transactions. **(NASD Case #C3A990020)**

**Jeffrey Daniel Hsu (CRD #2158258, Registered Representative, Pasadena, California)** was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hsu failed to respond to NASD requests to appear for an on-the-record interview. **(NASD Case #C02990006)**

**Richard William Jefferson, Jr. (CRD #2683679, Registered Representative, Hempstead, New York)** was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Jefferson failed to respond to NASD requests for information. **(NASD Case #C10990065)**

**Keba Keinde (CRD #2526406, Registered Representative,**

**Washington, D.C.)** submitted an Offer of Settlement pursuant to which he was fined \$5,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by exam. If he fails to requalify, he will be suspended from association with any NASD member in any capacity until he requalifies. Without admitting or denying the allegations, Keinde consented to the described sanctions and to the entry of findings that he was engaged in business activities outside his employment with a member firm and failed to provide his firm with prompt, or any, prior written notice of his activities. **(NASD Case #C10990113)**

**John Jay Kersey (CRD #1480524, Registered Representative, Wilmington, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$7,500 and suspended from association with any NASD member in any capacity for one month. Without admitting or denying the allegations, Kersey consented to the described sanctions and to the entry of findings that he mishandled a customer's funds. **(NASD Case #C3A990061)**

**Saeed Akbar Khalif (CRD #1917575, Registered Representative, Stone Mountain, Georgia)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$35,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Khalif consented to the described sanctions and to the entry of findings that he misused a public customer's funds and settled an investment-related issue with a public customer without involving his member firm in the settlement. The findings also stated that Khalif engaged in an outside business

activity without giving prompt written notification to his firm. **(NASD Case #C07990065)**

**Steven Jon Kline (CRD #2299624, Registered Representative, Manalapan, Florida)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Kline consented to the described sanctions and to the entry of findings that he maintained personal brokerage accounts, or accounts over which he had control, and failed to disclose these accounts to his member firm. **(NASD Case #C07990071)**

**Asim Sain Kohli (CRD #2717474, Associated Person, Monmouth Junction, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kohli consented to the described sanctions and to the entry of findings that he failed to appear for scheduled NASD on-the-record interviews. **(NASD Case #C10990181)**

**Harold Martin Kotler (CRD #1388272, Registered Representative, Phoenix, Arizona)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kotler consented to the described sanctions and to the entry of findings that he misrepresented to public customers that a new variable life insurance policy could be acquired for little or no additional cash payments by using cash values and/or future dividends from

existing life insurance policies when, in fact, the customers were required to make payments to keep the insurance in force. The findings also stated that Kotler sold variable life insurance to customers for whom the purchases were not suitable and misrepresented that variable life insurance was a pension plan without disclosing the life insurance elements of the product. **(NASD Case #CAF990022)**

**Michael John Lazar (CRD #2268590, Registered Representative, Scottsdale, Arizona)** submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lazar consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information. **(NASD Case #C3A980075)**

**Gerald Louis Leal (CRD #1040096, Registered Representative, New York, New York)** was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Leal failed to respond to NASD requests for information. **(NASD Case #C10990074)**

**Duckjae Lee (CRD #1641366, Registered Representative, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$79,500 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lee consented to the described sanctions and to the entry of findings that he withdrew \$11,900 from a public customer's whole life policy and converted the funds for his own use and benefit. **(NASD Case #C10990189)**

**Ben T. Magistro (CRD #2987477, Registered Representative, Avon, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$5,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Magistro consented to the described sanctions and to the entry of findings that he filed a Form U-4 with the NASD that failed to disclose his Ohio murder conviction. **(NASD Case #C8A990072)**

**Matthew Jason Matles (CRD #2509983, Registered Principal, Stamford, Connecticut)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Matles consented to the described sanctions and to the entry of findings that he allowed unregistered individuals to use his name and individual registered representative number in their dealings with the public for the express purpose of soliciting and purchasing securities and opening new securities accounts at his member firms. The findings also stated that Matles failed to cooperate during the course of an on-the-record interview in that he failed to answer questions posed to him by the NASD staff. **(NASD Case #C10990180)**

**Rodney Morris McConkie (CRD #2638123, Associated Person, Ogden, Utah)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, McConkie consented to the described sanctions and to the entry of findings that he failed to

disclose on a Form U-4 his arrest and guilty plea to a misdemeanor theft charge. **(NASD Case #C3A990060)**

**Jose Parra (CRD #1159572, Registered Representative, Moreno Valley, California)** was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Parra failed to respond to NASD requests for information. **(NASD Case #C02990014)**

**Jay Steven Robinson (CRD #833292, Registered Principal, Wichita, Kansas)** submitted an Offer of Settlement pursuant to which he was fined \$105,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Robinson consented to the described sanctions and to the entry of findings that he received checks totaling \$20,000 from a public customer for investment, failed to invest the monies as instructed, converted the proceeds to his own use and benefit, and later returned only \$1,473.45 to the customer. **(NASD Case #C04990036)**

**Thomas Carter Ronk (CRD #2293671, Registered Representative, Corona Del Mar, California)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$50,000, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Ronk 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 describing the proposed transactions and his proposed role therein. **(NASD Case #C02990057)**

**Darren J. Schiff (CRD #1914018, Registered Representative, Alpharetta, Georgia)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$102,500, barred from association with any NASD member in any capacity with the right to reapply in three years, and required to pay \$35,402.06, plus interest, in restitution to a public customer. Without admitting or denying the allegations, Schiff consented to the described sanctions and the entry of findings that he entered into a settlement and release agreement with a public customer to settle the customer's complaint without informing or obtaining approval from his member firm. The findings also stated that Schiff effected unauthorized transactions in the accounts of a public customer, prepared and delivered false account statements to the customer that misrepresented account balances and trading activity, and in the exercise of oral discretion given him by a public customer, placed the customer in an overly concentrated and unsuitable position in a speculative security. Schiff also exercised discretionary authority in public customer accounts pursuant to oral discretion from the customers, without obtaining written discretion from the customers or the written acceptance of the accounts as discretionary by his member firm. **(NASD Case #C07990072)**

**Steven Lester Schippel (CRD #1225164, Registered Principal, Frederick, Maryland)** submitted an Offer of Settlement pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one month. Without admitting or denying the allegations, Schippel consented to the described sanctions and to the entry of findings that he affixed signatures purporting to be those of public customers

to documents without the customers' prior authorization. **(NASD Case #C9A990047)**

**Scott Jason Siegel (CRD #2371400, Registered Representative, Dix Hills, New York)** submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for 15 months. Without admitting or denying the allegations, Siegel consented to the described sanctions and to the entry of findings that he made material misrepresentations, omitted to disclose material facts, and predicted the future prices of speculative securities in connection with the offer and sale of securities. The findings also stated that Siegel failed to follow a public customer's instructions to sell securities from the customer's account. **(NASD Case #C3A990017)**

**Michael Sean Stone (CRD #2370650, Registered Representative, Eagan, Minnesota)** submitted an Offer of Settlement pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Stone consented to the described sanctions and to the entry of findings that he affixed the signature of a public customer to a Margin Agreement for a securities account without the customer's knowledge or consent. The findings also stated that Stone placed a good-till-cancel limit order to purchase shares in the customer's account without the customer's knowledge or consent. **(NASD Case #C04990037)**

**Pablo Manuel Tasso (CRD #3032263, Associated Person, Buenos Aires, Argentina)** was fined \$70,000 and barred from association with any NASD member in any capacity. The sanctions

were based on findings that Tasso caused an impostor to sit for and complete the Series 7 exam on his behalf and failed to respond to an NASD request for information. **(NASD Case #C07990017)**

**Wilson Claude Tate, Jr. (CRD #1159282, Registered Representative, Nashville, Tennessee)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$100,000, barred from association with any NASD member in any capacity, and ordered to pay \$66,215.85, plus interest, in restitution to a public customer. Without admitting or denying the allegations, Tate consented to the described sanctions and to the entry of findings that he misappropriated funds totaling \$66,215.85 belonging to a public customer by effecting a loan against and redeeming a variable life insurance policy owned by the customer and depositing the funds into an account that he controlled, thereby converting the funds to his own use and benefit, without the customer's knowledge or consent. **(NASD Case #C05990051)**

**John Mark Wallach (CRD #1971522, Registered Representative, Lake Worth, Florida)** was fined \$75,000, barred from association with any NASD member in any capacity, and ordered to pay \$34,564, plus interest, in restitution to a public customer. The sanctions were based on findings that Wallach engaged in unsuitable and excessive trading in the customer's account. The findings also stated that Wallach failed to respond to NASD requests for information. **(NASD Case #C07980067)**

**Merle Gene Walter (CRD #851987, Registered Representative, Golden, Colorado)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was

fined \$7,500 and suspended from association with any NASD member in any capacity for 10 days. Without admitting or denying the allegations, Walter consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without giving his member firm prior written notice of his activities. **(NASD Case #C3A990059)**

**Ravindranath Yanamadula (CRD #1903157, Registered Principal, Hyderabad, India)** submitted an Offer of Settlement pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Yanamadula consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information and documents. **(NASD Case #C8A990057)**

### Decision Issued

The following decision has been issued by the DBCC or the Office of Hearing Officers and has been appealed to or called for review by the NAC as of November 12, 1999. 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*.

**Alberto Enrique Argomaniz (CRD #2518033, Registered Representative, Miami, Florida)** was fined \$62,500 and barred from association with any NASD member in any capacity. The findings were based on findings that Argomaniz endorsed a public customer's signature to a \$7,500 refund check issued to the customer without his authorization and converted the proceeds.

Argomaniz has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C07990013)**

### Complaints Filed

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

**Arthur Andrew Alonzo, III (CRD #2090475, Registered Representative, Boca Raton, Florida)** was named as a respondent in an NASD complaint alleging that he completed new account forms for public customers and falsified the information entered regarding the customers' birth date, net worth, and investment experience. The complaint also alleges that Alonzo effected unauthorized transactions in the account of a public customer and made unsuitable recommendations to public customers. In addition, the complaint alleges that Alonzo failed to register as a general securities representative with the NASD while functioning in that capacity and failed to respond to NASD requests for information. **(NASD Case #C07990070)**

**Jason Hamlet Carrillo (CRD #2232407, Registered Representative, Hoboken, New Jersey)** was named as a respondent in an NASD complaint alleging that he executed unauthorized transactions in the accounts of public customers

and failed to execute sell orders of a public customer. The complaint also alleges that Carrillo failed to appear for an NASD on-the-record interview. **(NASD Case #C10990188)**

**John Thomas Davis (CRD #62264, Registered Representative, East Pittsburgh, Pennsylvania)** was named as a respondent in an NASD complaint alleging that he added the words "Pay to the order of John T. Davis" above the endorsement of a public customer on checks written to the customer by Davis's member firm and caused the checks totaling \$40,188 to be negotiated for a purpose other than the benefit of the customer. The complaint also alleges that Davis failed to respond to NASD requests for information. **(NASD Case #C3A990052)**

**Edward Daniel McKechnie (CRD #2321046, Registered Representative, North Branford, Connecticut)** was named as a respondent in an NASD complaint alleging that he impersonated insurance policyholders in telephone calls to his member firm, requested and obtained unauthorized changes of address for the policyholders, and changed their correct address to his home address. The complaint alleges that McKechnie requested dividend releases, arranged to have the checks mailed to his home, forged the policyholders' signatures on the checks, and deposited them into his personal account, thereby converting \$33,420.34 in fixed insurance policy dividends for his own use and benefit. **(NASD Case #C11990043)**

**Michael Allan Michelson (CRD #2254190, Registered Representative, Chicago, Illinois)** was

named as a respondent in an NASD complaint alleging that he executed transactions in the accounts of public customers without their knowledge or consent and in the absence of written or oral authorization to exercise discretion in the accounts. The complaint also alleges that Michelson guaranteed a customer against loss in his account, effected securities transactions while failing to be registered in the appropriate capacity, and failed to respond to NASD requests for documents and information. **(NASD Case #C8A990074)**

**Eddy Ralph St. Louis (CRD #2358608, Registered Principal, Brooklyn, New York)** was named as a respondent in an NASD complaint alleging that he received \$2,000 from a public customer for the purpose of investing in a holding company he controlled and converted the funds to his own use and benefit, without the customer's knowledge, authorization, or consent. **(NASD Case #C10990196)**

**John Storey, Jr. (CRD #2504455, Registered Representative, Wheatley Heights, New York)** was named as a respondent in an NASD complaint alleging that he engaged in misrepresentation in that he made a specific price prediction about a speculative security being sold without an adequate, accurate, or reasonable basis in fact. The complaint also alleges that Storey refused, or failed to execute, customer sell orders and failed to follow customer instructions. In addition, the complaint alleges that Storey engaged in fraudulent sales practices and engaged in unauthorized trading in public customer accounts. **(NASD Case #CAF990024)**

### **Firms Expelled For Failing To Pay Fines, Costs, And/Or Provide Proof Of Restitution In Connection With Violations**

**First Colorado Financial Services Co., Inc.**, Denver, Colorado (November 12, 1999)

**Spectrum Securities, Inc.**, Aroura Hills, California (November 12, 1999)

### **Firm Canceled**

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

**Global Merchant Group, Inc.**, Cambridge, Massachusetts (November 3, 1999)

### **Suspensions Lifted**

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

**CI Investments, Inc.**, Lawrenceville, Georgia (November 16, 1999)

**Tiffany Capital Corp.**, Hialeah, Florida (November 12, 1999)

**Tiger Investment Group, Inc.**, Waltham, Massachusetts (October 25, 1999)

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

**Augustine, Michelle P. (f.k.a. Mark P. Augustine)**, Highlands Ranch, Colorado (November 12, 1999)

**Brooks, Donald G.**, Aroura, California (November 12, 1999)

**Huntebrinker, John R.**, Wildwood, Missouri (November 12, 1999)

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

If the individual has complied with the arbitration settlement agreement or has paid the award, the listing also includes the date the suspension concluded.

**Nisbet, Donald Alton III**, Ventura, California (November 17, 1999 - November 23, 1999)

**Rapp, Howard Charles**, Plano, Texas (November 22, 1999)

**Ryder, Robert Francis**, Cliffside Park, New Jersey (November 22, 1999)

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# For Your Information

## Electronic Refiling And Payment Reminders

**Form BD Refile—  
Deadline: Dec. 15, 1999**

The Securities and Exchange Commission (SEC) has required all broker/dealers to electronically file new information elicited by the revised Form BD and any information that NASD Regulation was unable to convert to the new Web CRD<sup>SM</sup> format. (NASD Regulation was able to convert some, but not all, of the broker/dealer information previously reported to the Legacy CRD system.) All member firms **must electronically refile** the unconverted information and the new information into Web CRD **no later than December 15, 1999**. Failure to refile the new Form BD by December 15, 1999, may result in regulatory and/or disciplinary action.

Please note that there are no fees associated with the Form BD refile.

**Year 2000 License And  
Registration Renewals Payment  
– Deadline: Dec. 10, 1999**

The Year 2000 License and Registration Renewal Process for members and their associated persons began November 1, 1999. Unlike previous years, Renewal Statements and Rosters will not be mailed in hard copy to member firms. Instead, the Renewal Process will be conducted electronically with member firms viewing their Renewal Statements and Rosters online through Web CRD. Therefore, member firms need Web CRD entitlement to review and renew their self-regulatory organization and state registrations and those registrations applicable to their associated persons. Similarly, member firms

need access to electronically submit termination filings, (*i.e.*, Forms U-5, Forms BDW, or Schedules E, for an associated person, the member firm, or branch office, respectively). The deadline for submitting your year 2000 renewal payment is **December 10, 1999**.

Any questions regarding the BD Refile, Renewals, or Web CRD should be directed to the Gateway Call Center at (301) 869-6699.

## Year-End Customer And PAIB Reserve Formula Computation

National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) members may elect to compute their reserve formula and proprietary account of an introducing broker/dealer (PAIB) computations as of the close of business on Wednesday, December 29, 1999, rather than at year end, according to an SEC interpretation. If this option is elected, the broker/dealer's reserve deposits, if any, would be made on Friday, December 31, 1999. The SEC has also stated that if this option is chosen, the next reserve formula computations would be required as of the close of business the following Friday (January 7, 2000) for weekly computers and as of month-end January (January 31, 2000) for monthly computers.

If you choose this option, you may use the total customer debits from the reserve formula computation as of December 29<sup>th</sup> in your calculation of December 31, 1999, net capital, provided your net capital is computed pursuant to SEC Rule 15c3-1 (a) (1) (ii). Additionally, the filing of the December 31, 1999 FOCUS report would include a balance sheet as of December 31 and a 15c3-3 Reserve Formula Computation as

of December 29, 1999. The filing due date will not change from the current 17<sup>th</sup> business day after the “as of” date.

If you elect this option, you must contact your local District Office

verbally with follow-up written notification. Any questions regarding this announcement should be directed to your local District Office.

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