# Notices to Members July 1999

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

NASD Regulation Offers Guidance To Members Forwarding Mini Tender Offers To Their Customers

### **Suggested Routing**

Senior Management
Advertising
Continuing Education
Corporate Finance
Executive Representatives
Government Securities
Institutional
Insurance
Internal Audit
Legal & Compliance
Municipal
Mutual Fund
Operations
Options
Registered Representatives
Registration
Research
Syndicate
Systems
Trading
Training

### **Executive Summary**

Recent press coverage of "mini tender offers" has highlighted a practice that may be generating significant confusion among National Association of Securities Dealers, Inc. (NASD®) members and public customers, and may result in monetary losses to customers. NASD Regulation, Inc. (NASD Regulation<sup>®</sup>) is publishing this *Notice* to alert members to the practice and to discuss the steps members can take to reduce the risk that customers and others tendering shares in a mini tender offer will be victimized.

Questions regarding this *Notice* may be directed to Elliott Curzon, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8451.

### **Background**

In a mini tender offer, the offeror makes an offer directly to an issuer's shareholders to purchase a small number or percentage (under five percent of the total shares outstanding) of an issuer's securities, often at a price below the current market price, by a certain day. The offer also contains a promise to pay for the tendered shares within a specified period. 1 When the offeror obtains tendered shares, the offeror resells the shares in the open market, pays the tendering shareholder, and retains the difference as profit.

Because the offers are for five percent or less of the outstanding shares, the offerors presently are not required to comply with the disclosure, filing, and transmission requirements of the Securities and Exchange Commission's (SEC) tender offer rules in Regulation 14D. They are, however, subject to the general tender offer anti-fraud prohibitions in SEC Regulation 14E.

A mini tender offer is solicited when the offeror forwards offering material describing the terms of the offer to the Depository Trust Company (DTC) or directly to shareholders.2 DTC sets up an account where acceptances of tendering shareholders are recorded and where payments by the offeror will be made in exchange for the tendered shares. DTC then notifies its participants (NASD members) of the offer. DTC's participant banks and broker/dealers that tender on behalf of their customers pay a small fee to DTC in connection with the tender. As discussed below, participants that receive these notices sometimes forward them to their customers.

### **Discussion**

There may be legitimate reasons for mini tender offers, such as providing liquidity for very illiquid securities or permitting institutions to dispose of block positions without moving the market price for the security.

Nevertheless, NASD Regulation is concerned that some shareholders may be disadvantaged by such offers if they agree, either through mistake or lack of sophistication, to tender their securities at prices that are lower than those they could obtain if they offered their securities for sale in the open market.

Moreover, NASD Regulation notes that there is no statute or rule that requires members to forward tender offer information to their customers.<sup>3</sup> Currently, some members forward all such offers to their customers without regard to the merits or terms of the offers.

In order to address concerns about shareholders tendering by mistake or as a result of lack of knowledge about the effect of an offer, NASD Regulation believes that members that forward information to customers concerning mini tender offers may wish to consider including

☐ Variable Contracts

the following disclosures as appropriate in the circumstances:

- (1) If the member has not reviewed the offer:
  - (a) that by forwarding the offer to the customer, the member is not endorsing or recommending the offer, and the terms of the offer have not been reviewed to determine if accepting the offer would be in the customer's interest; and
  - (b) the customer is not required to accept the offer.
- (2) If the member has reviewed the offer:
  - (a) whether the member is endorsing or recommending acceptance of the offer;
  - (b) whether the member is providing other information to the customer to assist the customer

- in making an informed decision about the offer; and
- (c) the customer is not required to accept the offer.
- (d) Information that could be supplied to the customer could include, for example: an indication of the current or recent market price for the security, e.g., either the most recent closing price or the trading range for a recent period such as the previous week or month; recent news about the issuer or announcements from the issuer; or a statement that there are no news reports or announcements.

such offers can be expensive and time consuming relative to the size of the offer. Nevertheless, we understand that some offerors are resorting to direct solicitation in order to avoid a recently instituted \$2,700 DTC minitender offer processing fee designed to cover DTC's costs in minitender offers. (See Exchange Act Release No. 41032 (February 9, 1999).)

<sup>3</sup>The NASD's Rule governing the Forwarding of Proxy and Other Materials (Rule 2260) does not cover information relating to tender offers. In addition, the SEC Rules governing tender offers (Regulations 14-D and 14-E) do not require broker/dealers to forward tender offer information to shareholders.

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### **Endnotes**

<sup>1</sup>SEC Rule 14e-1(c) requires offerors to pay for tendered securities promptly.

<sup>2</sup>The offeror can attempt to provide offering material directly to shareholders; however, obtaining and using shareholder lists for

NASD Regulation Seeks Comment On Issues Relating To Arbitrator-Ordered Expungements Of Information From The Central Registration Depository; Comment Period Expires July 30, 1999

### **Suggested Routing**

Senior Management
Advertising
Continuing Education
Corporate Finance
Executive Representatives
Government Securities
Institutional
Insurance
Internal Audit
Legal & Compliance
Municipal
Mutual Fund
Operations
Options
Registered Representatives
Registration
Research
Syndicate
Systems
Trading
Training

### **Executive Summary**

NASD Regulation, Inc. (NASD Regulation®) is seeking comment from National Association of Securities Dealers, Inc. (NASD®) members and other interested parties on issues relating to the expungement of information from the Central Registration Depository (CRD<sup>SM</sup>) that is ordered by arbitrators. In Notice to Members 99-09, NASD Regulation announced that it was imposing a moratorium on the expungement of certain information from the CRD system based on a directive contained in an arbitration award. Under the terms of the moratorium, which became effective January 19, 1999, NASD Regulation is not expunging information from the CRD system that is ordered by arbitrators in an award rendered in a dispute between a public customer and a registered representative or a firm unless the award has been confirmed by a court of competent jurisdiction.

Questions concerning this *Notice* may be directed to Ann E. Bushey, Assistant Director, CRD/Public Disclosure, NASD Regulation, at (301) 590-6389; Mary M. Dunbar, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8252; or Richard E. Pullano, Associate Director and Counsel, CRD/Public Disclosure, NASD Regulation, at (301) 212-3789.

### **Request For Comment**

NASD Regulation is seeking comment on the issues of arbitrator-ordered expungements and the moratorium on such expungements imposed in January 1999. NASD Regulation encourages all interested parties to comment on this matter. Comments should be mailed to:

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

pubcom@nasd.com

Important Note: The only

comments that will be considered

are those submitted in writing or via
e-mail.

Comments must be received by July 30, 1999. Before becoming effective, any rule change developed as a result of comments received must be adopted by the NASD Regulation Board of Directors, may be reviewed by the NASD Board of Governors, and must be approved by the Securities and Exchange Commission (SEC).

### **Background And Discussion**

The CRD system is an electronic registration and licensing system that contains information used by the SEC, NASD, other self-regulatory organizations (SROs), and state securities regulators to make licensing and registration decisions. among other things. The information on the CRD system includes criminal information (e.g., indictments and convictions for certain criminal offenses), disciplinary information (e.g., sanctions imposed by regulators), customer complaints and arbitration awards that meet specified criteria, certain categories of employment terminations, and other information.

Generally speaking, the information on the CRD system is submitted by registered broker/dealers and regulatory authorities (e.g., SEC, state securities regulators, and SROs) in response to questions on forms that are designed to elicit and collect information that is relevant to regulators in connection with their licensing and enforcement activities and to investors who are considering whether to do business with a firm or an associated person. NASD Regulation recognizes that accurate and complete reporting on these forms is an important aspect of investor protection.

NASD Notice to Members 99-54

July 1999

As noted in *Notice to Members* 99-09, during this moratorium, NASD Regulation is continuing to execute court-ordered expungements, including any expungement order contained in an arbitration award that is confirmed by a court of competent jurisdiction.

In addition, NASD Regulation is continuing to expunge information from the CRD system based on expungement directives in arbitration awards rendered in disputes between firms and current or former associated persons, where arbitrators have awarded such relief based on the defamatory nature of the information in the CRD system. To qualify for this exception from having an award confirmed in court, the dispute must be between a firm and a current or former associated person and arbitrators must clearly state in the "Award" section of the award that they are ordering expungement relief based on the defamatory nature of the information in the CRD system. (Arbitrators, however, are not required to state explicitly in the award that they have found that all of the elements required to satisfy a claim in defamation under governing law have been met.)

As discussed in *Notice to Members* 99-09, NASD Regulation imposed this moratorium after discussions with the North American Securities Administrators Association (NASAA). NASD Regulation operates the CRD system in accordance with an agreement with NASAA. Although this agreement expressly addresses court-ordered expungements, it does not specifically address arbitratorordered expundements, NASD Regulation believes that expungement of information from the CRD system that is ordered by an arbitrator and contained in an award should be afforded the same treatment as a court-ordered expungement. NASAA disagrees with this position and has informed NASD Regulation that it does not believe that arbitrator-ordered

expungements should be afforded the same treatment as court-ordered expungements. NASAA has informed NASD Regulation that, in its opinion, according to various state laws, information submitted to the CRD system is deemed to have been filed with each state in which the subject person or entity seeks to be registered.

Therefore, according to NASAA, information in the CRD system that may be the subject of an arbitratorordered expungement is in many cases a state record, and some state laws currently do not recognize the authority of an arbitrator to expunge a state record or do not otherwise permit such expungements because of state recordkeeping requirements. NASAA has provided one attorney general opinion that it believes supports its view. See Advisory Legal Opinion issued by Robert A. Butterworth, Attorney General of the State of Florida, AGO 98-54 (August 28, 1998) regarding records obtained from the securities dealers association's central depository.1

NASD Regulation is seeking comment on possible approaches that would address the interests of parties to an arbitration in having an arbitrator's expungement order effected (or given some meaningful effect), which ordinarily requires erasing or physically removing information on the CRD system, while at the same time complying with any applicable state recordkeeping laws and maintaining the integrity of the CRD system. Several such approaches are described in this *Notice*.

NASD Regulation recognizes that the information on the CRD system has important investor protection implications, provided it is complete and accurate. Therefore, such information should not be expunged without good reason (e.g., a finding that expungement relief is necessary because information on the CRD system is defamatory in nature, misleading, inaccurate, or

erroneous). Accordingly, NASD Regulation also seeks comment on an approach that contemplates the establishment of standards for arbitrators to consider in ordering expungement. Under this approach, the arbitrators' award would have to state the basis for the expungement order before NASD Regulation would expunge the information from the CRD system in the absence of a court order.

NASD Regulation requests comment on these approaches, suggestions for other alternatives, and comment from members and other interested parties on all of the issues implicated by arbitrator-ordered expungements.

Should consent awards (i.e., those containing expungement directives) be treated differently than awards issued after full consideration of the merits of the dispute?

As a threshold matter, NASD Regulation specifically seeks comment on the treatment of "consent awards" or "stipulated awards" that contain expungement directives. These are awards that essentially reflect the parties' settlement of a dispute. Parties then request that arbitrators capture the terms of the settlement in an award that arbitrators issue by consent of the parties. In such cases, arbitrators typically are issuing an award at the parties' (joint) request and have not made any finding on the merits of the dispute.<sup>2</sup> NASD Regulation seeks comment on whether expungement directives contained in these awards should be given the same treatment as awards that are rendered by arbitrators after full consideration of all of the pleadings, evidence, arguments, etc. NASD Regulation requests that commenters consider whether it is appropriate to establish standards that would have to be met before NASD Regulation would execute consent awards similar to the standards discussed in Approach Four on the following page.

NASD Notice to Members 99-54

Approach One: Could the interests of parties in arbitration be met if there were no disclosure of the information ordered expunged through the NASD's Public Disclosure Program?

Under this approach, information that is ordered expunged by arbitrators would remain on the CRD system, but would not be disclosed through the NASD's Public Disclosure Program. Since the information remains on the CRD system, however, and because it would be deemed by some states to be a state record notwithstanding the expungement order, it may still be disclosed by a state pursuant to that state's public records law, which is a state's equivalent of the federal Freedom of Information Act statute.3 Some states' public records laws are very broad in scope, and permit release of all information contained in state records - including all CRD records, even if they have been ordered expunged by an arbitrator.

Approach Two: Could the interests of parties in arbitration be met if a "legend" were placed on information that has been ordered expunged by arbitrators?

Under this approach, information that is ordered expunged by arbitrators would remain on the CRD system, but would clearly be identified as information that has been ordered expunged by an arbitrator or a panel of arbitrators through the use of a standard legend (e.g., the legend might state "A panel of arbitrators has determined that the above information is factually inaccurate, defamatory, or without merit and has ordered the information expunged from the CRD system."). A state that has determined that it must disclose the information, notwithstanding the arbitrators' expungement order, may continue to disclose the information; however, under this approach, the information would carry a legend indicating that it had been ordered expunged from the CRD system.

The NASD, on the other hand, consistent with its practice before the moratorium, would not disclose this information through its Public Disclosure Program.<sup>4</sup>

Approach Three: Could state recordkeeping requirements be satisfied through the use of alternate media?

This approach contemplates satisfying certain state recordkeeping requirements through the use of a hard copy equivalent, microfilm, or other medium. Under this approach, NASD Regulation would propose to provide an equivalent copy of any CRD record that a state is required to keep if that record is the subject of an expungement order issued by an arbitrator. Once the equivalent of the CRD record has been provided to a state, NASD Regulation would execute the expungement order and physically remove the relevant information from the CRD system.

NASD Regulation seeks comment on this alternative, because it appears that some states may have flexibility in the form or medium in which they maintain records that are required to be retained. See, e.g., Cal. Corp. Code Sect. 31506 (1997), which provides the Securities Commissioner with the discretion to maintain copies of records "on microfilm or in other form" provided those records are certified by the Commissioner. This statutory section further indicates that such records will be "accepted for all purposes as equivalent to the original" when so certified by the Commissioner. NASD Regulation requests that commenters provide specific support for this or any other proposed approach involving the use of alternative or equivalent records.

Approach Four: Could resolution of this issue be facilitated by the establishment of standards to be followed by arbitrators before they order information expunged from the CRD system? This approach contemplates the establishment of standards that would have to be satisfied before NASD Regulation would execute an arbitrators' awards directing the expungement of information from the CRD system. This proposed approach differs from the approaches discussed above in that it contemplates that NASD Regulation would execute arbitrators' expungement orders (i.e., physically remove information from the CRD system) provided certain prescribed standards were met. The objectives of this alternative would be to provide some parameters for arbitratorordered expungements to ensure that investor protection is not compromised, and to give some indication of the arbitrators' reasons for granting such relief. Such an approach also would enhance the integrity of the CRD system by providing an additional mechanism to remove misleading, inaccurate, or erroneous information from the system. Because of the state record retention issues described above. this approach may have to be combined with Approach Three above for those states that are required to maintain all CRD records.

It is widely accepted that arbitrators should have the authority to award equitable relief. NASD Regulation believes that ordering expungement of information from the CRD system that is found to be defamatory, misleading, inaccurate, or erroneous, is equitable in nature and within an arbitrator's authority. Currently, however, neither the NASD's Code of Arbitration Procedure nor the arbitrator training materials explicitly address the granting of the equitable relief of expungement of information from the CRD system.

Under this approach, NASD Regulation would establish standards for arbitrators to consider in ordering expungement. The arbitrators' award would have to state the basis for the expungement order before NASD Regulation would expunge the information from the CRD system in the absence of a court order. For example, the standards could provide that arbitrators may include as equitable relief in an arbitration award an order directing that information be expunged from the CRD system provided that the arbitrators found, after considering the merits, that the claim against the person/firm was frivolous or groundless (i.e., had no basis in fact), or was brought for an improper purpose (e.g., to damage the reputation of the named person/firm). Such standards might also require that the named party specifically seek the expungement relief and that arbitrators not grant such relief on their own.

NASD Regulation seeks comment on these proposed standards and whether there are other standards that should be considered. Commenters may want to address whether any of the above approaches should be combined with another or with other approaches that may be suggested by a commenter.

#### **Endnotes**

<sup>1</sup>This letter can be obtained from the State of Florida's Web site at: http://legal.firn.edu/opinions/index.html.

<sup>2</sup>While parties may request an arbitrator to embody their settlement agreement in an award, the Code of Ethics for Arbitrators In Commercial Disputes, in Canon V(D), states that an arbitrator is not bound to sign a consent award "unless [the arbitrator is] satisfied with the propriety of the terms of the settlement."

<sup>3</sup>In this regard, the information would not truly be expunged because expungement typically requires the physical destruction or erasure of the record in question. Therefore, a true expungement would not leave any record in the CRD system that would be susceptible to disclosure to the public (either through the NASD's Public Disclosure Program or by a state under its public records laws) because the record would be physically removed from the CRD system. Moreover, because this approach would not result in the physical destruction of the CRD record, NASD Regulation may also be required to produce the full CRD record (including the information ordered expunged by arbitrators) in response to a subpoena.

<sup>4</sup>However, as discussed in note three above, NASD Regulation may also be required to produce the full CRD record (including the information ordered expunged by arbitrators) in response to a subpoena.

<sup>5</sup>See Southland Corp. v. Keating, 465 U.S. 1, 13 (1984).

<sup>6</sup>Training materials designed to educate arbitrators about the issues discussed in *Notice to Members 99-09* have been prepared and will be used in the next round of arbitrator training sessions administered by NASD Regulation.

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Questions And Answers Relating To Non-Cash Compensation Rules

### **Suggested Routing**

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- ☐ Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- ☐ Systems
- Trading
- Training
- Variable Contracts

### **Executive Summary**

This Notice to Members addresses questions regarding the application of amendments recently adopted by the National Association of Securities Dealers, Inc. (NASD®) to NASD Rules 2820 (Variable Contracts Rule) and 2830 (Investment Company Rule). Generally, the new rules regulate compensation arrangements for the sale and distribution of variable products and investment company securities. To further facilitate member compliance with these rules, this Notice addresses questions that have been raised with respect to particular circumstances covered by the new rules.

Questions regarding this *Notice* may be directed to Joseph Savage, Counsel, Advertising/Investment Companies Regulation, NASD Regulation, Inc., (NASD Regulation\*), at (202) 728-8233; Lawrence N. Kosciulek, Assistant Director, Advertising/Investment Companies Regulation, NASD Regulation, at (202) 728-8329; and Stephanie M. Dumont, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8176.

### **Background**

The Securities and Exchange Commission (SEC) approved the non-cash amendments on July 15, 1998. The new rules became effective January 1, 1999, under the implementation plan described in *Notice to Members 98-75* (*NtM 98-75*). Generally, the rules limit the manner in which members may pay or accept non-cash compensation for the sale or distribution of variable contracts and investment company securities.

Specifically, the rules:

with limited exception, prohibit an associated person from accepting

- compensation from any person other than the member with which the person is associated;
- prohibit the payment of securities as compensation;
- prohibit the acceptance of cash compensation by a member from an offeror for the sale of investment company securities unless the compensation is disclosed in a prospectus;
- permit receipt of certain de minimis types of non-cash compensation gifts and gratuities;
- permit, under certain conditions, payment or reimbursement in connection with training and education meetings; and
- permit non-cash compensation arrangements that are based on concepts of total production and equal weighting, are organized and run by the member, and comply with certain recordkeeping requirements.

After the publication of the non-cash rules in NtM 98-75, some members requested advice from NASD Regulation on how the rules would apply in particular situations. The following questions and answers are published in order to address some of these particular situations and provide additional guidance. However, the guidance contained herein is intended to be general in nature and is not intended to provide an exhaustive analysis of all noncash arrangements subject to the rules. The facts and circumstances of various arrangements will differ, and members should feel free to seek additional advice from NASD Regulation by contacting the names listed in the Executive Summary above.

### **Frequently Asked Questions**

### **Non-Cash Arrangements**

Question #1: May a member conduct a non-cash contest that includes the sale of mutual funds, variable annuities, and new assets under management, where all three product categories will be included and the contest is based on total production and no preferential credits are given?

Answer: Yes. The contest is permissible provided that the member complies with all of the applicable provisions under Rule 2820(h)(4)(D) and Rule 2830(l)(5)(D). In particular, the member must ensure that the noncash award is calculated on the basis of the equal weighting requirements of Rule 2820(h)(4)(D)(ii) and Rule 2830(l)(5)(D)(iii).

Question #2: An insurance affiliated broker/dealer sponsors and funds the costs of an annual sales meeting for its top producing 125 representatives. Production is determined by equal weighting of all variable life and annuity products sold by the representatives, with the exclusion of a proprietary variable universal life product. Instead, this product will be the basis for qualifying for a separate sales meeting sponsored by the broker/dealer's parent life insurance company. Is this permissible?

Answer: No. It would be impermissible for the broker/dealer and its parent life insurance company to conduct separate contests in the manner described, and the proposed arrangement would clearly contradict one of the basic goals of the rules, to prohibit product-specific contests. Whether the contest is sponsored by the broker/dealer or its parent life insurance company, Rule 2820(h)(4)(D) requires that the

contest include all variable products distributed by the member.

Question #3: Continuing with the same fact pattern in Question #2, if credit for the sales of fixed products was included in the non-cash arrangement, would either the member or the insurance company be required to include all fixed products and ensure that the credit given for the fixed products is equally weighted?

**Answer:** No. The rules do not apply to the sale of fixed insurance products.

Question #4: A salesperson is licensed to sell insurance with a life insurance company that offers proprietary variable products. The salesperson is also separately licensed to sell securities with a broker/dealer that is unaffiliated with the life insurance company. The salesperson sells the life insurance company's proprietary variable products through his broker/dealer pursuant to a dealer agreement with the company. May the salesperson attend a non-cash compensation trip sponsored by the life insurance company for the sale of its variable products?

Answer: No. Rule 2820(h)(4) prohibits an associated person from accepting non-cash compensation unless an exception applies. Rule 2820(h)(4)(D) provides an exception that permits 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. In this case, the salesperson is an associated person of an *unaffiliated* member.

**Question #5:** May non-cash credits to registered representatives be based on gross dealer concessions?

Answer: Yes, if the contest meets all the requirements of the rules, including the equal weighting requirement. In particular, the amounts of non-cash credits for representatives based on dealer concessions must be equally weighted among different funds.

Question #6: NtM 98-75 states that, because of the substantial differences in design, purpose, cost structure, commission payouts, and target audience for variable annuity and variable life products, they do not need to be combined in the same incentive arrangement. Could separate contests be designed for different product categories such as non-IRA individual variable annuity products, IRA individual variable annuity products?

**Answer:** No. The differences in the suggested categories would not justify permissible non-cash arrangements for just those product categories.

### **Training And Education**

Question #7: May an offeror conduct and pay for a training and education meeting for registered representatives of unaffiliated dealers that sell the offeror's products?

Answer: Yes. This arrangement is permissible so long as neither the attendance at the meeting nor the payment for the meeting is preconditioned on the achievement of a sales target, and approval from the member is obtained prior to the meeting.

Question #8: May attendance at training or education meetings held by an offeror be pre-conditioned on achieving certain overall targets not exclusively tied to the sale of specific mutual funds, such as gathering of a certain level of assets or opening a particular number of new accounts?

Answer: No. Rule 2830(I)(5)(C)(ii) prohibits preconditioning attendance at a training and education meeting held by an offeror "...on the achievement of a sales target or any other incentives pursuant to a non-cash compensation arrangement permitted by subparagraph (I)(5)(D)."

**Question #9:** May a member reimburse its associated persons for the expenses of their guests that attend training and education seminars?

**Answer:** Yes. However, Rules 2820(h)(4)(C)(iv) and 2830(l)(5)(C)(iv) preclude an *offeror* from making payments to reimburse guests of associated persons attending training and education seminars.

### Application To Senior Management

**Question #10:** Do the non-cash compensation rules apply to officers or managers of the broker/dealer who are not involved in "point of sale" activities?

Answer: Yes. The non-cash compensation rules apply to any associated person, including officers and managers of members, if they receive, directly or indirectly, such compensation in connection with the sale and distribution of variable contracts or investment company securities.

### **Payment In Securities**

**Question #11:** May an associated person receive stock (or options to purchase stock) in the publicly-traded parent of the associated person's broker/dealer?

**Answer:** Yes. Rule 2820(h)(2) and Rule 2830(l)(2) prohibit members and associated persons of members from receiving compensation from an offeror in the form of securities of any

kind. However, these provisions were not intended to prohibit an associated person from receiving stock or stock options of the member's parent company as compensation.

Question #12: May insurance company wholesalers receive stock options of the insurance company's parent holding company as compensation for reaching certain production levels?

**Answer:** Yes, as long as the specified production levels are in compliance with the equal weighting and total production requirements of Rule 2820(h)(4)(D) or Rule 2830(l)(5)(D).

### Gifts And Occasional Meals, Tickets, Or Other Entertainment

Question #13: How are holiday parties, receptions, and other local events where local transportation and dinners may be provided to associated persons by offerors (and which are not organized specifically for training or educational purposes) treated?

Answer: Such items of value must be treated either as occasional meals, tickets, or comparable entertainment or as gifts and therefore subject to the limitations of Rule 2820(h)(4)(A) or (B), or Rule 2830(l)(5)(A) or (B).

Question #14: May an offeror provide a registered representative business development and educational enhancement items, such as software packages containing fund data for broker use or prospecting lists?

Answer: Yes. The provision of such items that are utilized by registered representatives for business purposes is permitted, provided that these items are not preconditioned on the achievement of a sales target.

Question #15: May an offeror reimburse a registered representative's "prospecting trip" expenses, such as travel and lodging expenses, meals during the trip, the cost of renting rooms or space for the purpose of meeting with prospects, or the cost of marketing materials to promote investment company or variable contracts sales meetings with prospects at centralized locations?

Answer: Yes, as long as the payment is made through the member and complies with the recordkeeping requirements of Rule 2820(h)(3) and 2830(l)(3) and, with respect to investment company securities, the prospectus disclosure requirements of Rule 2830(l)(4).

**Question #16:** Are gifts of a personal nature, such as wedding gifts or congratulatory gifts for the birth of a child, permissible?

**Answer:** Yes. The rules do not apply to these types of gifts.

**Question #17:** Are promotional items of nominal value that display the offeror's logo, such as golf balls, shirts, towels and pens, subject to the \$100 annual gift limit?

**Answer:** No. The rules do not apply to these types of nominal promotional items.

#### **Prospectus Disclosure**

Question #18: Rule 2830(I)(4) prohibits members from accepting cash compensation from offerors unless it is disclosed in the prospectus. In 1998, the SEC adopted amended Form N-1A as part of its effort to improve mutual fund disclosure. Under the N-1A amendments, much of the narrative disclosure regarding distribution arrangements, such as Rule 12b-1 fees, sales charges, sales charge waivers, broker reallowances, multiclass plans, and master-feeder

arrangements, is now required to be placed in the Statement of Additional Information (SAI), which is incorporated into the prospectus by reference and made available to customers upon request. May members satisfy the prospectus disclosure requirement of Rule 2830(I)(4) by placing such disclosure in the SAI?

Answer: Yes. To the extent that various cash compensation arrangements would qualify as the types of distribution arrangements now required to be disclosed in the SAI, disclosure in the SAI would satisfy the NASD disclosure requirements.

### Recordkeeping

Question #19: An offeror provides cash or non-cash compensation to registered representatives of its affiliated member. May the offeror maintain on behalf of its affiliated member the records required under Rule 2820(h)(3) and Rule 2830(l)(3), so long as the records are made accessible to the member, and in

turn made available to NASD Regulation for examination?

**Answer:** Yes, the offeror may perform this ministerial function on behalf of its affiliated member.

#### **Miscellaneous**

**Question #20:** May a member contribute to a non-cash compensation program sponsored by a bank?

Answer: Yes. Rule 2830(I)(5)(E) permits contributions by a member to a non-cash arrangement of a non-member, such as a bank, provided that the arrangement conforms to the criteria in Rule 2830(I)(5)(D), including the total production and equal weighting requirements. Thus, the member making the contribution must establish procedures through which it could be reasonably assured that the non-cash arrangement of the non-member conforms to the required criteria.

**Question #21:** May a registered representative receive commissions

or any compensation directly from an unaffiliated product manufacturer?

Answer: Generally no. Rules 2820(h)(1) and 2830(l)(1) require that registered representatives only accept compensation from the member with whom they are associated unless, among other things, an interpretive or no-action letter specifically permits such an arrangement.

**Question #22:** May a member structure a non-cash arrangement that is limited only to a specific division of the firm, such as an institutional sales division that offers only certain products?

**Answer:** Yes, as long as any such arrangement is based on the entire universe of products that the specific division is authorized to sell and otherwise complies with the equal weighting and total production requirements of Rule 2820(h)(4)(D) or Rule 2830(l)(5)(D).

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NASD Regulation Announces CRD "System Transition Period" Immediately Preceding The Deployment Of Web CRD

### **Suggested Routing**

Senior Management

· ·
Advertising
Continuing Education
Corporate Finance
Executive Representatives
Government Securities
Institutional
Insurance
Internal Audit
Legal & Compliance
Municipal
Mutual Fund
Operations
Options
Registered Representatives
Registration

### **Executive Summary**

The new Internet-based Central Registration Depository system, Web CRD<sup>™</sup>, will be deployed in August 1999. As NASD Regulation, Inc. (NASD Regulation®) transitions from the current CRD system to Web CRD, there will be a two-week period—System Transition Period beginning on July 31 and ending August 15, 1999, when neither system will be available to process form filings and other registrationrelated transactions. This "System Transition Period" is necessary principally to allow NASD Regulation to perform the final conversions of data from the current CRD system to Web CRD. The System Transition Period also will permit NASD Regulation to receive, capture, and review the final form filings submitted on the Interim Forms, which will be replaced by the new Forms U-4, U-5, BD, and BDW. (The Securities and Exchange Commission (SEC) is considering proposed revisions to the Forms U-4, U-5, and BD; the proposed new forms are expected to become effective on or about August 1, 1999. The SEC adopted revised Form BDW with an effective date of August 1, 1999.)

Member firms should read this Notice carefully to fully understand the implications of the System Transition Period and thereby avoid problems with associated person registration, transfer, regulatory reporting, and examination scheduling. The System Transition Period will affect both member firms and their registered representatives in many ways. Most significantly, NASD Regulation will not accept new registration requests submitted on paper Interim Forms after July 29. Member firms that are Firm Access Query System (FAQS) subscribers and Electronic File Transfer (EFT) filers will be able to submit (through

the existing interface) the following filings through July 30 electronically:

- Forms U-4: Pages One and Two only – FAQS subscribers and EFT filers
- Forms U-5 FAQS subscribers and EFT filers
- Forms BD: Schedule E only FAQS subscribers only

Member firms that are not FAQS subscribers or EFT filers must hold all new registration requests after July 29 (including requests for registration in additional states) for submission on the revised forms to Web CRD once it is deployed on August 16.

In addition, as discussed in detail on the following pages, the System Transition Period will change the way member firms transact business with the CRD/Public Disclosure Department in a number of ways.

NASD Regulation is committed to keeping all interested parties aware of developments regarding the deployment of Web CRD. For the latest information and updates on the System Transition Period and Web CRD deployment, member firms should check the Web CRD Internet Pages at:

www.nasdr.com/3400\_web.htm.

Questions concerning this *Notice* may be directed to Ann E. Bushey, Assistant Director, CRD/Public Disclosure, NASD Regulation, at (301) 590-6389; Mary M. Dunbar, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8252; or Richard E. Pullano, Associate Director and Counsel, CRD/Public Disclosure, NASD Regulation, at (301) 212-3789.

Variable Contracts

Research

Syndicate

Systems

Trading

Training

### Registration Activities Affected By The System Transition Period

 Form U-4 Filings or Requests for Additional Registrations and Jurisdictions

NASD Regulation will not accept paper Interim Forms U-4 after July 29, 1999. FAQS subscribers and EFT filers can file Pages 1 and 2 of Form U-4 through July 30, 1999. After July 29, member firms that are not FAQS subscribers must hold all Form U-4 filings until August 16 for electronic filing via Web CRD.

- Form U-5 Filings Reporting Full Termination
  - → Member firms should submit paper Forms U-5 during the System Transition Period (*i.e.*, after August 1, 1999) to report a **full termination** (*i.e.*, termination of all registrations and licenses).
    - → Paper Form U-5 filings reporting full terminations must be on the version of the Form U-5 expected to be approved by the SEC in June 1999. Interim Form U-5 (the version with an 11/97 revision date) will not be accepted after July 29, 1999 (see "Interim Forms Become Obsolete" on page 362).
    - → After Web CRD is deployed, NASD Regulation staff will perform data entry for paper Forms U-5 received during the System Transition Period.
  - → During the System
    Transition Period, NASD
    Regulation will return any
    paper Forms U-5 if the Form is
    reporting a partial termination
    or if it is the old version (*i.e.*,
    11/97 version) of the Form.

Note: If a member firm's 30-day deadline for submitting a Form U-5 reporting a full termination falls on July 29, 30, or 31, the member firm should ensure that NASD Regulation receives the paper Interim Form U-5 no later than July 29.

 Form U-5 Filings Reporting a Partial Termination

> NASD Regulation will not accept Form U-5 filings requesting a partial termination during the System Transition Period. Member firms must withhold partial termination requests until electronic filing begins on August 16.

- Form Amendments
  - → Member firms cannot file amendments to Forms U-4, U-5, or BD during the System Transition Period. Beginning on August 16, NASD Regulation will accept amendments to the Forms U-4, U-5, and BD submitted electronically through Web CRD.
  - → NASD Regulation will convert the data in the current CRD system to the Web CRD system with the exception of certain Form BD data.

    Registered broker/dealers will be required to electronically refile a substantial part of their Form BD information after Web CRD is deployed.

Note: The timing and other details of the Form BD re-file are expected to be finalized with the adoption by the SEC of the revised Form BD. Please visit the Web CRD Internet Pages at: www.nasdr.com/3400\_web.htm for the most current

### developments on the Form BD re-file.

Form BDW Filings

NASD Regulation will accept paper Form BDW filings reporting full terminations during the System Transition Period. Broker/dealers must use the Form BDW adopted by the SEC on May 3, 1999, which becomes effective on August 1, 1999. See SEA Release No. 41356. The new Form BDW is available on the SEC and NASD Regulation Web Sites (www.sec.gov and www.nasdr.com).

- Taking an Examination
  - → The System Transition Period will not affect NASDauthorized exam centers. Individuals can take examinations scheduled prior to but administered during the System Transition Period. However, registered representatives cannot request additional examinations during the System Transition Period. If an examination window is open prior to the System Transition Period, the candidate can schedule and take an examination.
  - → Passing an examination does not equate to being licensed or registered. With the exception of Transition Temporary Agent Transfers (TATs) (see next page), jurisdictions and self-regulatory organizations (SROs) cannot grant a registration or license through CRD from August 3 through August 15. Therefore, even if a person successfully completes an examination during the transition period, the license or registration applied for cannot be made effective until August 16 at the earliest.

- Satisfaction of Continuing Education Requirements
  - → The System Transition
    Period will not affect the
    delivery of most Continuing
    Education sessions at NASDauthorized exam centers. If a
    Continuing Education window
    is open, an individual can
    schedule and sit for a
    Regulatory Element session
    during the System Transition
    Period.

**Exception:** Persons who take the Regulatory Element after July 28 and do not complete it will not be able to reschedule a new appointment until after August 16.

- → NASD Regulation is granting a 30-day extension to individuals whose windows for fulfilling their Continuing Education requirement expire on July 29 through August 15 to prevent them from becoming inactive for failure to satisfy the Regulatory Element during the System Transition Period.
- Transition Temporary Agent Transfers (Transition TAT)
  - → Member firms can request the transfer of a registered representative's license during the System Transition Period if the person: (1) has no reportable disclosure information; and (2) has left his or her previous member firm employer no more than seven days prior to the request.

Note: Because of changes in the questions on the new Form U-4, member firms should thoroughly review the new Form prior to certifying that the registered representative has no reportable disclosure information.

→ To effect a Transition TAT, member firms must fax a "Transition TAT Request Form" to CRD/Public Disclosure (fax number (301) 212-9158). CRD/PD will then contact the member firm to confirm receipt of the form. To finalize the agent transfer, the member firm must submit a new, nondeficient Form U-4 electronically to Web CRD within 21 days of the Transition TAT request and, at that time, fax to CRD/PD a "Notification" of Form U-4 Filing Transition TAT Form." These two transitional forms will be available on the NASD Regulation Web Site before the System Transition Period begins.

Note: NASD Regulation understands that all states have agreed to participate in the Transition TAT Program; however, as of the date of publication of this Notice, NASD Regulation is awaiting the written confirmation of five states. Please visit the Web CRD Internet Pages at: www.nasdr.com/3400\_web.htm for the complete list of participating states.

- Depositing Funds into CRD Accounts
  - → The NASD Finance
    Department must receive all
    wired or mailed funds by July
    29, 1999, to have those
    deposits show as a credit to a
    firm's account when Web CRD
    is deployed on August 16.
    Member firms should
    anticipate the funds needed to
    process the filings that may
    accrue during the transition
    period to ensure they have an
    appropriate account balance
    for Web CRD deployment on
    August 16.

- → CRD Accounting will continue to process funds received after July 29, but a firm's CRD account will not reflect these deposits until August 16, 1999, at the earliest. Funds credited on August 16, 1999, are not available to pay for transactions until the following day.
- Mass Transfers

For a number of operational and legal reasons, NASD Regulation may not be able to process mass transfer requests shortly before and immediately after the System Transition Period.

Consequently, any member that is aware of, or is contemplating, a mass transfer request anytime after the publication of this *Notice* should contact the CRD/Public Disclosure Department as soon as possible.

### Other Important Notes Regarding The System Transition Period

Deficient Registration Requests

NASD Regulation will purge all registration requests that are "Form" or "Data" deficient on July 31, 1999. Member firms may want to order a roster from CRD/PD to identify registration requests that are currently Form or Data deficient and cure the deficiency by July 29. Any registration requests that are purged due to a Form or Data deficiency must be re-requested electronically after Web CRD deployment.

Pending Registrations

Jurisdictions have until August 2 to approve pending registration

requests filed before the beginning of the System Transition Period. For these final approvals, NASD Regulation will continue to mail blue sheets to notify member firms of approved registrations and Legacy CRD will still be available to run queries. Jurisdictions will not be able to approve through CRD registrations still pending on August 2 until August 16 at the earliest.

Interim Forms Become Obsolete

NASD Regulation anticipates that the Interim Forms (*i.e.*, the

11/97 version of Forms U-4 and U-5 and the 2/98 version of Form BD) will be replaced by the revised forms. Any paper filing made on an Interim Form after July 29 will not be accepted: member firms that are FAQS subscribers or EFT filers may submit electronically on the Interim Forms through July 30. The limited paper filings permitted during the System Transition Period (i.e., Forms U-5 reporting full termination, full BDWs, and initial Form BD applications) and all electronic Web CRD filings must be submitted on the new forms.

 TATs Initiated, But Not Completed, Before July 29, 1999

The filing of a non-deficient Form U-4 is a TAT requirement for a registered representative to obtain a permanent license in a jurisdiction. A conditional registration granted through TAT, prior to the System Transition Period, will terminate as of August 1, 1999, if NASD Regulation does not receive the required non-deficient Form U-4 on, or before, July 29, 1999.

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SEC Approves Rule Amendments Governing Clearing Firms And Their Introducing Firm Clients' Relationship; Effective Date: July 19, 1999

### Suggested Routing

Senior Management
Advertising
Continuing Education
Corporate Finance
Executive Representatives
Government Securities
Institutional
Insurance
Internal Audit
Legal & Compliance
Municipal
Mutual Fund
Operations
Options
Registered Representatives
Registration
Research
Syndicate
Systems
Trading
Training

### **Executive Summary**

On June 2, 1999, the Securities and Exchange Commission (SEC) approved amendments to National Association of Securities Dealers. Inc. (NASD® or Association) Rule 3230, which governs clearing agreements between members, with respect to: (1) the handling of customer complaints about introducing firms that are received by their clearing firms; (2) exception and other reports clearing firms make available to their introducing firm clients to assist them in their supervisory obligations; and (3) clearing firms granting their introducing firm clients check writing privileges on the clearing firm's account.

The amendments, which are substantially the same as amendments to New York Stock Exchange (NYSE) Rule 382 which were also approved on June 2, 1999, will take effect on July 19, 1999; however, members will be given up to 90 days to comply with certain provisions. The deadlines are discussed in more detail below.

Questions regarding this *Notice* may be directed to Samuel Luque, Associate Director, Compliance Department, (202) 728-8472; or Elliott R. Curzon, Assistant General Counsel, Office of General Counsel, (202) 728-8451.

### Background

Recent concerns about questionable sales practices and potentially fraudulent activity by certain introducing firms, and the handling of customer complaints about those firms by their clearing firms, caused NASD Regulation, Inc. (NASD Regulation\*) and the NYSE to examine the relationship between clearing firms and their client introducing firms. The resulting amendments are included in this

Notice. The NASD's and NYSE's amendments address the content and approval of clearing agreements to specify requirements for handling customer complaints; providing, requesting, and retaining exception reports; and issuing checks.

The amendments establish limited requirements to enable the introducing member to carry out its responsibilities under its clearing or carrying agreement with the clearing member, but they are not intended to change the fundamental nature of the relationship between introducing and clearing firms, or otherwise affect any existing rights, responsibilities, or liabilities under law or contract.

### **Description Of Rule Change**

Customer Complaints. It is generally the practice of clearing firms to forward to introducing firms customer complaints they receive relating to matters that are the responsibility of the introducing firm. Under NASD Rule 3070, a member is required to report to the Association any written customer complaint against it involving allegations of theft or misappropriation of funds or securities or of forgery. The failure of introducing firms to comply in a timely manner with the requirements of Rule 3070 when their clearing firms forward customer complaints to them may prevent the Association from receiving reports in a timely manner. Since there is no mechanism other than Rule 3070 designed to provide this information to NASD Regulation, such late reporting undermines the purpose of Rule 3070, which is to provide NASD Regulation with early warning indicators to generate a regulatory response to problems. In addition, receipt by clearing firms of large numbers of complaints regarding introducing firms may be indicative of sales practice problems requiring prompt regulatory attention.

Variable Contracts

To address this concern, new paragraph (b) states that when a clearing firm receives a customer complaint about an introducing firm relating to the functions and responsibilities of the introducing firm, the clearing firm must forward the complaint to the introducing firm and send a copy of the complaint to the introducing firm's Designated Examining Authority (DEA). The requirement may provide an early warning to the DEA of potential problems at introducing firms. The amendment also provides that the clearing agreement must expressly direct and authorize the clearing firm to forward complaints in this way. In addition, the amendment requires that the clearing firm must notify the customer in writing that the complaint was received, and was forwarded to the introducing firm and to the introducing firm's DEA.

Members will be expected to begin handling customer complaints in accordance with these amendments on the effective date of the amendments (July 19, 1999). NASD Regulation's copy of customer complaints should be directed to:

Rule 3230(b) Coordinator Member Regulation Department NASD Regulation, Inc. 1735 K Street, N.W. Washington, D.C. 20006

Exception Reports. All NASD member firms are required under NASD and federal regulations to establish, maintain, and enforce supervisory systems and procedures that are designed to address all areas of a member's business. A key aspect of these supervisory procedures is exception and other compliance reports that a member creates to help meet these supervisory responsibilities. In a fully disclosed clearing arrangement, the clearing member generally provides exception reports that are available to assist the introducing member in carrying out its supervisory

obligations. In addition, officers and managers of introducing members should be on notice of the reports and information that were available to them in meeting their supervisory and monitoring obligations.

Paragraph (c) of the amendments addresses these issues.

New paragraph (c)(1) requires the clearing firm to provide each introducing firm, both at the commencement of the introducing/clearing arrangement and annually thereafter (can be a single date for all agreements instead of the anniversary date of each agreement), a list or description of all exception or other reports that it offers to the introducing firm to assist it in supervising its activities, monitoring its accounts, and carrying out its functions and responsibilities under the clearing agreement. Paragraph (c)(1) also requires the introducing member to notify promptly the clearing member, in writing, of those specific reports offered by the clearing member that the introducing member requires to supervise and monitor its customer accounts. Failure to provide notification would not only be a violation of Rule 3230, but also of Rule 3010, which requires that members establish and maintain proper supervisory systems.

The staff recognizes that some clearing firms do not create such reports, but instead provide data and data formatting software to their introducing clients that allow the introducing firms to prepare their own reports. Clearing firms can comply with this provision where they communicate with their introducing firms about the data and data formatting the clearing firms can provide so that the introducing firms can determine which reports they will need to create in order to meet their supervisory and monitoring needs.

Paragraph (c)(2) requires the clearing firm to retain, as part of its books and records, copies of any

reports requested or provided to the introducing firm. The provision permits a clearing firm to meet the requirement if it retains the data that was used to prepare the report, but only if the clearing member, at the request of the DEA, can recreate the report or provide the data and data formatting that was used to prepare the report. Similarly, if the clearing firm provided data and report formatting to the introducing firm, the clearing firm could provide this to the DEA to fulfill this requirement.

Paragraph (c)(3) requires that each year, no later than July 31, the clearing member must notify the introducing member's chief executive and compliance officers of the reports offered to the introducing member pursuant to paragraph (c)(1), and the reports requested by or supplied to the introducing firm as of such date. The clearing member must also provide a copy of the notice to the introducing firm's DEA. This provision is designed to make the responsible principals of the introducing firm aware of the reports and data available from the clearing firm to assist the introducing firm in meeting supervisory and other functions and responsibilities under the clearing agreement, and to alert the DEA.

Clearing firm members and their introducing firm clients will be expected to provide notice of the exception reports available, the reports they are requesting, and the notices specified under the provisions of paragraphs (c)(1) and (c)(3) 90 days after the effective date of these amendments, or October 18, 1999.

Finally, new paragraph (c)(4) grants the staff of NASD Regulation the authority to grant exemptions from the requirements of the rule for good cause shown in instances in which the clearing and introducing firms are affiliated, and compliance with the rule could disrupt established integrated compliance systems.

Check Writing. Under new paragraph (d), the clearing agreement may permit the introducing firm to issue checks to the introducing firm's customers that are drawn on the clearing member's account upon written representation from the introducing firm that it has established, and will maintain and enforce, supervisory procedures with respect to the issuance of negotiable instruments. This provision is not intended to affect any liability that a clearing firm may otherwise have in connection with checks for which the clearing firm acts as drawer or maker. Instead, the rule simply requires introducing firms to establish clear safeguards and procedures that are satisfactory to the clearing member when the introducing member issues checks to customers drawn on the clearing member's account.

Clearing firm members will be required to comply with the requirements of paragraph (d) with respect to all new agreements on the effective date of the amendments (July 19, 1999). With respect to all existing agreements, as of October 18, 1999, members will be required to revoke check writing privileges unless the requirements of paragraph (d) have been complied with.

Finally, NASD Regulation notes that an interpretation regarding the introducing broker's ability to issue checks or drafts on behalf of the clearing firm was issued by the SEC's Division of Market Regulation to the NASD in 1993 and is summarized under the "Customer Protection Rule" section in the NASD's publication entitled NASD Guide To Rule Interpretations. The interpretation states that a firm that meets the requirements of Exchange Act Rule 15c3-3(k)(2)(ii) may issue checks or drafts on behalf of the clearing firm so long as:

the bank account is in the name of the clearing firm;

- (ii) the written contract between the two firms specifies that the introducing firm is acting as agent for the clearing firm; and
- (iii) the clearing firm does not debit customer brokerage accounts for checks issued by the introducing firm and drawn on the account until the checks clear (as an alternative to not debiting a customer's account, members are permitted to reduce debits in their Reserve Formula by an amount equal to outstanding customer checks).

### **Text Of Amendments**

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

#### 3230. Clearing Agreements

- (a) All clearing or carrying agreements entered into by a member, except where any party to the agreement is also subject to a comparable rule of a national securities exchange, shall specify the respective functions and responsibilities of each party to the agreement and shall, at a minimum, specify the responsibility of each party with respect to each of the following matters:
- opening, approving and monitoring customer accounts;
- (2) extension of credit;
- (3) maintenance of books and records;
- (4) receipt and delivery of funds and securities;
- (5) safeguarding of funds and securities;
- (6) confirmations and statements;
- (7) acceptance of orders and execution of transactions;

- (8) whether, for purposes of the Commission's financial responsibility rules adopted under the Act, and the Securities Investor Protection Act, as amended, and regulations adopted thereunder, customers are customers of the clearing member; and
- (9) the requirement to provide customer notification under paragraph [(d)] (g) of this Rule.
- (b) (1) In order for the introducing member to carry out its functions and responsibilities under the agreement, each clearing member must forward promptly any written customer complaint received by the clearing member regarding the introducing member or its associated persons relating to functions and responsibilities allocated to the introducing member under the agreement directly to: (A) the introducing member; and (B) the introducing member's examining authority designated under Section 17 of the Act ("DEA") (or, if none, to its appropriate regulatory agency or authority). The clearing or carrying agreement must specifically direct and authorize the clearing member to do so.
- (2) The clearing member must also notify the customer, in writing, that it has received the complaint, and that the complaint has been forwarded to the introducing member and to the introducing member's DEA (or, if none, to its appropriate regulatory agency or authority).
- (3) Pursuant to the 9600 Series, the Association may exempt a member or person associated with a member from the requirements of this paragraph for good cause shown in instances where the introducing organization is an affiliated entity of the carrying organization.

- (c) (1) A clearing member, when it enters into a clearing agreement, must immediately, and annually thereafter, provide the introducing member a list or description of all reports (exception and other types of reports) which it offers to the introducing member to assist the introducing member in supervising its activities, monitoring its customer accounts, and carrying out its functions and responsibilities under the clearing agreement. The introducing member must notify promptly the clearing member, in writing, of those specific reports offered by the clearing member that the introducing member requires to supervise and monitor its customer accounts.
- (2) The clearing member must retain as part of its books and records required to be maintained under the Act and the Association's rules, copies of the reports requested by or provided to the introducing member. For purposes of this Rule, the clearing member will be in compliance with the requirements of this paragraph if it retains the data from which the original report was produced, provided, the clearing member can, at the request of the DEA (or, if none, to its appropriate regulatory agency or authority), either (A) recreate the report; or (B) provide the data and the data formatting that was used to prepare the report.

- (3) Each year, no later than July 31, the clearing member must notify in writing the introducing member's chief executive and compliance officers of the reports offered to the introducing member pursuant to paragraph (c)(1) and the reports requested by or supplied to the introducing member as of such date. The clearing member must also provide a copy of the notice to the introducing member's DEA (or, if none, to its appropriate regulatory agency or authority).
- (4) Pursuant to the 9600 Series, the Association may exempt a member or person associated with a member from the requirements of this paragraph for good cause shown in instances where the introducing organization is an affiliated entity of the carrying organization.
- (d) The clearing or carrying agreement may permit the introducing member to issue negotiable instruments directly to the introducing member's customers using instruments for which the clearing member is the maker or drawer. The clearing member may not grant the introducing member the authority to issue negotiable instruments until the introducing member has notified the clearing member in writing that it has established, and will maintain and enforce, supervisory procedures with respect to the issuance of such instruments that are satisfactory to the carrying organization.

- [(b)] (e) Whenever a clearing member designated to the Association for oversight pursuant to Section 17 of the Act, or a rule of the Commission adopted thereunder, amends any of its clearing or carrying agreements with respect to any item enumerated in subparagraphs (a)(1) through (a)(9) or enters into a new clearing or carrying agreement with an introducing member, the clearing member shall submit the agreement to the Association for review and approval.
- [(c)] (f) Whenever an introducing member designated to the Association for oversight pursuant to Section 17 of the Act. or a rule of the Commission adopted thereunder, amends its clearing or carrying agreement with a clearing member designated to another self-regulatory organization for oversight with respect to any item enumerated in subparagraphs (a)(1) through (a)(9) enters into a new clearing agreement with another clearing member, the introducing member shall submit the agreement to its local Association district office for review.
- [(d)] (g) Each customer whose account is introduced on a fully disclosed basis shall be notified in writing upon the opening of his account of the existence of the clearing or carrying agreement.

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SEC Grants Exemption From Rule 15c2-11 For Securities Being Removed From The OTCBB Pursuant To The NASD Eligibility Rule

### **Suggested Routing**

Senior Management
Advertising
Continuing Education
Corporate Finance
Executive Representatives
Government Securities
Institutional
Insurance
Internal Audit
Legal & Compliance
Municipal
Mutual Fund
Operations
Options
Registered Representatives
Registration
Research
Syndicate
Systems
Trading
Training

### **Executive Summary**

The Securities and Exchange Commission (SEC) issued a letter on June 3, 1999, granting an exemption from SEC Rule 15c2-11 under the Securities Exchange Act of 1934 (Exchange Act) for securities that were quoted on the OTC Bulletin Board® (OTCBB) on or before January 4, 1999, that will no longer be eligible to be quoted on the OTCBB due to the phase-in implementation of National Association of Securities Dealers. Inc. (NASD®) Rule 6530 (the Eliqibility Rule).1 A copy of the SEC's letter is attached to this Notice.

Questions regarding this *Notice* may be directed to the OTC Compliance Unit at (301) 208-2802.

### **Discussion**

On January 4, 1999, the SEC approved amendments to NASD Rules 6530 and 6540 (Rules) to limit quotations on the OTCBB to the securities of companies that report their current financial information to the SEC, banking, or insurance regulators.<sup>2</sup> The new Rules are intended to ensure that investors in OTCBB securities have access to reliable and current information about the issuers of these securities.

The new Eligibility Rule was effective immediately for securities not quoted on the OTCBB on January 4, 1999. Issuers whose securities were quoted on the OTCBB as of January 4, 1999, and have continued to be quoted will be required to comply with the Eligibility Rule according to a phase-in schedule starting in July 1999 and continuing through June 2000 (see Notice to Members 99-43 to view the phase-in schedule). The delayed effectiveness of the Rule is designed to enable broker/dealers, investors, and issuers to take appropriate action.

The Eligibility Rule provides that, in order for a domestic issuer to continue being quoted on the OTCBB, the issuer must be required to make periodic filings with the SEC, or with banking or insurance regulators, and be current with those filings. The NASD will affix a modifier "E" on the security symbol of any security issuer that does not meet the requirements of the Eligibility Rule. The addition of the modifier will be publicly reported on the OTCBB Daily List, which is available on the OTCBB Web Site at www.otcbb.com. The "E" also will be evident to the quoting broker/dealers when they access the security on the Nasdaq Workstation II®.

Once an issuer is deemed not to be in compliance with the Eligibility Rule, the security may continue to be quoted on the OTCBB for a 30- or 60-calendar day grace period from date the "E" modifier was appended on the security symbol, depending on the type of issuer.3 After the grace period, quotations in non-compliant securities will not be permitted on the OTCBB, and member firms will be prohibited from quoting the issuer's security on the OTCBB. The NASD announced approval of the OTCBB Eligibility Rule and the phase-in schedule in Notice to Members 99-15, and announced a modified phase-in schedule in Notice to Members 99-43.

The exemption granted by the SEC from Rule 15c2-11 will permit broker/dealers to publish or submit quotations in other quotation media, including the National Quotation Bureau's Pink Sheets, for securities being removed from the OTCBB pursuant to NASD Rule 6530 subject to the following conditions:

 A broker or dealer must have in its records the information specified in paragraphs (a)(5)(i), (a)(5)(ii), and (a)(5)(viii) of Rule 15c2-11;

Variable Contracts

- The security was quoted in the OTCBB from January 4, 1999, until the date of its removal<sup>4</sup>;
- The NASD has appended the covered security's symbol to indicate that it is not compliant with Rule 6530; and
- 4. A broker or dealer must have published quotations in the covered security in the OTCBB on at least 12 business days during the preceding 30 calendar days, with no more than four consecutive business days without quotations.

The exemption will expire when the implementation of the Eligibility Rule is complete.<sup>5</sup>

To publish or submit quotations for a security pursuant to this exemption, a broker/dealer must comply with NASD Rule 6740 and, during the 30-or 60-day period that the security's symbol reflected on the OTCBB is appended with the "E" modifier, complete and mail the Exemption Form to:

OTC Compliance Unit NASD Regulation, Inc. 9513 Key West Avenue Rockville, MD 20850 or fax it to (301) 208-2806

A copy of the Exemption Form is attached to this *Notice* and is also available on the OTCBB Web Site.

The form must be received by the OTC Compliance Unit during the 30- or 60-calendar day grace

period commencing after the "E" is appended on the security symbol.

### 15c2-11 Exemption Request Form - Eligibility Rule

The information that must be provided on this form includes:

- The issuer's name and the issuer's predecessor in the event of a merger or reorganization within the previous 12 months;
- The issuer's address;
- A contact name and telephone number for the issuer;
- The nature of the issuer's business;
- The symbol(s) for the security(ies); and
- The security's CUSIP number (if applicable).
- If a broker/dealer is initiating a quotation with a priced entry, the firm must specify the basis for determining the price and the factors considered in making that determination.
- If the broker/dealer's initial quotation does not include a priced entry, the firm must supplement its filing before inserting a priced entry.
- The form must be signed by a principal of the member firm.

### **Endnotes**

<sup>1</sup>Letter from Larry E. Bergmann, Senior Associate Director, SEC, to Alden S. Adkins, General Counsel, NASD Regulation, Inc., dated June 3, 1999.

<sup>2</sup>See Release No. 34-40878 (January 4, 1999), 64 FR 1255 (January 8, 1999) (File No. SR-NASD-98-51).

<sup>3</sup>Issuers that file with the SEC will have a 30-day grace period before they can no longer be quoted on the OTCBB; issuers that file with other regulators will have a 60-day grace period.

<sup>4</sup>Therefore, if the SEC suspends trading in the security pursuant to Section 12(k) under the Exchange Act, this exemption does not apply to that security.

<sup>5</sup>After that time, broker/dealers that wish to publish a quotation in another quotation medium in an OTCBB security that becomes ineligible for the OTCBB system will be required to comply with Rule 15c2-11. The SEC has recently reproposed amendments to Rule 15c2-11. See Release No. 34-41110 (February 25, 1999), 64 FR 11124 (March 8, 1999). Broker/dealers would be required to comply with any new provisions of Rule 15c2-11, and this exemption may be modified or revoked upon adoption of any amendments

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### UNITED STATES SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C., 20549

June 3, 1999

Mr. Alden S. Adkins
Executive Vice President and General Counsel
NASD Regulation, Inc.
1735 K Street, NW
Washington, D.C. 20006-1500

Re: Exemption Request from Rule 15c2-11

File No. 99-162

Dear Mr. Adkins:

In your letter dated June 3, 1999, as supplemented by conversations with the staff, you request an exemption from Rule 15c2-11 (Rule 15c2-11 or Rule) under the Securities Exchange Act of 1934 (Exchange Act) to permit brokers or dealers to publish quotations in other quotation mediums<sup>1</sup> for securities that are no longer eligible to be quoted on the Over-the-Counter Bulletin Board (OTCBB) due to the implementation of National Association of Securities Dealers, Inc. (NASD) Rule 6530 (Eligibility Rule) without complying with certain provisions of Rule 15c2-11. This response is attached to the enclosed photocopy of your correspondence.

On January 4, 1999, the Commission approved amendments to NASD Rule 6530 to limit the securities that a member can quote on the OTCBB, operated by the NASD, to the securities of issuers that are registered under Section 12 of the Exchange Act, certain insurance companies, banks, savings associations, and registered closed-end investment companies, but only if they are current in their reporting obligations. The Commission also approved amendments to NASD Rule 6540 to prohibit a member from quoting a security on the OTCBB unless the security is eligible under Rule 6530 and the issuer is current in its reporting obligations. The new Eligibility Rule was effective immediately for securities not quoted on the OTCBB on January 4, 1999. Issuers whose securities were quoted on the OTCBB on January 4, 1999, and have continued to be quoted, will be required to comply with the Eligibility Rule according to a phase-in schedule starting on July 1, 1999 and continuing through June 2000. Thus, starting on July 1, 1999, a potentially large number of securities will no longer be eligible for quotation on the OTCBB.

3

Rule 15c2-11 governs the publication of quotations for securities in a quotation medium other than a national securities exchange or Nasdaq. Quotation medium is defined in section (e)(1) of the current Rule. Quotation mediums include the Over-the-Counter Bulletin Board (OTCBB) and the Pink Sheets operated by the National Quotation Bureau L.L.C.

See Release No. 34-40878 (Jan. 4, 1999).

Id.

Mr. Alden S. Adkins Executive Vice President and General Counsel NASD Regulation, Inc. June 3, 1999 Page 2

You request a limited exemption for brokers or dealers that are quoting the securities of companies that would have remained eligible to be quoted on the OTCBB if Rule 6530 had not been adopted. The exemption would permit brokers or dealers that have been quoting these securities on the OTCBB to quote these securities in other quotation mediums without interruption immediately following removal from the OTCBB.

### Response:

Rule 15c2-11 prohibits a broker or dealer from publishing any quotation for an OTC security (covered security), or from submitting any such quotation for publication, in any quotation medium, unless such broker or dealer has in its records and reviews the information specified in the Rule regarding the security and its issuer, or unless an exception or exemption from the Rule's requirement is available. Paragraph (d) of the Rule requires the broker or dealer submitting a quotation to an interdealer quotation system for any security of an issuer included in paragraph (a)(5) of Rule 15c2-11 to furnish the information described in paragraph (a)(5) to the interdealer quotation system, in the form prescribed by that system, at least three business days before the quotation is published or submitted.

Based upon your representations and the facts presented, the Commission, except as stated below, hereby grants an exemption from Rule 15c2-11, pursuant to paragraph (h), to permit broker-dealers to publish or submit quotations in other quotation mediums for covered securities being removed from the OTCBB pursuant to Rule 6530. This exemption is subject to the following conditions:

- Each broker or dealer relying upon this exemption must have in its records information specified in paragraphs (a)(5)(i), (a)(5)(ii), and (a)(5)(viii) of Rule 15c2-11;
- The security was quoted in the OTCBB from January 4, 1999, until the date of its removal;<sup>4</sup>
- The NASD has appended the covered security's symbol to indicate that it is not compliant with Rule 6530;

Therefore, if the Commission suspends trading in a covered security pursuant to Section 12(k) under the Exchange Act, this exemption does not apply to that security. Mr. Alden S. Adkins
Executive Vice President and General Counsel
NASD Regulation, Inc.
June 3, 1999
Page 3

- Each broker or dealer relying upon this exemption must have published quotations in the covered security in the OTCBB on at least 12 business days during the 30 calendar days preceding its removal from the OTCBB, with no more than four consecutive business days without quotations; and
- This exemption will expire when the implementation of the Eligibility Rule is complete.<sup>5</sup>

This exemption from Rule 15c2-11 is based solely on the facts and circumstances described above and is strictly limited to the application of Rule 15c2-11 to the quotations described above. The publications or submission of quotations by a broker or dealer in a quotation medium for a security based upon the foregoing exemption should be discontinued if any material change occurs concerning any of those facts or representations. In addition, brokers or dealers are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 10(b) and 15(c) and Rules 10b-5 and 15c1-2 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the brokers or dealers. We express no view with respect to any other questions that the proposed transactions may raise, including, but not limited to, the applicability of any other federal or state laws to the proposed transactions.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority,

Ja ve Buran

Larry E. Bergmann

Senior Associate Director

After that time, broker or dealers that wish to publish a quotation in another quotation medium in an OTCBB security that becomes ineligible for the OTCBB system will be required to comply with Rule 15c2-11. The Commission has recently reproposed amendments to Rule 15c2-11. See Securities Exchange Act Release No. 34-41110 (March 8, 1999). Broker-dealers would be required to comply with the provisions of Rule 15c2-11 in effect at that time, and this exemption may be modified or revoked upon adoption of any amendments.

### **NASD**

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No minimum usage required

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

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NASD Will No Longer Impose Censures For Some Violations

### **Suggested Routing**

Senior Management
Advertising
Continuing Education
Corporate Finance
Executive Representatives
Government Securities
Institutional
Insurance
Internal Audit
Legal & Compliance
Municipal
Mutual Fund
Operations
Options
Registered Representatives
Registration
Research
Syndicate
Systems
Trading
Training

### **Executive Summary**

On June 10, 1999, the National Adjudicatory Council (NAC) adopted a new policy that provides that censures will no longer be imposed for certain designated violations when the total monetary sanction is \$5,000 or less, and when bars or suspensions are imposed. Members are directed to attach this *Notice to Members* as an amendment to their *NASD Sanction Guidelines*.

Questions concerning this new policy may be directed to Shannon Lane, Attorney, Office of General Counsel, NASD Regulation, Inc., at (202) 728-6904.

### **Background**

The National Association of Securities Dealers, Inc. (NASD® or Association) may impose sanctions on member firms and persons associated with member firms for violations of the federal securities laws, rules of the Municipal Securities Rulemaking Board (MSRB), and the Association's rules.

When disciplining members for such violations, the NASD may impose any fitting sanction including monetary sanctions (e.g., fines, disgorgement, and restitution) and non-monetary sanctions (e.g., censures, suspensions, bars, and expulsions). The NASD Sanction Guidelines recommend a range of monetary and non-monetary sanctions for particular violations.

This Notice to Members is issued to inform the membership of a new censure policy adopted by the NAC at its June 10, 1999 meeting. Under this new policy, the NASD has identified certain violations for which it will no longer impose censures when relatively low monetary sanctions are imposed. Accordingly, the NASD will not impose censures when the total monetary sanction for any disciplinary action, regardless of the number of violations alleged, is \$5,000 or less (including any fine, or order of restitution or disgorgement)1 and the violation(s) at issue consist solely of one or more of the violations listed below.2

### Violations that will no longer be subject to censure when monetary sanctions of \$5,000 or less are imposed

### **Quality of Markets violations**

- ACT Violations Rule 6100 Series
- Backing Away
- Best Execution and Interpositioning
- Confirmation of Transactions (SEC Rule 10b-10)
- · ECN Display Rule
- Failure to Display Minimum Size in Nasdaq<sup>®</sup> Securities, CQS Securities, and OTC Bulletin Board Securities
- Fixed Income Pricing System Trade Reporting and Participant and Quotation Obligations
- · Limit Order Display Rule
- Limit Order Protection Rule
- Locked/Crossed Market
- Options Exercise and Positions Limits
- · Options Positions Reporting Late Reporting and Failing to Report
- Passive Market Making
- SelectNet<sup>™</sup> Text Messages
- · Short Sale Violations
- SOES<sup>™</sup> Rules
- · Trades Executed During a Trading Halt
- Trade Reporting Late Reporting; Failing to Report; Inaccurate Reporting

Variable Contracts

### Violations that will no longer be subject to censure when monetary sanctions of \$5,000 or less are imposed (continued)

### Qualification and Membership violations

- · Continuing Education Firm Element
- Continuing Education Regulatory Element
- Registration Violations

### Reporting/Provision of Information violations

- · FOCUS reports Late Filing
- Form BD-Y2K Reports Late Filing
- Forms U-4/U-5 Late Filing; Failure to File; Inaccurate Forms or Amendments
- MSRB Rule G-36 Untimely Filing of Offering Documents With MSRB; Late Filing; Failure to File
- MSRB Rules G-37/G-38 Reporting Late Filing; Failing to File
- Regulation M Reports Late Filing; Failing to File
- Reportable Events Under Conduct Rule 3070 Late Reporting; Failing to Report; Inaccurate Reports
- Request for Automated Transmission of Trading Data (Blue Sheets) Failure to Respond in a Timely and Accurate Manner

### Financial and Operational Practices violations

- Consumer Protection Rule
- Net Capital Violations
- Recordkeeping Violations
- Violations of SEC Rule 17a-11 (Notification Provisions for Broker/Dealers)

### Supervision violation

Supervisory Procedures - Deficient Written Supervisory Procedures<sup>3</sup>

In addition, because bars and suspensions are severe sanctions that already signify the Association's official disapproval of a respondent's conduct, censures will not be imposed in cases where the respondent is barred or suspended in any capacity regardless of the nature of the violation.

The new policy applies to all Letters of Acceptance, Waiver, and Consents and Offers of Settlement executed by respondents beginning on June 11, 1999, and to all NAC

and Office of Hearing Officer decisions decided and issued on or after June 11, 1999.

Members are directed to attach this *Notice to Members* as an amendment to their *NASD Sanction Guidelines*.

### **Endnotes**

<sup>1</sup>Censures will be imposed, however, when fines above \$5,000 are reduced or eliminated due to a respondent's demonstrated inability to pay or bankruptcy.

<sup>2</sup>This list largely consists of violations as found in the *NASD Sanction Guidelines*. To the extent that a particular guideline indicates that its application is appropriate for violations of an analogous rule, violations of that analogous rule will not be subject to censure when monetary sanctions of \$5,000 or less are imposed.

<sup>3</sup>In addition, censures will not be imposed for violations disposed of under the Minor Rule Violation Plan pursuant to NASD Procedural Rule 9216(b) and IM-9216.

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Fixed Income Pricing System Additions, Changes, And Deletions As Of May 24, 1999

### **Suggested Routing**

- Senior Management
- ☐ Advertising
- ☐ Continuing Education
- Corporate Finance
- ☐ Government Securities
- Institutional
- ☐ Insurance
- ☐ Internal Audit
- Legal & Compliance
- Municipal
- ☐ Mutual Fund
- OperationsOptions
- ☐ Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- ☐ Training
- ☐ Variable Contracts

As of May 24, 1999, the following bonds were added to the Fixed Income Pricing System<sup>SM</sup> (FIPS<sup>®</sup>).

Symbol	Name	Coupon	Maturity
AEC.GA	Associated Estates Realty Corp.	8.375	04/15/00
AEC.GB	Associated Estates Realty Corp.	7.100	11/15/02
AEN.GE	AMC Entertainment Inc.	9.500	02/01/11
AES.GG	AES Corporation	9.500	06/01/09
ALIL.GA	Alliance Laundry Sys LLC/Corp.	9.625	05/01/08
AMAX.GA	American Axle & Mfg. Inc.	9.750	03/01/09
AMSN.GA	American Standard Inc.	8.250	06/01/09
ARCH.GA	ARCO Chem Co.	9.800	02/01/20
ARCH.GB	ARCO Chem Co.	9.900	11/01/00
ARCH.GC	ARCO Chem Co.	10.250	11/01/10
ARCH.GD	ARCO Chem Co.	9.375	12/15/05
BDGM.GE	Building Materials Corp.	8.000	12/01/08
BGFW.GB	Big Flower Press Holdings Inc.	8.625	12/01/08
COUC.GA	Continental Resources Inc.	10.250	08/01/08
COVD.GB	Covad Communication Group Inc.	12.500	02/15/09
DOAP.GA	Doane Pet Care Co.	9.750	05/15/07
FRO.GA	Frontier Corp.	7.250	05/15/04
GALU.GA	Golden Northwest Aluminum Inc.	12.000	12/15/06
GHV.GD	Genesis Health Ventures Inc.	9.875	01/15/09
HPK.GA	Hollywood Park Inc. Series B	9.250	02/15/07
LPHH.GA	Lifepoint Hospital Holdings Inc.	10.750	05/15/09
MFNX.GA	Metromedia Fiber Network Inc. Ser	B10.000	11/15/08
MHTG.GA	Mohegan Tribal Gaming Authority	8.750	01/01/09
MHTG.GB	Mohegan Tribal Gaming Authority	8.125	01/01/06
NXLK.GD	NextLink Communications Inc.	12.250	06/01/09
NXLK.GE	NextLink Communications Inc.	10.750	11/15/08
NXLK.GF	NextLink Communications Inc.	10.750	06/01/09
OSG.GA	Overseas Shipholding Group Inc.	8.000	12/01/03
OSG.GB	Overseas Shipholding Group Inc.	8.750	12/01/13
PDE.GA	Pride International Inc.	10.000	06/01/09
PZN.GA	Prison Realty Trust Inc.	12.000	06/01/06
QWST.GF	Quest Communications Intl Inc. Ser		11/01/08
RTHL.GA	Rain Tree Healthcare Corp.	11.000	01/01/03
SFS.GA	Santa Fe Snyder Corp.	8.050	06/15/04
SFXE.GB	SFX Entertainment Inc.	9.125	12/01/08
THC.GG	Tenet Healthcare Corp.	7.625	06/01/08
THC.GH	Tenet Healthcare Corp.	8.125	12/01/08
UGLY.GA	Ugly Duckling Corp.	12.000	10/23/03
UGLI.GA	ogly buckling corp.	12.000	10/23/03

As of May 24, 1999, the following bonds were deleted from FIPS.

Name	Coupon	Maturity
Accused the second	40.000	0=/04/00
Affiliated Newspaper Invts Inc.	13.250	07/01/06
Aztar Corp.	11.000	10/01/02
Borg-Warner Security Corp.	9.625	03/15/07
Kelley Oil & Gas Corp.	13.500	06/15/99
	Affiliated Newspaper Invts Inc. Aztar Corp. Borg-Warner Security Corp.	Affiliated Newspaper Invts Inc. 13.250 Aztar Corp. 11.000 Borg-Warner Security Corp. 9.625

NASD Notice to Members 99-60

July 1999

Symbol	Name	Coupon	Maturity
MUOP.GA	Muse Air Corp.	16.875	06/15/99
NWCG.GA	NWCG Holdings Corp.	13.500	06/15/99
RVSU.GC	Revlon Consumer Products Corp.	9.500	06/01/99
SFR.GA	Santa Fe Energy Resources Inc.	11.000	05/15/04
TCOM.GC	Tele-Communications Inc.	11.125	10/01/03
TWA.GE	Trans World Airlines Inc.	10.250	06/15/03
VIA.GA	Viacom Inc.	8.000	07/07/06
WAX.GD	Waxman Industries Inc.	13.750	06/01/99

As of May 24, 1999, changes were made to the symbols of the following FIPS bonds:

New Symbol	Old Symbol	Name	Coupon	Maturity	
BWS.GA	BG.GB	Brown Shoe Inc.	9.500	10/15/06	
COVD.GA	CVDU.GA	Communication Group Inc. Series B	13.500	03/15/08	
TWRS.GA	CWNI.GA	Crown Castle Int. Inc.	10.625	11/15/07	
TWRS.GB	CWNI.GB	Crown Castle Int. Inc.	9.000	05/15/11	
TWRS.GC	CWNI.GC	Crown Castle Int. Inc.	10.375	05/11/11	

All bonds listed above are subject to trade-reporting requirements. Questions pertaining to FIPS trade-reporting rules should be directed to Stephen Simmes, Market Regulation, NASD Regulation, at (301) 590-6451.

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

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SEC Approves Changes To Rule 4613—Firm Quotation Requirements; Effective Date: August 2, 1999

### **Suggested Routing**

Senior Management
Advertising
Continuing Education
Corporate Finance
Executive Representatives
Government Securities
Institutional
Insurance
Internal Audit
Legal & Compliance
Municipal
Mutual Fund
Operations
Options
Registered Representatives
Registration
Research
Syndicate
Systems
Trading
Training

### **Executive Summary**

On June 22, 1999, the Securities and Exchange Commission (SEC) approved changes to National Association of Securities Dealers, Inc. (NASD®) Rule 4613(b) regarding quotation updates following execution of an order.

NASD Rule 4613(b), as now amended, will require a Market Maker to disseminate an inferior quote whenever the Market Maker fails to execute the full size of an incoming order that is at least one normal unit of trading greater than the Market Maker's published quotation size. The rule change will also modify IM-4613 to prohibit the use of automatic quote updating in violation of Rule 4613(b).

The NASD and The Nasdaq Stock Market, Inc. (The Nasdaq Stock Market®) believe that this change will improve market efficiency by requiring Market Makers to display their true and intended quote size, thereby increasing market transparency and price discovery. This *Notice* is being issued to alert members to the changes involved, which will become effective on August 2, 1999.

Questions concerning this *Notice* may be directed to the Office of General Counsel, The Nasdaq Stock Market, at (202) 728-8294; or the Legal Section, Market Regulation, NASD Regulation, Inc. (NASD Regulation\*) at (301) 590-6410.

### **Background And Summary**

NASD Rule 4613(b) (Rule) sets forth the requirement that a Market Maker execute an order for at least the number of shares displayed in its quotation at the displayed price. The Rule is being modified to address situations where a Market Maker displays the minimum quotation size required, receives an incoming order larger than its displayed size, fills the

order only up to its displayed size, and remains at the inside quote prepared to accept another order at the minimum size. Although the Market Maker has complied with the current NASD Rule 4613(b) and other applicable quotation requirements (NASD Rule 3320, "Offers at Stated Prices," IM-3320, "Firmness of Quotations." and Exchange Act Rule 11Ac1-1), its continued display of the same price and size indicates that it was actually willing to buy more than the number of shares displayed. This practice creates opportunities for "gaming," hinders price discovery, leads to locked/crossed markets, and increases transactions costs.

To remedy this inefficient trading scenario, subsection (2) is being added to the Rule which will mandate that a Market Maker disseminate an inferior quote whenever it fails to execute the full size of an incoming order that is at least one normal unit of trading greater than its published quotation size. The following scenario best describes the behavior to be mandated under Rule 4613(b)(2):

Market Maker #1 (MM1) is bidding \$10 for 100 shares of ABCD. Order Entry Firm #1 (OE1) sends a preferenced SelectNet<sup>™</sup> order to MM1 to sell 1,000 shares of ABCD at \$10. MM1 partially executes OE1's 1,000-share order by buying 100 shares of ABCD.

Prior to implementation of these amendments, it would be permissible for MM1 to continue quoting 100 shares at \$10, thereby forcing OE1 to potentially execute an additional nine transactions to sell the 1,000 shares it offered in the original order. Under the amended Rule, however, MM1 must immediately move its quotation to an inferior price for failing to execute the entire 1,000-share order. However, if OE1's 1,000

Variable Contracts

shares had been offered as an all-ornone order, MM1 would be permitted to decline the order and remain at its current quotation.<sup>1</sup>

IM-4613 is also being modified to prohibit a Market Maker from using an automatic quote updating system in any manner that would violate the Rule, as amended.

The modified text of the Rule and IM-4613, which will become effective on Monday, August 2, 1999, is as follows.

### **Text Of Amendments**

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

#### 4613. Character of Quotations

- (a) No changes
- (b) Firm Quotations
  - (1) A market maker that receives an offer to buy or sell from another member of the Association shall execute a transaction for at least a normal unit of trading at its displayed quotations as disseminated in The Nasdaq Stock Market at the time of receipt of any such offer. If a market maker displays

a quotation for a size greater than a normal unit of trading, it shall, upon receipt of an offer to buy or sell from another member of the Association, execute a transaction at least at the size displayed.

(2) If a market maker, upon receipt of an offer to buy or sell from another member of the Association in any amount that is at least one normal unit of trading greater than its published quotation size as disseminated in The Nasdaq Stock Market at the time of receipt of any such offer, executes a transaction in an amount of shares less than the size of the offer, then such market maker shall, immediately after such execution, display a revised quotation at a price that is inferior to its previous published quotation. The failure of a market maker to execute the offer in an amount greater than its published quotation size shall not constitute a violation of subparagraph (b)(1) of this rule.

(c) - (e) No changes

### IM-4613. Autoquote Policy

(a) No changes

(b) Exceptions to the General **Prohibition** - Automated updating of quotations is permitted when: (1) the update is in response to an execution in the security by that firm (such as execution of an order that partially fills a market maker's quotation size), and is in compliance with Rule 4613(b)(2); (2) it requires a physical entry (such as a manual entry to the market maker's internal system which then automatically forwards the update to Nasdaq); (3) the update is to reflect the receipt, execution, or cancellation of a customer limit order; or (4) an electronic communications network as defined in SEC Rule 11Ac1-1(a)(8) is required to maintain a two-sided quotation in Nasdaq for the purpose of meeting Nasdaq system design requirements.

### **Endnote**

<sup>1</sup>Please note that while NASD Regulation will fully investigate reports of alleged violations of Rule 4613(b)(2) for future disciplinary action, NASD Regulation will not attempt to obtain contemporaneous trade executions based on such claims.

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### NASD Rule Filing Status

Rule Filing Status As Of July 7, 1999

### **NASD Rule Filing Status**

The following is a list of rule filings by the National Association of Securities Dealers, Inc. (NASD® or Association) that are either pending at the Securities and Exchange Commission (SEC) or recently have been approved by the SEC and have not been announced in a Notice to Members. The information is current as of July 7, 1999. Copies of rule filings (and any amendments thereto), the SEC release publishing the rule proposal for comment, and the SEC release approving the rule change are available from the SEC Public Reference Room at (202) 942-8090, or from Christopher Leigh, NASD Office of General Counsel, at (202) 728-8236 or via e-mail at leighc@nasd.com(in certain cases a fee may be required). NASD rule changes are not effective until approved by the SEC.

### Rule Filings That Have Not Been Published For Comment By The SEC

#### 99-32

Amend Rule 6750 to provide for limited discretionary authority among Nasdaq® senior management to reduce the minimum quotation size for certain securities quoted at a price exceeding \$200 in the OTC Bulletin Board.

### 99-31

Amend Rule 7010 to permit NASD members that currently report trades to the Nasdaq Workstation I to instead use the Nasdaq Automated Confirmation Transaction Service<sup>™</sup> (ACT<sup>™</sup>) Desk to report trades to ACT, provided the members report an average of 20 or fewer trades per day. Amendment No. 1 filed with the SEC on June 17, 1999.

### 99-29

Amend Rule 7010 to extend the pilot program for an additional six months in order to provide a transaction credit to NASD members that

exceed certain levels of trading activity in exchange-listed securities.

#### 99-26

Amend the NASD Code of Procedure to, among other things: (i) expand the circumstances under which an aggrieved party may request a hearing to challenge an Association action that the party believes constitutes a "denial of access"; (ii) expand the pool of potential hearing panelists in denial of access proceedings, and simplify the process by which panelists are selected; and (iii) establish the General Counsel for the NASD as the custodian of the record in denial of access cases.

#### 99-24

Amend Rule 7010 to establish a oneyear pilot program, commencing with the April 1, 1999 billing period, to reduce the fees for Nasdaq Level 1 market to non-professional users by 50 percent on either a per query or monthly basis.

### 99-05

Amend Rule 2520 relating to margin for exempted borrowers, good faith accounts, joint back office arrangements, and options transactions.

#### 98-74

Amend Rule 3110 to require additional disclosure in pre-dispute arbitration agreements regarding the arbitration process including: possible limits on eligibility of claims and availability of punitive damages; requiring member firms to provide certain information regarding arbitration and pre-dispute arbitration agreements to customers upon request; and clarifying the rule regarding use of choice-of-law provisions in pre-dispute arbitration agreements.

### 98-55

Amend Section 8 of Schedule A of the NASD By-Laws with respect to the collection of SEC transaction fees (SEC Fees).

#### 98-40

Amend Rule 3350 governing short sales in Nasdaq National Market® (NNM) securities to allow Market Makers and broker/dealers to engage in certain customer facilitating, liquidity-providing transactions (Facilitation Exemption).

#### 98-11

Adopt IM-2210-5, Presentation of Mutual Fund and Variable Contract-Related Performance Information, and amend Rule 2210 and IM-2210-2 to permit the presentation of related performance information (other than manager performance information) in mutual fund and variable product sales material, subject to certain conditions designed to make the presentation fair, balanced, and not misleading.

## Rule Filings That Have Been Published For Comment But Have Not Been Approved By The SEC

#### 99-23

Amend Rule 4613(e) regarding locked and crossed market conditions that occur prior to the market's opening. Amendment No. 1 filed with the SEC on May 14, 1999. Published for comment by the SEC in Release No. 34-41473 (June 2, 1999); 64 F.R. 31335 (June 10, 1999). Comment period expired July 1, 1999.

#### 99-16

Amend Rules 3320, IM-3320, 4613, 4615, 4623 to: (1) require Market Makers and electronic communication networks (ECNs) to round their quotations to the next minimum quotation increment when the Market Maker or ECN charges another market participant a fee in excess of one-half of one cent to access its quote; and (2) amend certain NASD quotation rules to remove any arguable prohibitions that could prevent Market Makers from charging a fee when their agency quote is accessed.

Amendment No. 1 filed with the SEC on April 22, 1999. Published for comment by the SEC in Release No. 34-41343 (April 28, 1999); 64 F.R. 24430 (May 6, 1999). Comment period expired June 1, 1999.

#### 99-15

Amend Rule 1015 to eliminate the procedures for members of the National Adjudicatory Council to call for review membership decisions until October 31, 1999. Amendment No. 1 filed with the SEC on April 16, 1999. Published for comment by the SEC in Release No. 34-41311 (April 20, 1999); 64 F.R. 20347 (April 26, 1999). Comment period expired May 17, 1999.

#### 99-12

Amend Rule 7010 to establish a fee for a voluntary trading data distribution facility, named Nasdaq Post Data<sup>™</sup>, accessible to NASD members, buy-side institutions (Qualified Institutional Buyers [QIBs]¹) and market data vendors through its "NasdaqTrader.com" Web Site. Amendment No. 1 filed with the SEC on March 23, 1999. Published for comment by the SEC in Release No. 34-41244 (April 1, 1999); 64 F.R. 17429 (April 9, 1999). Comment period expired April 30, 1999.

#### 99-11

Amend Rules 4611, 4613, 4618, 4619, 4620, 4632, and Series 4700 to re-establish SelectNet<sup>™</sup> as an order delivery and negotiation system for NNM securities and make numerous changes to the current rules relating to the trading of NNM securities. Published for comment by the SEC in Release No. 34-41296 (April 15, 1999); 64 F.R. 19844 (April 22, 1999). Comment period expired June 1, 1999.

### 99-09

Amend Rule 4613 to permit the separate display of customer orders by Market Makers in Nasdaq through a Market Maker agency identification symbol. Published for comment by the SEC in Release No. 34-41128 (March 2, 1999); 64 F.R. 12198 (March 11, 1999). Comment period expired April 1, 1999. Comment period extended in SEC Release No. 34-41243 (April 1, 1999); 64 F.R. 17428 (April 9, 1999). Comment period expired June 1, 1999.

#### 99-08

Amend Rules 10201 and 10202, and adopt new Rule 3080 and new Rule Series 10210 to enhance the dispute resolution process for the handling of employment discrimination disputes, and to expand disclosure to employees concerning the arbitration of all disputes. Amendment No. 1 filed with the SEC on May 7, 1999. Published for comment by the SEC in Release No. 34-41461 (May 27, 1999); 64 F.R. 30081 (June 4, 1999). Comment period expired June 25, 1999.

#### 99-07

Submission of proposed Discovery Guide for use in arbitration proceedings to improve the discovery process in NASDsponsored securities arbitrations. The Discovery Guide consists of introductory and instructional text, and 14 document production lists. Amendment No. 1 filed with the SEC on March 23, 1999. Amendment No. 2 filed with the SEC on April 9, 1999. Published for comment by the SEC in Release No. 34-41302 (April 16, 1999); 64 F.R. 20036 (April 23, 1999). Comment period expired May 14, 1999.

### 99-04

Adopt new Rule 2315, which would require members to review current issuer information prior to recommending a transaction to a customer in an over-the-counter (OTC) equity security. Additionally, the proposed rule change would amend NASD Rule 6740 to permit members to submit a certification to the Association that states that the member has conducted a review of specified information and has fulfilled

its SEC Rule 15c2-11 obligations for documents that currently reside on the SEC's EDGAR database. Published for comment by the SEC in Release No. 34-41075 (February 19, 1999); 64 F.R. 10037 (March 1, 1999). Comment period expired March 22, 1999.

#### 99-02

Amend IM-2110-1 and Rule 2720 to clarify the definition of "public offering" to include all offerings of securities exempt from SEC registration under SEC Rule 504. Published for comment by the SEC in Release No. 34-41519 (June 11, 1999); 64 F.R. 32907 (June 18, 1999). Comment period expired July 9, 1999.

#### 98-85

Adopt new Rules 4990 through 4998 to establish the Nasdaq Application, a new electronic trading system based on the innovative information processing technology provided by OptiMark Technologies, Inc. Published for comment by the SEC in Release No. 34-40835 (December 28, 1998); 64 F.R. 549 (January 5, 1998). Comment period expired January 26, 1999.

# 98-80

Adopt Rule 9800 Series to establish procedures to enable NASD Regulation to issue temporary cease and desist orders. The proposed rule change also would grant NASD Regulation authority to take expedited disciplinary actions when temporary or permanent cease and desist orders are violated. Amendment No. 1 filed with the SEC on December 5, 1998. Published for comment by the SEC in Release No. 34-40826 (December 22, 1998); 63 F.R. 71984 (December 30, 1998). Comment period expired March 1, 1999.

### 98-61

Amend Rule 6420 to eliminate an unnecessary provision relating to the reporting of transactions in

exchange-listed securities traded in the third market. Published for comment by the SEC in Release No. 34-40360 (August 21, 1998); 63 F.R. 46267 (August 31, 1998). Comment period expired September 25, 1998.

#### 98-49

Amend Rule 10335 to make it a permanent part of the Code of Arbitration. Amendment No. 1 filed with the SEC on September 9, 1998. Amendment No. 2 filed with the SEC on September 10, 1998. Amendment No. 3 filed with the SEC on December 3, 1998. Published for comment by the SEC in Release No. 34-40441 (September 15, 1998); 63 F.R. 50611 (September 22, 1998). Comment period expired October 13, 1998

#### 98-44

Amend Rule 1060 and create new Interpretative Material, IM-3010, to codify existing practice by exempting from registration persons whose securities business is limited to certain limited marketing activities and specify supervisory requirements for members concerning such unregistered persons. Published for comment by the SEC in Release No. 34-40784 (December 15, 1998); 63 F.R. 70173 (December 18, 1998). Comment period expired January 8, 1999.

#### 98-32

Amend Rule 2210 to exclude independently-prepared research reports from the filing requirements of Rule 2210. Amendment No. 1 filed with the SEC on May 13, 1998. Published for comment by the SEC in Release No. 34-40074 (June 4, 1998); 63 F.R. 32690 (June 15, 1998). Comment period expired July 6, 1998. Amendment No. 2 filed with the SEC on June 29, 1999.

# 98-18

Adopt a new membership Rule 1150 that would provide NASD members with qualified immunity in arbitration proceedings for statements made in

good faith in certain disclosures filed with the NASD on Forms U-4 and U-5. Published for comment by the SEC in Release No. 34-39892 (April 21, 1998); 63 F.R. 23321 (April 28, 1998). Comment period extended in SEC Release No. 34-40005 (May 19, 1998); 63 F.R. 29050 (May 27, 1998). Comment period expired June 19, 1998.

#### 98-17

Amend Rules 4611, 4613, 4618, 4619, 4620, 4632, 4642, and adopt new Rule Series 4900 to establish an integrated order delivery and execution system. The new system would replace the existing Small Order Execution System<sup>™</sup> (SOES<sup>™</sup>) and SelectNet, while retaining certain features of each in a combined infrastructure. It also will feature a voluntary limit order book. In addition, a component of the new system will permit institutions to obtain direct electronic access to The Nasdag Stock Market® through a sponsored arrangement with a Nasdag Market Maker, Amendment No. 1 filed with the SEC on March 3, 1998. Published for comment by the SEC in Release No. 34-39718 (March 4, 1998); 63 F.R. 12124 (March 12, 1998). Comment period expired April 2, 1998. Comment period extended in SEC Release No. 34-39794 (March 25, 1998); 63 F.R. 15471 (March 31, 1998). Comment period expired May 8, 1998.

#### 98-14

Amend Rules 2820 and 2830 to: 1) provide maximum aggregate sales charge limits for fund of funds arrangements; 2) permit mutual funds to charge installment loads; 3) prohibit loads on reinvested dividends: 4) impose redemption order requirements for shares subject to contingent deferred sales loads; and 5) eliminate duplicative prospectus disclosure. Amendment No. 1 filed with the SEC on March 12. 1998. Amendment No. 2 filed with the SEC on June 10, 1998. Published for comment by the SEC in Release No. 34-40310 (August 7,

1998); 63 F.R. 43974 (August 17, 1998). Comment period expired September 8, 1998.

### 98-08

Amend trade reporting Rules 4623, 4632, 4652, 6420, and 6620. The proposals would: 1) implement a new trade report modifier to identify trades effected at a prior reference price; 2) eliminate the 10,000-share limitation on individual trades that may be "bunched" for trade reporting purposes; 3) require ECNs to be responsible for reporting all trades executed within the ECN; and 4) address risk-less principal trades involving exchange-listed securities traded in the third market. Published for comment by the SEC in Release No. 34-40047 (June 2, 1998); 63 F.R. 30791 (June 5, 1998). Comment period expired June 26, 1998.

# 97-89

Adopt a new interpretation to Rule 2210 to permit the use by members and associated persons of bond mutual fund volatility ratings in supplemental sales literature on an interim 18-month pilot basis. Published for comment by the SEC in Release No. 34-40627 (November 2, 1998); 63 F.R. 60431 (November 9, 1998). The comment period expired November 30, 1998.

#### 97-61

Adopt new IM-2240-2: Application of the NASD Mark-Up Policy to Transactions in Government and Other Debt Securities. Published for comment by the SEC in Release No. 34-40511 (September 30, 1998); 63 F.R. 54169 (October 8, 1998). Comment period expired December 7, 1998.

#### 97-58

Amend Rule 3350 to implement Short Sale Rule on a permanent basis. Published for comment by the SEC in Release No. 34-38979 (August 26, 1997); 62 F.R. 46537 (September 3, 1997). Comment period expired September 24, 1997.

#### 97-47

Adopt new Rule 10336 to the Code of Arbitration Procedure to cap punitive damages at the lesser of twice compensatory damages or \$750,000. Amendment No. 1 filed with the SEC on October 17, 1997. Amendment No. 2 filed with the SEC on November 14, 1997. Published for comment by the SEC in Release No. 34-39371 (November 26, 1997); 62 F.R. 64428 (December 5, 1997). Comment period expired December 29, 1997.

#### 97-44

Amend Rule 10304 of the Code of Arbitration Procedure (Eligibility Rule) to retain current six-year eligibility rule, provide that all claims shall be eligible for arbitration unless challenged, eliminate involuntary bifurcation of claims, and eliminate election of remedies. Amendment No. 1 filed with the SEC on July 14, 1997. Amendment No. 2 filed with the SEC on July 18, 1997. Amendment No. 3 filed with the SEC on December 3, 1997. Amendment No. 4 filed with the SEC on December 18, 1997. Published for comment by the SEC in Release No. 34-39487 (December 23, 1997); 63 F.R. 588 (January 6, 1998). Comment period expired January 27, 1998.

#### 97-12

Amend Rule 2340 relating to the disclosure of values for direct participation program and real estate investment trust securities on customer account statements. Published for comment by the SEC in Release No. 34-38451 (March 27, 1997); 62 F.R. 15945 (April 3, 1997). Comment period expired April 24, 1997. Amendment No. 1 filed with the SEC on June 26, 1997. Submission dated June 26, 1997, responds to comments. Amendment No. 2 filed with the SEC on July 7, 1997.

# 96-47

Amend Rule 10304, Code of Arbitration Procedure, to establish

interim policy of referring eligibility determinations to the arbitrators and to eliminate eligibility determinations by the staff pending adoption of final eligibility rule. Published for comment by the SEC in Release No. 34-38060 (December 18, 1996); 61 F.R. 68081 (December 26, 1996). Comment period expired January 16, 1997.

#### 96-43

Amend Rules 4613, 4623, 4710, 4730, 6330, and IM-4613 to modify SOES and SelectNet to implement the SEC's Order Handling Rules. Published for comment by the SEC in Release No. 34-38008 (December 2, 1996); 61 F.R. 64549 (December 5, 1996). Comment period expired December 26, 1996. Amendment No. 1 filed with SEC on January 9, 1997. Partial approval granted by the SEC in Release No. 34-38156 (January 10, 1997); 62 F.R. 2415 (January 16, 1997).

# Rule Filings Approved By The SEC

# 99-30

Amend Rule 4510 Entry Fee and Annual Fee for Foreign Issuers Quoted on the Nasdaq National Market. Notice of filing and immediate effectiveness published by the SEC in Release No. 34-41547 (June 22, 1999); 64 F.R. 34836 (June 29, 1999). Comment period expires July 20, 1999.

### 99-28

Amend Rule 1140 to make it consistent with the newly developed Web CRD<sup>™</sup> and to implement the Rule on the planned date of deployment of Web CRD, which is August 16, 1999. Approved by the SEC in Release No. 34-41575 (June 29, 1999); 64 F.R. 36728 (July 7, 1999).

# 99-27

Amend Rule 10335 to extend the effectiveness of the Pilot Injunctive relief rule until January 3, 2000. Notice of filing and immediate

effectiveness published by the SEC in Release No. 34-41532 (June 16, 1999); 64 F.R. 33335 (June 22, 1999). Comment period expired July 13, 1999.

#### 99-25

Amend Rule 7010 to establish a oneyear pilot program, commencing with the April 1, 1999 billing period, to reduce by 50 percent the fees for Nasdaq Level 1 market to nonprofessional users on either a per query or monthly basis. Notice of filing and immediate effectiveness published by the SEC in Release No. 34-41499 (June 9, 1999); 64 F.R. 32910 (June 18, 1999). Comment period expired on July 9, 1999.

#### 99-22

Amend Rule 7010 to rescind the Limited Usage Fee (paragraph (f)). Published for comment by the SEC in Release No. 34-41432 (May 20, 1999); 64 F.R. 29075 (May 28, 1999). Comment period expired June 18, 1999. Approved by the SEC in Release No. 34-41571 (June 28, 1999); 64 F.R. 36415 (July 6, 1999).

# 99-19

Amend IM-10100 of the Code of Arbitration Procedure to facilitate use of dispute resolution programs offered by providers other than selfregulatory organizations. Notice of filing and immediate effectiveness published by the SEC in Release No. 34-41339 (April 28, 1999); 64 F.R. 23887 (May 4, 1999). Comment period expired on May 26, 1999.

# 99-18

Amend Section 5.2 of the Nasdaq By-Laws to increase the maximum size of the Nasdaq Listing and Hearing Review Council from 11 to 18 members. Amendment No. 1 filed with the SEC on April 7, 1999. Notice of filing and immediate effectiveness published by the SEC in Release No. 34-41287 (April 14, 1999); 64 F.R. 19573 (April 21, 1999). Comment period expired May 12, 1999.

#### 99-17

Amend Rule 7010(I) to extend, through March 31, 2000, the fees currently charged for the execution of transactions in SelectNet. Notice of filing and immediate effectiveness published by the SEC in Release No. 34-41314 (April 20, 1999); 64 F.R. 22664 (April 27, 1999). Comment period expired May 18, 1999.

### 99-14

Adopt IM-4300 to advise issuers of the Nasdaq rules to consider when issuing securities that convert into common stock based a conversion rate (Future Priced Securities). Notice of filing and immediate effectiveness published by the SEC in Release No. 34-41337 (April 27, 1999); 64 F.R. 23889 (May 4, 1999). Comment period expired May 26, 1999.

#### 99-13

Amend Rule 7010 to establish a pilot program to provide a transaction credit to NASD members that exceed certain levels of trading activity in exchange-listed securities. Notice of filing and immediate effectiveness published by the SEC in Release No. 34-41174 (March 17, 1999); 64 F.R. 14034 (March 23, 1999). Comment period expired April 13, 1999.

# 98-96

Amend Form U-4, the Uniform Application for Securities Industry Registration or Transfer, and Form U-5, the Uniform Termination Notice for Securities Industry Termination. Comments solicited in Notice to Members (NtM) 98-101. Amendment No. 1 filed with the SEC on March 30, 1999. Amendment No. 2 filed with the SEC on April 7, 1999. Amendment No. 3 filed with the SEC on April 15, 1999. Published for comment by the SEC in Release No. 34-41326 (April 22, 1999); 64 F.R. 23366 (April 30, 1999). Comment period expired May 17, 1999. Amendment No. 4 filed with the SEC on April 28, 1999. Published by the SEC in Release No. 34-41371 (May

5, 1999); 64 F.R. 25945 (May 13, 1999). Comment period expired May 28, 1999. Amendment No. 5 filed with the SEC on June 8, 1999. Amendment No. 6 filed with the SEC on June 18, 1999. Approved by the SEC in Release No. 34-41560 (June 25, 1999); as of press time, this approval has not been published in the Federal Register.

### 98-88

Amend NASD Rule Series 4800: Code of Procedures for review of Nasdaq Listing Determinations. Published for comment by the SEC in Release No. 34-40874 (December 31, 1998); 64 F.R. 1258 (January 8, 1999). Comment period expired January 29, 1999. Approved by the SEC in Release No. 34-41367 (May 4, 1999); 64 F.R. 25942 (May 13, 1999).

# 98-59

Amend the trade reporting Rules 4632, 4642, 4652, 6620 with respect to "risk-less" principal transactions by Market Makers. Published for comment by the SEC in Release No. 34-40382 (August 28, 1998); 63 F.R. 47337 (September 4, 1998). Comment period expired September 25, 1998. Approved by the SEC in Release No. 34-41208 (March 24, 1999); 64 F.R. 15386 (March 31, 1999).

#### 98-20

Amend Rule 11860 to permit members to use the facilities of a Qualified Electronic Vendor for electronic confirmation and affirmation of depository eligible transactions. Published for comment by the SEC in Release No. 34-39831 (April 6, 1998); 63 F.R. 18057 (April 13, 1998). Comment period expired May 4, 1998. Comment period extended by the SEC in Release No. 34-39944 (May 1, 1998); 63 F.R. 25531 (May 8, 1998). Comment period expired June 3, 1998. Approved by the SEC in Release No. 34-41390 (May 12, 1999); 64 F.R. 27016 (May 18, 1999).

# **Endnote**

<sup>1</sup>For purposes of this service, Nasdaq will rely on the definition of "Qualified Institutional Buyer" found in Rule 144A of the Securities Act of 1933.

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# Disciplinary Actions

Disciplinary Actions Reported For July NASD Regulation, Inc. (NASD Regulation®) has taken disciplinary actions against the following firms and individuals for violations of National Association of Securities Dealers, Inc. (NASD®) rules: federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). Unless otherwise indicated, suspensions will begin with the opening of business on Monday, July 19, 1999. The information relating to matters contained in this Notice is current as of the end of June 22, 1999,

# Firm And Individuals Suspended

Talley King & Co., Inc. (CRD #31043, Irvine, California), Paul Douglas King (CRD #1794109, Registered Principal, Irvine, California), and Richard William Talley, (CRD #442208, Registered Principal, Santa Barbara, California) submitted an Offer of Settlement pursuant to which they were censured and fined \$90,000. jointly and severally, and suspended from participating in direct participation program offers and/or sales for 30 days. In addition, the firm was required to offer rescission to certain investors and provide proof of the rescission offers to the NASD, and to retain an independent consultant to review the firm's procedures and policies, recommend appropriate corrective measures, and submit a final report setting forth all procedures adopted and implemented to ensure compliance with the NASD's rules. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting under the direction and control of King, effected securities transactions and induced the purchase and sale of securities when the firm failed to maintain sufficient net capital. Also the firm, acting under the direction and control of King and Talley, offered and sold investments in a

contingent offering of limited partnership interests, failed to deposit and retain customer funds in separate escrow accounts until the minimum number of units had been sold, and offered and sold securities to public customers for which a registration statement was not filed and in effect with the Securities and Exchange Commission (SEC) and for which no exemptions were applicable. The findings also stated that the firm, acting under the direction and control of King, failed to maintain and preserve required records and failed to establish written supervisory procedures reasonably designed to carry out the firm's business, specifically its direct participation programs. (NASD Case #C02980071)

# Firm And Individual Fined

Pryor, McClendon, Counts & Co., Inc. (CRD #11002, Philadelphia, Pennsylvania) and Malcolm Dermott Pryor, Sr. (CRD #368534, Registered Principal, Villanova, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$15,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Pryor, failed to evaluate and prioritize its training needs and failed to develop a written training plan as required by the NASD's Continuing Education Requirements, failed to administer Firm Element Continuing Education to all employees subject to such training, and failed to maintain adequate records documenting the content of programs administered pursuant to the Firm Element Continuing Education Requirements. The findings also stated that, in connection with its participation as an underwriter in offerings of securities that traded at an immediate premium in the secondary market, the firm effected sales to

investment partnership or corporation accounts without complying with one of the two alternatives under NASD IM-2110-1(f)(1), and the firm and Pryor failed to ensure that the firm had obtained the information for the accounts required by one of the two alternatives before the trades were executed. Furthermore, the firm sold securities issued in a public offering that traded at an immediate premium in the secondary market to an account prohibited from purchasing any "hot issue", and the firm, acting through Pryor, failed to establish and maintain adequate written supervisory procedures pertaining to the Firm Element provisions of the NASD's Continuing Education Requirement and the NASD Board of Governors' Free-Riding and Withholding Interpretation. (NASD Case #C9A990015)

# **Firms Fined**

**American Fronteer Financial** Corporation (CRD #1398, Denver, Colorado) 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 reported transactions to the Fixed Income Pricing System<sup>sv</sup> (FIPS®) in violation of applicable securities laws and regulations regarding trade reporting and failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws and regulations regarding FIPS. (NASD Case #CMS990047)

Black & Company, Inc. (CRD #95, Portland, Oregon) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$32,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm, while acting in the capacity of lead manager in an

initial public offering (IPO), and acting through various registered representatives, obtained checks from public customers on deposit for the purchase of shares of common stock in the IPO prior to the effective date of registration of the stock. The findings also stated that the firm reflected the time of execution on order tickets as a time later than the time the transactions were reported to Nasdaq®, and executed transactions for its own inventory account at the same price or at a price better than pending customer limit orders. In addition, the NASD determined that the firm failed to reflect immediately customer limit orders in its market-making quotations. (NASD Case #C3B990015)

Comprehensive Capital Corp., (CRD #6215, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$33,500, required to submit revised written supervisory procedures to the NASD, and ordered to pay restitution to public customers in the amount of \$1,052.24, plus interest. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to the **Automated Confirmation Transaction** Service<sup>™</sup> (ACT<sup>™</sup>) in violation of applicable securities laws and regulations regarding trade reporting and recordkeeping. The findings also stated that the firm failed to use reasonable diligence to ascertain the best inter-dealer market so that the resultant price to the customer was as favorable as possible under prevailing market conditions. The NASD also determined that the firm failed to establish, maintain, and enforce adequate written supervisory procedures regarding ACT compliance, annual review/internal audits, best execution, limit order protection, SEC order execution rules, registration of traders and supervisors, trade reporting, the Small Order Execution System<sup>™</sup>

(SOES<sup>SM</sup>), anti-competitive issues, books and records, and locked and crossed markets. (NASD Case #CMS990048)

GFI Group, Inc. (CRD #19982, 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 reported transactions to ACT in violation of applicable securities laws and regulations regarding trade reporting and recordkeeping. (NASD Case #CMS990046)

Legg Mason Wood Walker, Inc. (CRD #6555, Baltimore, Maryland) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which it was censured and fined \$16.500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to ACT in violation of applicable securities laws and regulations regarding trade reporting and recordkeeping. The findings also stated that the firm failed, where it acted as principal for its own account, to provide written notification disclosing to its customers the correct reported trade price, the price to the customer, and the difference, if any, between the reported trade price and the price to the customer, and also failed to provide written notification disclosing its capacity in transactions. In addition, the NASD determined that the firm failed to contemporaneously execute customer limit orders after it traded each subject security for its own market-making account at prices that would satisfy each customer limit order, and failed to immediately publish in its public quotation customer limit orders, each of which were at a price that would improve its public quote in each security. Furthermore, the NASD found that the firm failed to use reasonable diligence to ascertain the

best inter-dealer market for each subject security, and buy and sell in such market so that the resultant price to its customers was as favorable as possible under the prevailing market conditions. The firm also failed to establish, maintain, and enforce adequate written supervisory procedures reasonably designed to achieve compliance with applicable rules regarding trade reporting, recordkeeping, the SEC's Order Handling Rules, Limit Order Protection Interpretation, best execution, the use of SOES, and anti-competitive practices. (NASD Case #CMS990040)

Olde Discount Corporation (CRD #5979, Detroit, Michigan) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$38,500, and ordered to pay restitution to public customers in the total amount of \$580.63, plus interest. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to contemporaneously execute protected customer limit orders after it transacted in each security for its own market-making account at a price that was equal to or better than each such customer limit order, and, in the execution of customer orders, failed to use reasonable diligence to ascertain the best inter-dealer market for the securities so that the resultant price to its customers was as favorable as possible under prevailing market conditions. The findings also stated that the firm failed to display customer limit orders in its public quote immediately, where each such order was at a price better than the firm's public quote or at a price equal to its public quote when such quote was priced equal to the national best bid or offer in such security and that order represented more than a de minimis change in relation to the size associated with the firm's bid or offer. In addition, the NASD determined that the firm failed to establish, maintain, and enforce written

supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and the NASD rules concerning trade reporting, limit orders, ACT reporting requirements, the conducting of an annual review and internal audits, best execution requirements, limit order protection, the SEC's Order Handling Rules, the registration of associated persons with the NASD, trade reporting, the use of SOES, recordkeeping, locked and crossed markets, and the issues identified in the SEC's 21(a) Report concerning the NASD. (NASD Case #CMS990050)

Triad Securities Corporation (CRD #11363, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to

which the firm was fined \$12,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to ACT in violation of applicable securities laws and regulations regarding trade reporting. The findings also stated that the firm failed to establish, maintain, and enforce adequate written supervisory procedures to ensure compliance with the NASD rules regarding trade reporting. (NASD Case #CMS990045)

# Individuals Barred Or Suspended

Donna Marie Andres (CRD #1892251, Registered Representative, St. Louis, Missouri) submitted an Offer of Settlement pursuant to which she was censured, fined \$17,500, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Andres received checks totaling \$1,500 payable to her member firm, and without the knowledge or consent of her firm, endorsed the checks, deposited them into a bank account she controlled, and

converted the funds to her own use and benefit. (NASD Case #C04990017)

William Henry Ball (CRD #1924039, Registered Representative, Lisbon, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$30,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Ball consented to the described sanctions and to the entry of findings that he collected a total of \$3,190.76 in cash from insurance policyholders for the payment of premiums, provided the policyholders with receipts, but failed to apply the money to pay the premiums on variable and other insurance products. The NASD found that, instead, Ball misappropriated the funds and improperly converted the funds for his own use and benefit. (NASD Case #C11990019)

Anthony Joseph Barbera, Jr. (CRD #2404631, Registered Representative, Ocean Township, 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 five days. Without admitting or denying the allegations, Barbera consented to the described sanctions and to the entry of findings that he effected transactions in the accounts of public customers without the customers' prior authorization, and misrepresented to a customer that he would not pay sales charges on transactions in his account. The findings also stated that Barbera made misstatements to the NASD in connection with an investigation. (NASD Case #C3A970019)

Milton Royal Barnes III (CRD #1427439, Registered Principal, Phoenix, Arizona) submitted an Offer of Settlement pursuant to which he was censured, suspended from

association with any NASD member in any capacity for nine months, and required to pay restitution in the amount of \$115,000 to public customers. Without admitting or denying the allegations, Barnes consented to the sanctions and to the entry of findings that he effected transactions in the account of a public customer that were excessive in size and frequency, made recommendations to public customers that were unsuitable for them in view of their financial situation and needs, and offered to settle with the customers financially without advising his member firm of that offer. (NASD Case #C3A960030)

Tyrone Antoine Bennett (CRD #2783238, Associated Person, Downingtown, Pennsylvania) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Bennett failed to respond to NASD requests for information. (NASD Case #C9A980045)

**Emanuele Robert Cardaci (CRD** #2592992, Registered Principal, Farmingville, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$25,000, and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Cardaci consented to the described sanctions and to the entry of findings that he made material misrepresentations and omitted to disclose material information to public customers in connection with his solicitation of customers to purchase securities. The findings also stated that Cardaci, in connection with his solicitation of customers to purchase securities, predicted the future prices of securities without having a reasonable basis, effected transactions in public customer accounts without the customer's prior authorization, and failed to execute a

public customer's sell order. Furthermore, the NASD found that Cardaci engaged in a series of securities transactions that were not economically beneficial to the customer but were economically beneficial to Cardaci. (NASD Case #C3A990013)

**Darren Joseph Dietrich (CRD** #1814017, Registered Representative, Plant City, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$2,500, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denving the allegations, Dietrich consented to the described sanctions and to the entry of findings that he exercised discretion in a public customer's account without obtaining prior written authorization from the customer to exercise said discretion, or having the account accepted in writing as a discretionary account by his member firm. (NASD Case #C07990034)

Victor Joseph Difrisco (CRD #1922218, Registered Representative, Gaithersburg, Maryland) submitted an Offer of Settlement pursuant to which he was censured and suspended from association with any NASD member in any capacity for 90 days. Without admitting or denying the allegations, Difrisco consented to the sanctions and to the entry of findings that he made baseless and improper price predictions as to speculative securities to public customers and required that customers purchase aftermarket shares as a condition of purchasing IPO units. (NASD Case #CAF980031)

Douglas Arthur Dill (CRD #2097574, Registered Representative, Lakewood, Ohio) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings

that Dill failed to respond to NASD requests for information. (NASD Case #C8B980023)

Anthony John DiMaria (CRD #2288257, Registered Representative, Bronx, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, DiMaria consented to the described sanctions and to the entry of findings that he had an impostor take and complete the Series 62 exam on his behalf. (NASD Case #C10990067)

John Arthur Eastin (CRD #2682834, Registered Representative, Joplin, Missouri) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$20,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Eastin consented to the described sanctions and to the entry of findings that he received a \$2,000 cashier's check from a public customer to purchase securities, failed to invest the monies as instructed, and without the knowledge or consent of the customer, converted the funds to his own use and benefit. The findings also stated that Eastin received an \$8,000 check from the customer, misused the funds in that he failed to make the investment as directed and retained the uncashed check until a later date, without the knowledge or consent of the customer. (NASD Case #C04990022)

Matthew Barry Eliscu (CRD #2739848, Registered Representative, Chicago, Illinois) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the

allegations, Eliscu consented to the sanctions and to the entry of findings that he purchased call option contracts in his personal cash account at his member firm at a total cost of \$1,824.50, failed to have sufficient funds to pay for the transactions at the time they were effected, and failed to make full payment for the transactions until a later date. (NASD Case #C8A990042)

Todd Alan Endicott (CRD #2561038, Registered Representative, Golden, Colorado) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Endicott paid approximately \$20,000 to an employee of two affiliated insurance companies as a reward for the referral of her employers' securities business to him. (NASD Case #C3A980060)

Joseph John Esposito, Jr. (CRD

#2811005, Registered Principal, Howard Beach, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$25,000, suspended from association with any NASD member in any capacity for two years, and, in the event he becomes registered with a member firm after his suspension, he shall not be permitted to continue such association unless that firm has adopted and implemented compliance programs and procedures with respect to Esposito which include monitoring his phone conversations and correspondence and reviewing his order tickets and account documentation for 12 months. Without admitting or denying the allegations, Esposito consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information and documentation. (NASD Case #C10990019)

Garvey William Fox, Jr. (CRD #2166036, Registered

Representative, New York, New York), Matthew John Kehoe (CRD #2509976, Registered Representative, New York, New York), Glen O'Hare (CRD #2202811, Registered Representative, Staten Island, New York), and Matthew Jed Hirsch (CRD #2166037, Registered Representative, New York, New York) submitted Offers of Settlement pursuant to which Fox was censured, fined \$76,000, and barred from association with any NASD member in any capacity. Kehoe and O'Hare were each censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 10 business days, and Hirsch was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Fox, Kehoe, O'Hare, and Hirsch purchased securities for the accounts of public customers without the knowledge or consent of the customers and in the absence of written or oral authorization to exercise discretion in said accounts. The findings also stated that Fox failed to follow customers' instructions to sell securities. (NASD Case #C8A970017)

Philip Sidney Gassman (CRD #1569242, Registered Representative, Miami, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Gassman consented to the described sanctions and to the entry of findings that he exercised discretionary power in a public customer's account without obtaining prior written authorization from the customer, and without having the account accepted as a discretionary account by his member firm. (NASD Case #C07990028)

Noah Peter Grassi (CRD #2928628, Registered Representative, Ardmore, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Grassi consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information concerning matters relating to the termination of his employment by a member firm. (NASD Case #C9A990020)

**Andrew Todd Greene (CRD** #1943281, Registered Principal, New York, New York) submitted an Offer of Settlement pursuant to which he was censured, suspended from association with any NASD member in a supervisory capacity for 50 days, and required to requalify by passing the Series 24 exam prior to serving in a supervisory capacity with a member firm. Without admitting or denying the allegations, Greene consented to the described sanctions and to the entry of findings that he failed to exercise his supervisory obligations adequately by failing to require that persons under his control prepare scripts that presented a fair and balanced picture of risk factors or negative information relating to investments in securities. (NASD Case #CAF990003)

Ronald Ira Gross (CRD #860452, Registered Principal, Paradise Valley, Arizona) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$15,000, suspended from association with any NASD member in any capacity for 45 days, and required to requalify as a Series 6 investment company and variable contracts products representative. Without admitting or denying the allegations, Gross consented to the sanctions and to the entry of findings that he engaged in private securities transactions and business activities outside the scope of his relationship with his member firm without giving

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his firm prior written notice. (NASD Case #C3A990032)

Eliezer Gurfel (CRD #1409216, Registered Representative, Washington, DC) was censured and barred from association with any NASD member in any capacity. The SEC affirmed the findings of the National Adjudicatory Council (NAC) that Gurfel forged, or caused to be forged, the signature of the firm's president on commission checks totaling \$9,625.64, and converted the proceeds to his own use.

Gurfel has appealed this action to the U.S. Court of Appeals for the D.C. Circuit and the sanctions, other than the bar, are not in effect pending consideration of the appeal. (NASD Case #C9B950010)

Alfred Robert Heiman (CRD #1962530. Registered Representative, Oklahoma City, Oklahoma) submitted an Offer of Settlement pursuant to which he was censured, fined \$7,500, suspended from association with any NASD member in any capacity for three months, and ordered to pay disgorgement of \$31,606. Without admitting or denying the allegations, Heiman consented to the described sanctions and to the entry of findings that he was the recipient of stock in IPOs through accounts in which he had a beneficial interest and these securities later traded at a premium in the secondary market (hot issues). The findings also stated that Heiman opened securities accounts with other member firms, and prior to opening such accounts or placing initial orders, failed to notify his member firm in writing that he had established and maintained such accounts, and failed to inform the executing firms in writing of his association with a member firm. Heiman also failed to notify his member firm that he had established securities accounts with an investment adviser prior to the execution of the initial transactions in these accounts. (NASD Case #C05990006)

Roy Wayne Helgeson (CRD #2662543, Registered Representative, St. Helens, Oregon) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$8,000, and suspended from association with any NASD member in any capacity for 20 days. Without admitting or denving the allegations. Helgeson consented to the described sanctions and to the entry of findings that he signed and submitted a Form U-4 that contained a false answer in that he did not disclose a bankruptcy petition, and failed to file amendments to his Form U-4 to disclose an investigation by the state of Oregon, a civil action that alleged violations of federal and state securities laws, and the bankruptcy petition. (NASD Case #C3B990016)

Wayne Ralph Horne (CRD #1740513, Registered Principal, Boca Raton, Florida) submitted an Offer of Settlement pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any supervisory capacity for 15 days. Without admitting or denying the allegations, Horne consented to the described sanctions and to the entry of findings that he failed to supervise an individual adequately so as to be able to detect the unsuitable recommendations the individual made with respect to public customers. (NASD Case #C07980045)

Stuart Gordon Horowitz (CRD #2942375, Registered Representative, Boca Raton, Florida) submitted an Offer of Settlement pursuant to which he was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Horowitz consented to the described sanctions and to the entry of findings that he failed to amend a Form U-4 to disclose that he was the subject of an investigation by the Florida bar and his license to practice law had

been suspended. Horowitz also failed to respond to NASD requests for information. (NASD Case #C07980027)

Frank James Hutton (CRD #2357906, Registered Representative, Brandon, Mississippi) was censured, fined \$757,500, barred from association with any NASD member in any capacity, and ordered to pay restitution in the amount of \$101,525.11. The sanctions were based on findings that Hutton sold stock out of the joint account of public customers, without the authorization of the customers, and forged their signatures on a check for almost the entire proceeds of the sale in the amount of \$29,971.70. The findings also stated that in order to conceal his conversion of these funds, Hutton caused the customers' address to be changed in his member firm's records so that they would not receive their account statement, prepared a fictitious account statement that failed to disclose the sale of the securities from their account, and mailed it to the customers. Furthermore. Hutton effected withdrawals totaling \$96,552.40 from the joint account of other public customers, converted the funds to his own use and benefit by forging the customers' signatures on checks, and maintaining possession of the funds, without the customers' knowledge or consent. Hutton also put through a false change of address for the customers in his firm's records and told the customers they would be receiving account statements only every six weeks. In addition, Hutton failed to respond to NASD requests for information. (NASD Case #C05980017)

Christopher John Kelley (CRD #2267149, Associated Person, Denver, Colorado) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, and barred from association with any NASD

member in any capacity. Without admitting or denying the allegations, Kelley consented to the described sanctions and to the entry of findings that he completed and signed a Form U-4 and failed to answer truthfully all of the questions asked of him. According to the findings, when asked if he had ever been arrested or charged with a felony, Kelley answered in the negative when, in fact, he was arrested, charged, and pleaded guilty to two felonies. (NASD Case #C3A990028)

Daniel Ray Kirkley (CRD #1167528, Registered Representative, Tuscaloosa, Alabama) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$155,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kirkley consented to the described sanctions and to the entry of findings that he received \$11,000 from a public customer for the purpose of investing in mutual funds, failed and neglected to execute the purchases on the customer's behalf, and instead. converted the \$11,000 to his own use and benefit, without the customer's knowledge or consent. (NASD Case #C05990015)

Alan Edward Koeneman (CRD #273104, Registered Representative, Tucson, Arizona) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Koeneman 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. The findings also stated that Koeneman engaged in business activities outside the scope of his employment with a member firm without providing prompt written

notice of these activities to his firm. (NASD Case #C3A990030)

Warren Howard Lamond, Jr. (CRD #1251644, Registered Representative, Brookline, Massachusetts) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Lamond failed to respond to NASD requests for information in connection with a customer complaint. (NASD Case #C11980005)

**Luanne Christine Lembo (CRD** #2469080, Registered Representative, Orlando, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was censured, fined \$2,500, and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, Lembo consented to the described sanctions and to the entry of findings that she signed the name of a public customer to a letter requesting the wire transfer of funds, without the customer's knowledge or consent. (NASD Case #C9B990001)

Pier Luccarelli (CRD #1902896, Registered Principal, Fairfax, Virginia) was censured, fined \$25,000, and suspended from association with any NASD member in any capacity for one year. The sanctions were based on findings that, on several occasions, Luccarelli falsely told a public customer that the value of securities accounts as set forth in the customer's monthly account statements was incorrect, and misled the customer as to the true current value of the accounts. (NASD Case #C07980077)

Gregory Paul Maggipinto (CRD #1042789, Registered Representative, San Jose, California) was censured, fined \$25,000, suspended from association with any NASD member

in any capacity for six months, and required to requalify by exam in all capacities. The NAC imposed the sanctions following appeal of a San Francisco District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Maggipinto effected securities transactions in the account of a public customer without the prior knowledge or consent of the customer.

Maggipinto has appealed this action to the SEC and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C01970025)

Salvatore Charles Marchiano (CRD #1395812, Registered Principal, Morganville, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Marchiano consented to the sanctions and to the entry of findings that he failed to cooperate with an NASD investigation concerning allegations that he had an impostor sit for and complete the Series 24 exam on his behalf. (NASD Case #C10990079)

Jeffrey Tod Marshall (CRD #2043618, Registered Representative, Atlanta, Georgia) was censured, fined \$35,750, barred from association with any NASD member in any capacity, and ordered to pay \$150 in restitution. The sanctions were based on findings that Marshall received a \$150 check with an application from an individual to become associated with his member firm. Rather than submitting the application and check to his member firm. Marshall cashed the check and converted the proceeds to his own use and benefit. Marshall also failed to respond to NASD requests for information. (NASD Case #C07980066)

John Anthony Miller (CRD #1985176, Registered Representative, Cape Coral, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$520,000, barred from association with any NASD member in any capacity, and ordered to pay \$99.794.42 in restitution to his member firm. Without admitting or denying the allegations, Miller consented to the described sanctions and to the entry of findings that he recommended to public customers that they invest in a fixed rate annuity through a life insurance company, made misrepresentations to the customers regarding the rate of return of the investment, and received checks totaling \$100,236.52 from the customers for the annuities. The NASD determined that Miller deposited the checks in a bank account he had created in the name of the insurance company, made several monthly interest payments to some of the customers, and converted the remainder of the customers' funds to his own use. (NASD Case #C07990039)

Richard Vu Nguyen (CRD #2488905, Registered Representative, Fullerton, California) was censured, fined \$75,000, barred from association with any NASD member in any capacity, and ordered to pay \$32,499 in restitution to public customers. The sanctions were based on findings that Nguyen executed transactions through a member firm while not registered with the NASD. Nguyen also failed to respond completely to NASD requests for information and failed to appear for an interview with the NASD staff. (NASD Case #C02980028)

Gregory John Pocock (CRD #1060326, Registered Principal, Roswell, Georgia) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, and barred

from association with any NASD member in any capacity. Without admitting or denying the allegations, Pocock consented to the sanctions and to the entry of findings that he forged his estranged wife's signature on checks totaling \$12,375, drawn from their joint brokerage account. (NASD Case #C07990030)

**Neil Randolph Post (CRD** #1423171, Registered Principal, Douglaston, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,393, suspended from association with any NASD member in any capacity for 10 business days, and required to requalify by exam in all capacities. If Post fails to requalify, he will be suspended from acting in each such capacity until each exam is successfully completed. Without admitting or denying the allegations, Post consented to the described sanctions and to the entry of findings that he accepted trades for a public customer's account at his member firm from a third party whom he believed had the authority to enter trades for that account, failed to receive a written power of attorney conveying authority to the third person, and should not have accepted these trades and executed them. The findings also stated that Post prepared and entered into a written agreement with the public customer, without his member firm's knowledge or approval, to settle the customer's complaints regarding alleged losses which resulted from the aforementioned securities transactions. (NASD Case #C10990078)

Terry Don Rader (CRD #369900, Registered Principal, Dallas, Texas) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Rader failed to respond to NASD requests for information. (NASD Case #C06980015) Rene Reyes (CRD #2063715, Registered Representative, New Orleans, Louisiana) submitted an Offer of Settlement pursuant to which he was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Reves consented to the described sanctions and to the entry of findings that he received a check for \$5,000 from a public customer to invest in IPOs, failed to invest these funds on the customer's behalf, and instead, converted the funds to his own use and benefit, without the customer's knowledge or consent. The findings also stated that Reves failed to notify his member firm, in writing, that he had established and maintained securities accounts with other member firms, and failed to inform those firms of his association with a member firm. Reves also failed to respond to NASD requests for information. (NASD Case #C05980007)

Fernando Patricio Rodriguez (CRD #1587712, Registered Principal, Long Beach, California) submitted an Offer of Settlement pursuant to which he was censured, fined \$14,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Rodriguez consented to the sanctions and to the entry of findings that a public customer brought cash payments totaling \$800 to Rodriguez for the purpose of paying Individual Retirement Account fixed annuity premiums. The NASD determined that, instead, Rodriguez converted the \$800 to his personal use. (NASD Case #C02990032)

Timothy Lee Rose (CRD #2314205, Registered Representative, Maryland Heights, Ohio) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations,

Rose consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information in writing concerning his apparent negotiation of checks received from a public customer. (NASD Case #C9A990024)

Kirk Francis Ruffler (CRD #2580976, Registered Representative, Perrineville, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$110,000, barred from association with any NASD member in any capacity, and ordered to pay \$42,988.50 in restitution to public customers. Without admitting or denying the allegations, Ruffler consented to the described sanctions and to the entry of findings that he effected securities transactions in the accounts of public customers without the knowledge, consent, or authorization of the customers. Ruffler also failed to follow customer orders to sell securities and failed to respond to NASD requests for information and/or documentation. (NASD Case #C10990082)

Ricardo Mario Saltalamachea (CRD #1825946, Registered Principal, Staten Island, New York) submitted a Letter of Acceptance. Waiver, and Consent pursuant to which he was censured, fined \$1,000, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Saltalamachea consented to the sanctions and the entry of findings that, in an attempt to obtain a public customer's decision concerning a miscommunicated purchase and sale order, he made misstatements about his ability to cancel and re-bill a purchase into his own account, as well as repeatedly calling the customer and his wife in an attempt to resolve the matter. (NASD Case #C10990080)

Robert John Savala (CRD #2261797, Registered Principal, Holmdel, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Savala consented to the sanctions and to the entry of findings that he solicited public customers to invest approximately \$96,686.12 with a non-member entity for the stated purpose of investing in short-term U.S. Treasury Bills and for purchasing investment company shares. Savala deposited the customers' funds in a bank account he controlled and used the proceeds for his own purposes. The findings also stated that Savala prepared false statements for the accounts of public customers reflecting investment positions when, in fact, no such investment positions existed. (NASD Case #C10990073)

Robert Andrew Saxe (CRD #2435726, Registered Representative, St. Petersburg, Florida) was censured, fined \$35,000, suspended from association with any NASD member in any capacity for 30 business days, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Saxe misrepresented the rating of certain municipal securities to a public customer in connection with the purchase of municipal securities and failed to respond to NASD requests for information.

Saxe's suspension commenced with the opening of business on June 21, 1999, and will conclude at the close of business on August 2, 1999. (NASD Case #C07980048)

David Harris Shapiro (CRD #2586431, Registered Principal, New York, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$100,000, and barred from association with any

NASD member in any capacity. Without admitting or denying the allegations, Shapiro consented to the described sanctions and to the entry of findings that a former member firm, acting through Shapiro, solicited customers for the purchase of an IPO, received payments for the purchase of interests in the IPO prior to the effective date of the offering. failed to ensure that individuals were qualified and registered in the appropriate capacity with the firm prior to permitting them to engage in the investment banking or securities business and to function as representatives, failed to comply with the terms of its restrictive agreement by participating in the solicitation of a firm commitment underwriting of an IPO offering, and operated a branch office without notifying the NASD. The findings also stated that the firm, acting through Shapiro, entered into an agreement with another member firm whereby orders or indications for the purchase of the IPO would be executed by the other firm without written discretionary authorization of the public customers. The NASD also determined that the firm, acting through Shapiro, failed to record these customer orders on its blotters or make any other records. In addition, the former firm failed to maintain the minimum required net capital, prepared inaccurate trial balances and net capital computations, and filed an inaccurate FOCUS Part IIA Report with the NASD. (NASD Cases #C8A980097 and C8A990014)

Frederick Douglass Smith (CRD #2167780, Registered Representative, Los Angeles, California) was censured, fined \$151,431.35, barred from association with any NASD member in any capacity, and ordered to pay \$14,286.27, plus interest, in restitution to public customers. The sanctions were based on findings that Smith received funds totaling \$14,286.27 from public customers for investment purposes, failed to invest

the customers' funds, and instead, converted the funds to his personal use and benefit. (NASD Case #C02980070)

Timothy A. Smith (CRD #2263079, Registered Representative, St. Cloud, Florida) was censured, fined \$40,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Smith breached his member firm's internal policies by accepting \$2,000 in cash from a public customer for an investment in a mutual fund, failed to record the transactions on the branch office trade blotter, and failed to process the transaction through his firm's headquarters. Smith also caused his member firm's books and records to be inaccurate by failing to follow the firm's internal policies and procedures regarding the receipt, recording, and processing of customer funds. (NASD Case #C07980080)

Edward James Stock, Jr. (CRD #2379991, Registered Representative, Nesconset, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Stock consented to the described sanctions and to the entry of findings that he caused unauthorized transactions to be made in the account of a public customer, and required that another customer purchase aftermarket shares as a condition of purchasing IPO units.

Stock's suspension began July 1, 1999 and will conclude at the close of business on July 30, 1999. (NASD Case #CAF980031)

David Lewis Swartzendruber (CRD #2185516, Registered Representative, Telford, Pennsylvania) submitted a Letter of

Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for four months. Without admitting or denying the allegations. Swartzendruber consented to the described sanctions and to the entry of findings that while employed with a member firm, he opened a securities account in his name with another member firm, and failed to notify his employing firm in writing that he had opened the account, and failed to disclose to the executing member firm his association with another firm. The findings also stated that Swartzendruber made false and misleading statements to his member firm regarding the disposition of certain securities held in a personal brokerage account. (NASD Case #C9A990023)

Robert Courtney Temple II (CRD #2499499, Registered Representative, Salina, Kansas) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Temple failed to respond to NASD requests for information. (NASD Case #C04980074)

**Donald Lewis Turney (CRD** #2409226, Registered Representative, Babylon Village, New York) was censured, fined \$70,000, barred from association with any NASD member in any capacity, and ordered to pay \$64,849.50, plus interest, in restitution to a public customer. The sanctions were based on findings that Turney solicited members of the public to become customers and to purchase securities by making material misrepresentations and by omitting to disclose material information about the securities. Turney also projected the future price of a security to a customer without having a reasonable basis, and executed unauthorized

transactions in the accounts of public customers. Turney also failed to follow a customer's instructions to sell stock. (NASD Case #C3A970071)

Christiaan Pieter Van Der Put (CRD #2921664, Associated Person, Pittsburgh, Pennsylvania) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Van Der Put forged and falsified a document concerning the duration and nature of his employment with a member firm and his salary for the purpose of obtaining credit. (NASD Case #C9A980035)

Victor Ming Wang (CRD #1982694, Registered Principal, New York, New York) and Gregg Adam Thaler (CRD #1836166, Registered Principal, New York, New York) were each censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Wang and Thaler failed to appear for on-the-record interviews and to provide testimony. (NASD Case #CAF980030)

Louis Alberto Williams, Jr. (CRD #2120870, Registered Representative, Tucson, Arizona) 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 10 business days. Without admitting or denying the allegations, Williams consented to the described sanctions and to the entry of findings that he executed transactions in the accounts of public customers without written authorization and acceptance of the accounts as discretionary. The findings also stated that Williams entered erroneous information on order tickets with respect to certain transactions in which he exercised discretion without written authority. (NASD Case #C3A970028)

# **Individual Fined**

Drew Edgar Schaefer (CRD #1199891, Registered Principal, Manasquan, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and fined \$25,000. Without admitting or denying the allegations, Schaefer consented to the sanctions and to the entry of findings that he failed to report to the NASD statistical and summary information regarding customer complaints that his member firm had received. (NASD Case #C10990061)

# **Decisions Issued**

The following decisions have been issued by the DBCC or the Office of Hearing Officers and have been appealed to or called for review by the NAC as of June 11, 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*.

Cressida Capital, Inc. a/k/a Norfolk Securities Corp. (CRD #32352, New York, New York) and Jeffrey Allen Van Blarcom (CRD #1971041, Registered Principal, Mahwah, New Jersey) were censured and fined \$50,000, jointly and severally. Van Blarcom was fined an additional \$50,000. individually, and barred from association with any NASD member in any capacity. The sanctions were based on findings that the firm, acting through Van Blarcom, failed to timely report or otherwise inform the NASD of statistical and summary information regarding customer complaints. In addition, the firm, acting through Van Blarcom, failed to establish, maintain, and enforce written supervisory procedures designed to ensure compliance with the NASD customer complaint reporting requirements, and failed to

respond to NASD requests for documents. Furthermore, the firm, acting through Van Blarcom, permitted individuals to continue to perform duties as registered persons when they had failed to comply with the Regulatory and Firm Elements of the NASD's Continuing Education rules. Moreover, the firm, acting through Van Blarcom, failed to delegate responsibility for compliance with the Firm and Regulatory Elements; failed to maintain written procedures for compliance with the Firm and Regulatory Elements; failed to maintain written supervisory procedures that would mandate an annual needs analysis, a written training plan, and implementation plan; and failed to maintain books and record to demonstrate compliance with the Firm Element, including the maintenance of a written needs analysis, a written training plan, the materials used in training, and a list of dates of training sessions.

The action has been called for review by the NAC and Van Blarcom appealed this action to the NAC. The sanctions are not in effect pending consideration of the appeal. (NASD Cases #C10960043, C10960161, and C10970019)

Edward Michael Gabbert (CRD #2798883, Registered Representative, Wilmington, Delaware) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Gabbert failed to respond to NASD requests for information.

Gabbert has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C9A980044)

Edwin Leslie Lawrence, Jr. (CRD #2282684, Registered Representative, Dix Hills, New

York) was censured, fined \$75,000, barred from association with any NASD member in any capacity, and ordered to pay restitution of \$76,639.75, plus interest, to public customers. The sanctions were based on findings that Lawrence executed transactions in the accounts of public customers without the knowledge or consent of the customers, and in the absence of written or oral authorization to exercise discretion in the accounts.

Lawrence has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C10980088)

Michael Allen Usher (CRD #734581, Registered Principal, Greeley, Colorado) was censured, fined \$25,000, barred from association with any NASD member as a general securities principal, and ordered to disgorge \$3,914.70, plus interest, in commissions. The sanctions were based on findings that Usher conducted a securities business while his and his broker/dealer's registrations were suspended.

Usher has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C3A980069)

# **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.

Kent Anderson (CRD #2717386, Registered Representative, Waterford, Michigan) was named as a respondent in an NASD complaint alleging that he instructed a public customer to endorse a \$2.958 refund check "Payable to the Equitable," with the understanding that the check would be applied as the initial premium for a variable life insurance policy with Anderson's member firms. The complaint alleges that Anderson then cashed the refund check, and used the funds for his own benefit or for the benefit of someone other than the customer, without the customer's knowledge or authorization. The complaint also alleges that Anderson failed to respond to NASD requests for information. (NASD Case #C8A990053)

**Neil Howard Brauner (CRD** #2571484, Registered Representative, New York, New York) was named as a respondent in an NASD complaint alleging that he induced the purchase or sale of shares of stock by means of a manipulative, deceptive, or other fraudulent device or contrivance in that he made misstatements of material facts in connection with the offer and sale of shares of stock. The complaint also alleges that Brauner guaranteed a customer against loss by repeatedly assuring a public customer that he would not lose any money on his potential investment and promising to return the customer's original investment amount in the event that the securities depreciated in value or if the securities were not profitable. The complaint alleges that Brauner executed transactions in the account of a public customer without the knowledge or consent of the customer, and in the absence of the customer's written or oral authorization to Brauner to exercise discretion in the account. The complaint also alleges that Brauner failed to respond truthfully to NASD requests for information. (NASD Case #C10990081)

D.L. Cromwell Investments, Inc. (CRD #37730, Boca Raton, Florida), Denise Lynn Crowley-DelRossi (CRD #2308457, Registered Representative, Boca Raton, Florida), Lloyd Sylvester Martin Beirne (CRD #1982417. Registered Principal, Boca Raton, Florida) and Matthew Greenwald (CRD #229262, Registered Principal, Boca Raton, Florida) were named as respondents in an NASD complaint alleging that Crowley-DelRossi recommended and implemented a course of unsuitable trading in the accounts of public customers based upon the customers' age, disability, income needs, trading inexperience, investment objectives, financial situation, and the concentration of positions. The complaint alleges that Beirne and Greenwald failed to supervise Crowley-DelRossi adequately so as to detect the unsuitable recommendations made with respect to public customers. The complaint alleges that the firm failed to establish and maintain a supervisory system to supervise each of its registered representatives that was reasonably designed to achieve compliance with applicable securities laws, regulations, and the NASD rules. (NASD Case #C07990037)

Gerard Joseph D'Amaro (CRD #2385619, Registered Representative, Boca Raton, Florida) was named as a respondent in an NASD complaint alleging that he provided to a public customer correspondence in the form of letters, facsimile transmissions, and telexes written by D'Amaro, containing false and misleading representations. The complaint also alleges that D'Amaro failed and neglected to obtain prior approval of the correspondence from a principal of his member firm when he knew or should have known that prior approval of outgoing correspondence was required pursuant to the NASD rules. (NASD Case #C05990019)

Vincent Grieco (CRD #1568462, Registered Principal, West Islip, New York) was named as a respondent in an NASD complaint alleging that he directly and/or indirectly, singly and in concert with numerous registered representatives under his control and direction, engaged in fraudulent practices with much of the conduct occurring at Grieco's direction or with his encouragement, or, at a minimum, with his tacit approval. The complaint alleges that this fraudulent conduct included making baseless and improper price predictions, omitting or negating materially negative or cautionary information about the security being recommended, making false statements asserting knowledge of inside information, making material misrepresentations regarding specific issuers, engaging in unauthorized trading in public customer accounts without having discretionary trading authority for the relevant accounts, and refusing or failing to execute sell orders. The complaint alleges that by Grieco's own conduct, and through those registered representatives under his direction and control, induced the purchase or sale of securities by means of manipulative, deceptive and other fraudulent devices, and contrivances. (NASD Case #CAF990008)

**Keith Taylor Hamilton (CRD** #1281968, Registered Representative, Tallahassee, Florida) was named as a respondent in an NASD complaint alleging that he caused proceeds in the amount of \$14,033.97 to be withdrawn from a public customer's IRA account, without her knowledge or consent, misrepresented to the customer that these funds would be deposited in an IRA rollover account. and failed and neglected to effect the rollover of the funds into an IRA account. The complaint also alleges that Hamilton received \$31,352.27 from public customers for the purpose of establishing and contributing to individual IRA rollover

accounts, and failed and neglected to either establish the rollover IRA accounts on the customers' behalf or to deposit the funds appropriately. (NASD Case #C05990017)

Lakeside Trading (CRD #39418, Metairie, Louisiana) and (Thomas Griswold Russell, CRD #2669033, Registered Principal, Metairie, Louisiana) were named as respondents in an NASD complaint alleging that the firm, acting through Russell, its president and sole principal, improperly used public customer funds in that Russell executed transactions in the account of a customer, then directed the trading profits from the customer's account to the firm by placing excessive commissions on certain trades. The complaint alleges that Russell effected discretionary trades in the account of the customer without obtaining written discretionary authority from the affected customer, and guaranteed the customer against losses in a securities account maintained at his firm by telling the customer that only profitable transactions would be placed in his account. The complaint also alleges that Russell caused the execution of transactions in his personal account maintained at his firm's clearing firm, for which transactions he knowingly did not have the financial resources to settle. nor the ability to meet the initial margin requirements, and failed to disclose to the clearing firm his inability to pay for these transactions. The complaint also alleges that Russell effected unauthorized transactions totaling approximately \$275,225 in the account of a public customer with the intention of transferring gains in that account to his own account; the transactions resulted in eventual realized losses to the customer of approximately \$97,430. The complaint further alleges that Russell willfully misled representatives of his clearing firm by misrepresenting that he had sold over \$1.7 million in unsecured positions in the stock in his personal

account, and by so doing, prevented the clearing firm from taking action to limit losses in the account, so that he could continue to maintain the positions in anticipation that the values would increase. The complaint alleges that the firm, acting through Russell, failed to timely file its FOCUS Part IIA and Schedule I with the NASD, and failed to file audited annual financial statements for a one-year period. The complaint also alleges that the firm, acting through Russell, employed its initial advertisement in the form of an Internet Web site, without having previously filed such material with the NASD prior to use, and continuously revised such advertisements without filing prior to use as required by the NASD. The complaint further alleges that the firm, acting through Russell, employed advertising, in the form of an Internet Web site, that failed to provide a sound basis for evaluating the services provided by the firm and included exaggerated and unwarranted statements that were potentially misleading. The complaint also alleges that Russell failed to respond to NASD requests for information. (NASD Case #C05990018)

Mark Alan McGee (CRD #2422551, Registered Representative, Newcastle, Washington) was named as a respondent in an NASD complaint alleging that he received a check in the amount of \$5,079 from a public customer for investment purposes, and the customer did not receive either the shares of stock he intended to purchase, nor did McGee return the funds to him. The complaint also alleges that McGee received a total of \$26,000 from public customers for investment in a fund they were told by McGee was managed by a group of financial advisors in the firm's Seattle office, when in fact, there was no such product provided by the firm, and the customers' funds were not placed in a bona fide investment, nor did McGee return the funds to them. The

complaint also alleges that McGee failed to respond to NASD requests for information. (NASD Case #C3B990017)

Erwin Allen Porges (CRD #1222183, Registered Representative, Boca Raton, Florida) was named as a respondent in an NASD complaint alleging that he caused securities to be purchased in a joint account maintained by public customers, even though such purchase of securities had not been authorized by the affected customers. The complaint also alleges that Porges failed to respond to NASD requests to provide testimony. (NASD Case #C8A990056)

John Richard Russell (CRD #1320693, Registered Representative, Albuquerque, New Mexico) was named as a respondent in an NASD complaint alleging that he received \$2,435.54 of a public customer's mutual fund proceeds, failed to promptly invest the proceeds in any investment or place the proceeds in an account in the name of the customer, maintained possession and control of the funds, and when confronted by the customer, issued the customer a personal check in the amount of \$2,400. The complaint also alleges that Russell failed to respond completely to NASD requests for information and documentation. (NASD Case #C3A990039)

Gregory John Shultis (CRD #1934789, Registered Representative, Rochester, New York) was named as a respondent in an NASD complaint alleging that he received a \$400 check made payable to Shultis from a public customer for a financial planning fee, cashed the check, and deposited the proceeds in his checking account when his member firm's policy required all client checks to be made out to the company and expressly prohibited the deposit of client funds in a representative's personal

account. The complaint alleges that had Shultis properly handled the customer's funds, he would have been entitled, at most, to compensation equaling 33 percent of the fee, or \$132, and by retaining the full \$400 for his own use and benefit, Shultis converted \$268 in funds properly belonging to his member firm and to which he was not entitled. (NASD Case #C8B990016)

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

The Glaser Capital Corp., Cincinnati, Ohio (June 17, 1999)

**Kronos Investments Limited,** Oklahoma City, Oklahoma (May 14, 1999)

**Pellett Investments, Inc.,** Missoula, Montana (May 14, 1999)

# Firms Suspended/Canceled

The following firms were suspended/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 suspensions/cancellations commenced is listed after the entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

**Bob Moore Investment Securities, Inc.,** West Palm Beach, Florida (May 14, 1999 - May 24, 1999)

**CDH Capital Corporation,** Irving, Texas (June 4, 1999)

**Income Network Company,** Irvine, California (May 14, 1999)

**Lakeside Trading,** Metairie, Louisiana (May 14, 1999) **Qwon Investment Consultants, Inc.,** Denver, Colorado (June 4, 1999)

**W.J. Askins & Company, Inc.,** Washington, DC (May 19, 1999 - June 11, 1999)

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

**Coffey, Stephen M.,** Cincinnati, Ohio (June 17, 1999)

**Dalton, Lance R.,** Los Angeles, California (June 17, 1999)

Fang, Kai, Flushing, New York (May 14, 1999)

Feintuch, Ira B., Englewood, New Jersey (May 14, 1999 - May 21, 1999)

**Gerhauser, Jr., William C.,** Brentwood, New York (May 14, 1999)

**Gerhauser, Sr., William H.,** Surrey, Great Britain (May 14, 1999)

**Kelleher, Michael A.,** Boston, Massachusetts (May 14, 1999)

**Pellett, Ronald N.,** Missoula, Montana (May 14, 1999)

**Perry, Sean M.,** Rancho Cucamonga, California (June 17, 1999)

Peters, James Basil, Oxnard, California (May 14, 1999)

**Pritula, James S.,** Orlando, Florida (May 14, 1999)

**Shvarts, Aleksandr,** Brooklyn, New York (June 17, 1999)

Van Ahn, Thomas K., Oshkosh, Wisconsin (June 17, 1999) Whitman, Jr., Bruce N., Stamford, Connecticut (June 17, 1999)

# Individuals Suspended Pursuant To NASD Rule Series 9510 For Failure To Pay Arbitration Awards

**Shui, Amy,** Long Branch, New Jersey (June 1, 1999 - June 17, 1999)

**Zimmerman, June Sayer,** San Diego, California (June 1, 1999)

# NASD Regulation Censures And Fines Lehman Brothers \$100,000 For Short Sale, Confirmation Disclosure, And Free-Riding Violations

NASD Regulation announced that Lehman Brothers, Inc., of New York, NY, has been censured and fined \$100,000 after settling charges that it violated NASD rules regarding the execution and reporting of short sales, mutual fund confirmation disclosure, and free-riding and withholding requirements.

Lehman Brothers, while neither admitting nor denying the findings, was also cited for inadequate supervision over the areas in which the violations occurred during periods from February 1995 through February 1997. The violative conduct was uncovered during an examination of the firm by NASD Regulation's Seattle District Office.

NASD Regulation found that the firm executed 50 impermissible short sale transactions on 14 days and also failed to properly designate the reports of the transactions with a short sale modifier. The NASD's Short Sale Rule prohibits broker/dealers from placing short sale transactions in Nasdaq National Market stocks at the bid price or below the bid price, when it is below the preceding inside bid. The Short Sale Rule was designed to prohibit market destabilizing and

abusive short sales in declining markets.

Lehman Brothers was also sanctioned for failing to include required disclosure language on over 4,100 confirmations mailed to customers who had purchased over \$165 million of mutual funds which were subject to sales charges. NASD rules require prominent disclosure on each confirmation informing the customer that he or she may pay a sales charge on the sale of the shares.

NASD Regulation further found violations of its Free-Riding Rule. The Free-Riding Rule ensures brokerage firms make a bona fide public distribution of "hot" IPOs – those that trade at a premium in the

market immediately after trading begins. The Rule prohibits some individuals from purchasing these "hot" IPOs entirely, and prohibits others from IPO purchases without the requisite documentation. The purpose of the Rule is to protect the integrity of the public offering system by ensuring that shares are sold to the general public and that broker/dealers do not withhold the securities for their own benefit or use them to reward persons who are in a position to direct future business to the broker/dealer. The Rule also assures that members do not take unfair advantage of their "insider position" in the industry to the detriment of public investors.

NASD Regulation found that from January 1996 through October 1996,

Lehman Brothers sold over 1 million shares, worth over \$16 million, to restricted persons or to conditionally restricted accounts, without making an appropriate inquiry about the customers or documenting in writing the permissibility of the sales. The firm also filed inaccurate information with the NASD regarding the sales.

Finally, NASD Regulation found that Lehman Brothers failed to take reasonable steps to ensure that adequate supervision in each of these areas was being carried out, and that failures in these areas were noted and addressed in a timely manner.

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1999 D	ispute Resolution I	Program			1999 Տր	oring Secu	ırities Conf	erence	
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# For Your Information

# **Registration Fee Changes**

Registration fees have changed recently in the following jurisdictions: Utah, the Chicago Board of Options Exchange, North Dakota, and Nebraska. These registration fees are processed through the Central Registration Depository (CRD<sup>™</sup>) and the changes went into effect on **July 1, 1999**.

# Utah

Fee Description		New Amount		
•	UT Individual Registration Fee	\$45.00		
•	UT Transfer Fee	\$45.00		
•	UT Individual Renewal Fee	\$45.00		

Any questions concerning these fee changes should be directed to Joseph Eschler, Utah Department of Commerce, Securities Division, at (801) 530-6600.

# **Chicago Board of Options Exchange**

Fee Description		New Amount	
•	CBOE Individual Registration Fee	\$35.00	
•	CBOE Transfer Fee	\$30.00	
•	CBOE Individual Renewal Fee	\$30.00	

Any questions concerning these fee changes should be directed to Emily Schmitz, Chicago Board of Options Exchange, at (312) 786-7056.

# **North Dakota**

Fee Description		New Amount	
•	ND Individual Registration Fee ND Transfer Fee	\$60.00 \$60.00	
•	ND Individual Renewal Fee	\$60.00	

Any questions concerning these fee changes should be directed to Diane Kambeitz, North Dakota Securities Commission, at (701) 328-2910.

### Nebraska

Nebraska will change participation in the CRD system by requiring CRD to collect the \$250 Nebraska Broker/Dealer registration fee.

In doing so, Nebraska joins other jurisdictions that allow the CRD to both process and deduct fees for BD registration filings. Any firm that submits a Form BD requesting Nebraska registration will automatically have the fees deducted from the firm's CRD account. Payment should no longer be sent to the state of Nebraska.

Any questions concerning this change should be directed to Holly Vierk, Nebraska Securities Bureau, at (402) 471-3445.

# Announcement - Upcoming District 2 Compliance Seminars

The 1999 District 2 Compliance Seminars will be held this month in the following three locations:

- Los Angeles on July 27, 1999
- Orange County on July 28, 1999
- San Diego on July 29, 1999

Members of the NASD Regulation staff, as well as industry members,

will be available to discuss current industry issues and offer insights and best practices on regulatory and compliance matters. Featured topics include discussions on branch office supervision and compliance issues; continuing education; Order Audit Trail System (OATS<sup>SM</sup>) implementation; on-line trading; and recent regulatory trends. There will also be an online tutorial of the newly redesigned CRD system.

To register or for more details, call Kelly Mosley, NASD Regulation, at (213) 627-2122. For more information, see the NASD Regulation Web Site (www.nasdr.com).

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# **NASD Member Benefits**



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- · Dell's award-winning service and support
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To take advantage of this benefit, go to your NASD Premier Page at www.dell.com/premier. Enter user name "NASD" and password "DELLNASD98". Then custom-configure your systems and place your order. Your discount will automatically be applied. And, as always, you can call Dell toll-free at 877-248-3355 to speak with a sales representative.



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

Watch your mail for a conference brochure and registration materials. Questions? Call the NASD at (202) 728-8383 or visit the NASD Regulation Web Site.

1999 NASD Regulation Fall Securities Conference

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# Special NASD Notice to Members 99-62

Nominees For District Committees And District Nominating Committees

# **Suggested Routing**

Senior Management
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Training

# National Association of Securities Dealers, Inc. Notice Of Nominees

The purpose of this *Special Notice to Members* is to advise members of the nominees to fill vacancies on the District Committees and the District Nominating Committees except for those in District 10 (New York). Scheduling commitments precluded the ability of all District 10 Nominating Committee members to convene for the purpose of finalizing its slate of candidates. It is anticipated that the District 10 Nominating Committee will meet shortly for that purpose and the results will be communicated under separate cover. Therefore, in accordance with the National Association of Securities Dealers, Inc. (NASD°) By-Laws, this *Special Notice to Members* is being issued to announce the candidates from Districts 1, 2, 3, 4, 5, 6, 7, 8, 9, and 11. The individuals identified in this *Special Notice to Members* have been nominated for three-year terms on the District Committees and for one-year terms on the District Nominating Committees which begin in January 2000.

We appreciate the interest shown by many of you in participating in the District Committees. We look forward to your participation in the matters of the Districts during the coming year. Following is a general description of the procedures pertaining to this stage of the election. The detailed procedures to fill the vacancies on the District Committees can be found in *Special Notice to Members* 99-40.

 If an officer, director, or employee of an NASD member is interested in being considered as an additional candidate, he/she must indicate his/her interest to the District Director within fourteen (14) calendar days of the date of this Special Notice to Members. The District Director shall make a written record of the time and date of such notification.

If an additional candidate does not come forward after the 14 days, the election of the committee is complete.

- Additional candidate(s) may be nominated if a petition signed by the Executive Representative of at least 10 percent of the members eligible to vote in the District is filed with the District Nominating Committee within 30 calendar days from the mailing date of this Special Notice to Members, unless the Secretary of NASD Regulation® grants additional time for good cause shown.
- If no additional candidate(s) are nominated within the 30-calendar day period, then the candidates nominated by the District Nominating Committee shall be considered duly elected, and the District Committee shall certify the election to the Board of Directors of NASD Regulation.

Questions concerning this Special Notice may be directed to:

Joan C. Conley Corporate Secretary National Association of Securities Dealers, Inc. 1735 K Street, N.W. Washington, D.C. 20006-1500 (202) 728-8381

Variable Contracts

# National Association of Securities Dealers, Inc. District Committee Nominees And District Nominating Committee Nominees

The following persons have been nominated to serve on District Committees and District Nominating Committees.

# **District 1**

Elisabeth P. Owens, District Director John J. Sanders, Jr., District Nominating Committee Chair 525 Market Street, Suite 300 San Francisco, CA 94105 (415) 882-1200

Northern California (the counties of Monterey, San Benito, Fresno, and Inyo, and the remainder of the state north or west of such counties), northern Nevada (the counties of Esmeralda and Nye, and the remainder of the state north or west of such counties), and Hawaii

### **District Committee Nominees**

Sally G. Aelion Emmett A. Larkin Company, Inc. San Francisco, CA

David A. Baylor Thomas Weisel Partners LLC San Francisco, CA

Henry W. Carter E\*Trade Securities, Inc. Menlo Park, CA

# **District Nominating Committee Nominees**

Nicholas C. Cochran American Investors Company Dublin, CA

Deborah R. Gatzek Franklin/Templeton Distributors San Mateo. CA

John F. Luikart Sutro & Co. Incorporated San Francisco, CA

John E. Schmidt Credit Suisse First Boston San Francisco, CA

William A. Svoboda Morgan Stanley Dean Witter San Jose, CA

# **District 2**

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

Southern California (that part of the state south or east of the counties of Monterey, San Benito, Fresno, and Inyo), southern Nevada (that part of the state south or east of the counties of Esmeralda and Nye), and the former U.S. Trust Territories

# **District Committee Nominees**

Kellen M. Flanigan Dabney Flanigan, LLC Los Angeles, CA

William H. Howard, Jr. Hagerty, Stewart & Associates, Inc. Irvine, CA

James R. Kruger Dreyfus Brokerage Services, Inc. Beverly Hills, CA

Stephen P. Maguire Maguire Investments, Inc. Santa Maria. CA

# **District Nominating Committee Nominees**

Carl E. Lindros Santa Barbara Securities, Inc. Santa Barbara. CA

Robert L. Winston American Funds Distributors, Inc. Los Angeles, CA

Jerry M. Gluck Jefferies & Company, Inc. Los Angeles, CA

Kaye M. Woltman Girard Securities San Diego, CA

Joan B. Seidel Morton Seidel & Company, Inc. Beverly Hills, CA

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

Arizona, Colorado, New Mexico, Utah, and Wyoming

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

Alaska, Idaho, Montana, Oregon, and Washington

# **District Committee Nominees**

Bruce Kramer Prudential Securities, Inc. Seattle, WA

J. Pamela Dawson WM Financial Services , Inc. Seattle, WA

Steven Fishbein American Fronteer Financial Corporation Denver, CO

John Hinfey United Planners' Financial Services of America, a Limited Partner Scottsdale, AZ

# **District Nominating Committee Nominees**

Anthony Petrelli Neidiger, Tucker, Bruner, Inc. Denver, CO

J. Wendell Garrett J. W. Garrett & Company, Inc. Phoenix, AZ

James Kerr Ragen MacKenzie, Inc. Seattle, WA

Steven Larson Richards, Merrill & Peterson, Inc. Spokane, WA

Douglas Strand Strand, Atkinson, Williams & York, Inc. Portland, OR

### **District 4**

Jack Rosenfield, District Director Edward J. Berkson, District Nominating Committee Chair 120 W. 12th Street, Suite 900 Kansas City, MO 64105 (816) 421-5700

Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota

# **District Committee Nominees**

E. John Moloney Moloney Securities Company St. Louis, MO

Rodger O. Riney Scottsdale Securities, Inc. St. Louis, MO

Gail Werner-Robertson GWR Investments, Inc. Omaha, NE

Jeffrey A. Schuh Offerman & Company Minneapolis, MN

# **District Nominating Committee Nominees**

Todd W. Miller Miller, Johnson & Kuehn, Incorporated Minneapolis, MN

John D. Cleland Security Distributors, Inc. Topeka, KS

Colleen Curran American Express Financial Advisors Inc. Minneapolis, MN

Albert W. Lauth First St. Louis Securities, Inc. St. Louis, MO

Wayne H. Peterson Washington Square Securities, Inc. Minneapolis, MN

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

Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Oklahoma, and Tennessee

### **District Committee Nominees**

David A. Daugherty James Baker & Associates A Limited Partnership Oklahoma City, OK

James M. Rogers J.J.B. Hilliard, W.L. Lyons, Inc. Louisville. KY

W. Lucas Simons J. C. Bradford & Co. Nashville, TN

# **District Nominating Committee Nominees**

Jerry Roberts Sterne, Agee & Leach, Inc. Little Rock, AR

J. French Hill J.F. Hill & Company, Inc. Little Rock, AR

William T. Patterson Morgan Keegan & Company, Inc. Jackson. MS

David S. Patrick Wheat, First Securities, Inc. Montgomery, AL

Miguel Uria Oro Financial, Inc. New Orleans, LA

### District 6

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

Texas

# **District Committee Nominees**

G. Clyde Buck Harris Webb & Garrison, Inc. Houston, TX

Richard L. Sandow Southlake Capital, L.L.C. Southlake, TX

Bryan T. Forman First Financial Investment Securities, Inc. Austin, TX

# **District Nominating Committee Nominees**

William B. Madden Madden Securities Corp. Dallas, TX

Paul L. Larkin Vista Securities, Inc. Dallas, TX

Robert G. Gunn III Gunn and Company, Inc. San Antonio, TX

Jane Bates
The Variable Annuity Marketing Company
Houston, TX

William D. Connally Greenman Parker Connally Greenman, Inc. Fort Worth, TX

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

Florida, Georgia, North Carolina, South Carolina, Virginia, Puerto Rico, the Canal Zone, and the Virgin Islands

### **District Committee Nominees**

Collie W. Lehn A.G. Edwards & Sons, Inc. Laurens, SC

Michael D. Hearn, Esq. Wachovia Securities, Inc. Charlotte, NC

John W. Waechter William R. Hough & Co. St. Petersburg, FL

Charles E. Scarlett, Esq. J. W. Genesis Securities, Inc. Boca Raton, FL

# **District Nominating Committee Nominees**

Franklin C. Golden James M. Myers and Co. Charlotte, NC

Stuart J. Knobel Edgar M. Norris & Co., Inc. Anderson, SC

R. Charles Shufeldt SunTrust Banks Atlanta, GA

Robert J. Brietz Marion Bass Securities Corp. Charlotte, NC

David G. Pittinos Dean Witter Reynolds, Inc. Tallahassee, FL

### **District 8**

Carlotta A. Romano, District Director Earl Clifford Oberlin, III, District Nominating Committee Chair 10 South LaSalle, 20th Floor Chicago, IL 60603-1002 (312) 899-4400

Illinois, Indiana, Michigan, and Wisconsin

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

Ohio and part of upstate New York (the counties of Monroe, Livingston, and Steuben, and the remainder of the state west of such counties)

#### **District Committee Nominees**

Carol Podesta Foley Podesta & Company Chicago, IL

Christine E. Monical Conseco Financial Services, Inc. Conseco Equity Sales, Inc. Carmel, IN

Renee M. Rombaut Sage, Rutty & Co., Inc. Rochester, NY

# **District Nominating Committee Nominees**

Leonard L. Anderson Anderson & Company, Inc. Grand Haven, MI

Robert T. Clutterbuck McDonald Investments, Inc. Cleveland, OH

Paul F. Murin David A. Noyes & Company Chicago, IL

William H. Richardson Trubee, Collins & Co., Inc. Buffalo, NY

G. Donald Steel Planned Investment Co., Inc. Indianapolis, IN

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

Delaware, Pennsylvania, West Virginia, District of Columbia, Maryland, and the part of southern New Jersey in the immediate Philadelphia vicinity

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

New Jersey (except southern New Jersey in the immediate Philadelphia vicinity)

### **District Committee Nominees**

James D. Lamke Spear, Leeds & Kellogg Jersey City, NJ

Lance A. Reihl 1717 Capital Management Co. Wilmington, DE

John P. Meegan Parker/Hunter Incorporated Pittsburgh, PA

Lenda P. Washington GRW Capital Corporation Washington, DC

# **District Nominating Committee Nominees**

Allen S. Jacobson Gibraltar Securities Co. Florham Park, NJ

William F. Rienhoff IV BT Alex. Brown Incorporated Baltimore, MD

James J. Malespina Herzog, Heine, Geduld, Inc. Jersey City, NJ

Mark W. Cresap Cresap, Inc. Radnor, PA

Robert A. Woeber Arthurs, Lestrange & Company Incorporated Pittsburgh, PA

# District 11

Willis H. Riccio, District Director Mary Toumpas, District Nominating Committee Chair 260 Franklin Street, 16th Floor Boston, MA 02110 (617) 261-0800

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, and New York (except for the counties of Monroe, Livingston, and Steuben; and the five boroughs of New York City)

# **District Committee Nominees**

Elena Dasaro H.C. Wainwright & Co., Inc. Boston, MA

John D. Lane Westport Resources Investment Services, Inc. Westport, CT

Deborah G. Ullman American Skandia Marketing, Inc. Shelton, CT

Peter T. Wheeler Commonwealth Equity Services Waltham, MA

# **District Nominating Committee Nominees**

Edward L. Sherr Carl P. Sherr & Company Worcester, MA

Stephanie Brown Linsco/Private Ledger Corp. Boston, MA

Harry H. Branning Advest, Inc. Hartford, CT

Francis W. Murphy Moors & Cabot Boston, MA

Wilson G. Saville Barrett & Company Providence, RI

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