AUGUST 2004

Notices to Members

Notices

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Reported for August D1

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Notice to Members

AUGUST 2004

SUGGESTED ROUTING

Legal & Compliance
Operations
Registered Representatives
Systems
Trading

KEY TOPICS

ACT Short Sale Reporting Requirements
IM-6130
Rule 6130(d)(6)
Short Sales

GUIDANCE

ACT Short Sale Reporting Requirements

Operative Date of Short Sale ACT Reporting Requirements for OTCBB and Other Non-NASDAQ OTC Equity Securities Extended to **September 24, 2004**

Executive Summary

NASD is delaying the operative date of IM-6130 (Trade Reporting of Short Sales) for Over-the-Counter Bulletin Board (OTCBB) and other non-NASDAQ over-the-counter (OTC) equity securities until **September 24, 2004**. IM-6130 was filed for immediate effectiveness with the SEC in May 2004 with an operative date of July 26, 2004.[1] New IM-6130 clarifies that, as currently required by Rule 6130 (Trade Report Input), a "short sale" or "short sale exempt" indicator, as applicable, is required in all short sale transactions reported to the Automated Confirmation Transaction Service (ACT), including (1) NASDAQ National Market (NNM) securities; (2) NASDAQ SmallCap Market (SmallCap) securities; (3) other OTC transactions in exchange-listed securities; (4) OTCBB securities; and (5) other non-NASDAQ OTC equity securities. NASD understands that some members and their vendors need to make significant technological changes to their systems for OTCBB and other non-NASDAQ OTC equity securities to comply with these requirements; therefore, in consultation with SEC staff, NASD is extending the operative date for OTCBB and other non-NASDAQ OTC equity securities to provide members with additional time to make such changes.

Questions/Further Information

Questions regarding this *Notice to Members* may be directed to Jeffrey S. Davis, Office of General Counsel, NASDAQ, at (202) 912-3035; the Legal Section, Market Regulation, NASD, at (240) 386-5126; or Office of General Counsel, Regulatory Policy and Oversight, NASD, at (202) 728-8071.

Discussion

As further detailed in *Notice to Members 04-40*, NASD, through its subsidiary, The Nasdaq Stock Market, Inc. (NASDAQ), filed for immediate effectiveness with the SEC proposed interpretive material to Rule 6130 clarifying that a "short sale" or "short sale exempt" indicator, as applicable, is required in all short sale transactions reported to ACT, including transactions in NNM, SmallCap, exchange-listed, OTCBB, and other non-NASDAQ OTC equity securities.

Although IM-6130 became effective immediately upon filing, the operative date of these requirements was July 26, 2004 to provide members with additional time to educate staff and re-program their systems, if necessary. NASD understands that some members and their vendors need to make significant technological changes to their systems with respect to OTCBB and other non-NASDAQ OTC equity securities to comply with the requirements and therefore, in consultation with SEC staff, NASD is delaying the operative date of these provisions until **September 24, 2004**. NASD believes that delaying the operative date of these requirements will provide members the additional time necessary to make changes to their systems regarding OTCBB and other non-NASDAQ OTC equity securities.

Endnotes

1 *See* Securities Exchange Act Release No. 49833 (June 8, 2004), 69 FR 116 (June 17, 2004); *see also Notice to Members 04-40* (May 2004).

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Notice to Members

AUGUST 2004

SUGGESTED ROUTING

Legal & Compliance
Registered Representatives
Registration
Senior Management

KEY TOPICS

Branch Office Registration
Central Registration Depository (CRD®)

REQUEST FOR COMMENT

Branch Office Registration

NASD Requests Comment on a Proposed Uniform Branch Office Registration Form; **Comment Period Expires September 3, 2004.**

Executive Summary

NASD requests comment on a proposed uniform branch office registration form (Form BR) that will enable firms to register branch offices electronically with NASD, the New York Stock Exchange, Inc. (NYSE), and states through the Central Registration Depository (CRD® or CRD system). As proposed, the Form BR is intended to replace Schedule E of the Form BD, the current NYSE Branch Office Application form, and certain state branch office forms. Enhancements to the CRD system that are scheduled to be deployed with the proposed Form BR also will enable firms to identify the branch offices to which their registered representatives are assigned. NASD notes that the NYSE is soliciting comments from its members on Form BR and the North American Securities Administrators Association (NASAA) also is separately soliciting comment on the proposed form (please visit *www.nyse.com* and *www.nasaa.org* for more detailed information on the NYSE and NASAA communications).

The proposed Form BR is included as Attachment A.

Questions/Further Information

Questions concerning this *Notice* may be directed to Chip Jones, Vice President/State Liaison, at (240) 386-4797; Richard E. Pullano, Associate Vice President/Chief Counsel, Registration and Disclosure, at (240) 386-4821; or Stefanie M. Watkins, Staff Attorney, Registration and Disclosure, at (240) 386-4824.

Request for Comment

NASD encourages all interested parties to comment on the proposed form. Comments must be received by September 3, 2004. Members and other interested parties can submit their comments using the following methods:

- mailing comments in hard copy to the address below; or
- e-mailing comments to *pubcom@nasd.com*

Comments sent by hard copy should be mailed to:

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

Important Notes: The only comments that will be considered are those submitted pursuant to the methods described above. All comments received in response to this *Notice* will be made available to the public on the NASD Web Site. Generally, comments will be posted on the NASD Web Site one week after the end of the comment period.[1]

Before becoming effective, a proposed rule change must be authorized for filing with the Securities and Exchange Commission (SEC) by the NASD Board, and then must be approved by the SEC following publication for public comment in the *Federal Register*.[2]

Background

A working group composed of NASD and NYSE staff, and representatives of NASAA and states, has developed the Form BR, a form for registering branch offices. The proposed Form BR will be a "uniform" registration form, similar to the Form U4 (Uniform Application for Securities Industry Registration or Transfer) and the Form U5 (Uniform Termination Notice for Securities Industry Registration). Like the Forms U4 and U5, Form BR will enable NASD member firms to register branch offices electronically with NASD, the NYSE, and states that require branch registration, through a single filing through the CRD system.[3] The proposed Form BR will reconcile inconsistencies among existing branch office forms, eliminate duplicative questions, and elicit information that will facilitate the branch office registration process. Form BR is intended to replace the current NYSE Branch Office Application form, the existing state branch office forms, and Schedule E of Form BD (Uniform Application for Broker-Dealer Registration).[4]

Some highlights of the proposed Form BR are noted below:

Filing Types: The proposed Form BR will permit firms to make: (1) an "initial" filing (to apply for approval of or report a branch office); (2) an "amendment" filing (to amend information previously filed); and (3) a "closing/withdrawal" filing (to terminate a branch office registration and/or to withdraw an initial filing prior to approval by a state or self-regulatory organization).

Explanation of Terms: The proposed Form BR adopts, to the extent possible, the "Explained Terms" used on the existing uniform forms. The proposed Form BR also includes definitions of additional terms used in the context of branch office registration and reporting, including "closing," "person-in-charge," "regular branch," "small branch," "supervisor," and "withdrawal."[5]

Type of Entity: Consistent with the uniform form concept, the proposed Form BR will provide entities with the opportunity to designate whether the branch office filing is being made on behalf of a broker-dealer (BD) or an investment adviser (IA). This feature will enable member firms to register or report IA branches in states that require such registration and reporting.

NYSE Component: The proposed Form BR will elicit certain information required for branch office registration for firms that are NYSE members. Accordingly, the proposed form incorporates the information elicited on both the NYSE's current Branch Office Application and Office Space-Sharing forms. The CRD system will interact with the NYSE's branch office system on NYSE branch office registration filings. The NYSE's current protocol for requesting approval for new branch offices would continue with proposed Form BR. Under the proposed approach, NYSE members would use proposed Form BR to request such approvals, and the information provided by NYSE members would be transmitted to the NYSE, which, in turn, would communicate its determinations (*e.g.*, approvals) back through the CRD system.

Other Business (DBA) Names/Types of Activities/Web Sites: This section of the proposed Form BR will elicit the financial industry activities conducted at the branch office, names under which the branch office is conducting business, and Web Site addresses used by the branch office.

Office Sharing Arrangements: The proposed Form BR will elicit information on office sharing arrangements of the branch office, consistent with information currently elicited on Schedule E of the Form BD.

Integration with the CRD System

Form BR represents one component of a broader project to register branch offices through the CRD system.[6] The integration of branch office registration into the CRD system through proposed Form BR will create efficiencies for member firms by, among other things, making it easier to register branch offices with NASD, the NYSE, and the states and manage their ongoing responsibilities with regard to those branch office registrations. For example, in addition to being able to submit a single filing to fulfill the branch office registration requirements of NASD, the NYSE, and states, member firms also will benefit from the centralized fee collection, on-line work queues, electronic notifications, and other features available through the CRD system.

Furthermore, with the proposed deployment of the Form BR, NASD is planning enhancements to the CRD system that will enable firms to designate, and users to identify, the branch office or office(s) to which a particular registered representative is assigned. Firms would continue to report changes to an individual registered person's branch office assignment by amending the Form U4. With the planned CRD enhancements, firms also would be able to report a new office of employment address for multiple registered persons assigned to a particular branch office if that branch office has moved to a new location by filing an amended Form BR (rather than filing multiple Form U4 amendments for the registered persons affected).

Request for Comment

NASD seeks comment on the proposed Form BR and the ability to electronically file Form BR through the CRD system to fulfill member firms' registration and reporting requirements relating to branch offices. NASD is interested in whether commenters support the use of the CRD system to register branch offices with NASD, the NYSE, and states. NASD also is interested in commenters' views on the scope of information collected on the proposed Form BR and the clarity of the instructions on the proposed form.

Endnotes

1 *See Notice to Members 03-73* (November 2003) (NASD Announces Online Availability of Comments). Personal identifying information, such as names or email addresses, will not be edited from submissions. Persons should submit only information that they wish to make publicly available.

2 Section 19 of the Securities Exchange Act of 1934 (Exchange Act) permits certain limited types of proposed rule changes to take effect upon filing with the SEC. The SEC has the authority to summarily abrogate these types of rule changes. *See* Exchange Act Section 19 and rules thereunder.

3 Currently, Connecticut, Florida, Nevada and Vermont have separate forms that firms must submit to register a branch office in each of those states.

4 States that currently require branch office registration or reporting have indicated that they would use the proposed Form BR for those purposes. SEC staff has indicated that it would consider endorsing the proposed Form BR as a replacement for Schedule E of Form BD.

5 NASD notes that some of these terms are used on the current NYSE Branch Office Application form.

6 Both NASD and the NYSE have submitted rule filings to the SEC proposing to adopt a definition of branch office that is either identical or the same in all material respects. *See* SR-NASD-2003-104 (July 1, 2003) and SR-NYSE-2002-34 (as amended April 19, 2004). NASD will work with other regulators to coordinate implementation of all components of the project.

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Notice to Members

AUGUST 2004

SUGGESTED ROUTING

Legal and Compliance

KEY TOPICS

Arbitration
Arbitrators
Dispute Resolution

GUIDANCE

Online Arbitration Claim Filing System

SEC Approves Amendments to Rule 10314 to Implement the Online Arbitration Claim Filing System; **Effective August 5, 2004**

Executive Summary

The Securities and Exchange Commission (SEC) has approved amendments to Rule 10314 of the NASD Code of Arbitration Procedure (Code) to allow parties to complete part of the arbitration claim filing process through the Internet.[1]

The text of the amendments is set forth in Attachment A. The amendments will be effective on August 5, 2004 and will apply to any arbitration claims commenced using the system on or after August 5, 2004.

Questions/Further Information

Questions regarding this *Notice* may be directed to Mignon McLemore, Counsel, NASD Dispute Resolution, at (202) 728-8151 or *mignon.mclemore@nasd.com*.

Discussion

NASD has amended Rule 10314 of the Code to allow parties to complete part of the arbitration claim filing process through the Internet.

Background

NASD Dispute Resolution is upgrading its computer system, in what is known as the MATRICS[2] Computer Project, which will replace its two case management systems: CRAFTIS and NLSS (Neutral List Selection System). Once the upgrade is complete, MATRICS will be an interactive, automated system that will allow parties and arbitrators to monitor and provide updates for those arbitration cases in which they are participating.

Online Claim Filing System

A significant component of this upgrade includes the development of an online, Internet-based arbitration claim notification and filing system (online filing system). This component of MATRICS will allow parties to complete part of the arbitration claim filing process through the Internet by submitting certain information to NASD electronically.

Under the current rule, if a claimant wants to file an arbitration claim, the claimant must complete a package of materials and return them to NASD Dispute Resolution through the mail. The Claimant also must supply copies of the Statement of Claim and supporting documents for the other parties and the arbitrators. Once the intake staff receives the claimant's materials, the staff must open a new case file and manually enter the new claim information into CRAFTIS. The process of opening a case file, analyzing claim documents, and manually entering data is time-consuming and can be subject to delay as errors (resulting from illegible handwriting to incomplete answers) are corrected. With the implementation of the online filing system, the process will begin to become more streamlined, and ultimately, more efficient.

The online filing system will allow a Claimant to commence the arbitration claim filing process by completing a Claim Information Form online. The Claim Information Form is an electronic version of the Claim Information Sheet, which is included in the materials sent to claimants seeking to file an arbitration claim. This document gathers key information about the claim, such as background information on all of the parties, the actions giving rise to the claim, and the type of relief sought. When completed, the Claim Information Sheet serves as a reliable source of background information for intake staff. Thus, NASD Dispute Resolution decided to use it as a template in designing the online filing system.

While use of the online filing system is voluntary, the benefits that the system provides will make filing an arbitration claim online more attractive than using the mail. Once the Claimant has completed the Claim Information Form online, the online filing system will allow the Claimant to attach an electronic version of the Statement of Claim to the form, provided it does not exceed 50 pages. Once this online form has been completed, the Claimant will be able to send all of this information to NASD Dispute Resolution electronically.[3] Other benefits provided by the system include a link to the fee calculators, which will calculate the amount that should be remitted with the Statement of Claim, and a "look up" tool that helps the user find the exact name of a respondent to insert in the appropriate fields. The system will also allow a user to print a receipt of the submission; print instructions for completing the filing; save partially completed claims as "templates" to be used as the basis for subsequent claims; and save multiple partially completed claims that can be accessed and completed at a later date.

Effective Date

The amendments will be effective on August 5, 2004 and will apply to any arbitration claims commenced using the system on or after August 5, 2004.

Endnotes

1 Exchange Act Release No. 49673 (May 10, 2004) (File No. SR-NASD-2004-016), 69 Federal Register 26910 (May 14, 2004).

2 MATRICS stands for Mediation and Arbitration Tracking and Retrieval Interactive Case System.

3 The Claimant would then complete the claim filing process by filing a copy of the Tracking Form receipt, an executed Uniform Submission Agreement, sufficient copies of the Statement of Claim (if it has not been submitted electronically), sufficient copies of any exhibits or other supporting documents, and the filing fee and hearing session deposit through the mail, as is current practice. NASD staff will make the necessary copies of the electronically submitted Statement of Claim for the other parties and the arbitrators.

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ATTACHMENT A

New language is underlined; deletions are in brackets.

Code of Arbitration Procedure

* * *

10314. Initiation of Proceedings

Except as otherwise provided herein, an arbitration proceeding under this Code shall be instituted as follows:

(a) Statement of Claim

(1) The Claimant shall file with the Director of Arbitration an executed Submission Agreement, a Statement of Claim of the controversy in dispute, together with the documents in support of the Claim, and the required deposit. Sufficient additional copies of the Submission Agreement and the Statement of Claim and supporting documents shall be provided to the Director of Arbitration for each party and each arbitrator. The Statement of Claim shall specify the relevant facts and the remedies sought. The Director of Arbitration shall endeavor to serve promptly by mail or otherwise on the Respondent(s) one (1) copy of the Submission Agreement and one (1) copy of the Statement of Claim.

(2) A Claimant or counsel (referred to herein collectively as "Claimant") may use the online claim notification and filing procedure to complete part of the arbitration claim filing process through the Internet. To commence this process, a Claimant may complete a Claim Information Form that can be accessed through an NASD Web site. In completing the Claim Information Form, the Claimant may attach an electronic version of the Statement of Claim to the form, provided it does not exceed 50 pages. Once this online form has been completed, an NASD Dispute Resolution Tracking Form will be generated and displayed for the Claimant to reproduce as necessary. The Claimant shall then file with the Director of Arbitration the rest of the materials required in subparagraph (1), above, along with a hard copy of the NASD Dispute Resolution Tracking Form.

(Remainder of rule unchanged.)

* * * *

Notice to Members

AUGUST 2004

SUGGESTED ROUTING

Executive Representatives
Legal and Compliance
Senior Management

KEY TOPICS

NASD By-Laws
Non-Payment of Arbitration Awards

GUIDANCE

Non-Payment of Arbitration Awards

NASD Extends Jurisdiction to Suspend Formerly Associated Persons Who Fail to Pay Arbitration Awards

Executive Summary

The Securities and Exchange Commission (SEC) has approved two amendments to the NASD By-Laws that further strengthen NASD's ability to prevent formerly associated persons from re-entering the securities industry if they have failed to pay awards or settlements relating to arbitrations or mediations submitted under NASD Rules.

Specifically, the amendments allow NASD to institute suspension proceedings against a formerly associated person for failing to pay an award or settlement for a period of two years after the award was rendered or the settlement agreement was entered into. In addition, the amendments provide that NASD's authority to suspend an associated or formerly associated person for failure to comply with an award or settlement relating to a arbitration or mediation under NASD rules is not limited to suspending his or her NASD registration, but now also includes the authority to suspend his or her ability to associate with a member *in any capacity* until the award or settlement is paid.

Included with this *Notice* is Attachment A, the text of the amendments to the NASD By-Laws.

NASD will implement these amendments on September 9, 2004.

Questions/Further Information

Questions concerning this *Notice* should be directed to Laura Gansler, Assistant General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8275; or Jean I. Feeney, Vice President and Chief Counsel, Dispute Resolution, at (202) 728-6959.

04-57

Background and Discussion

NASD Jurisdiction for Failure to Pay Awards While Person is Associated with a Member

Currently, NASD may suspend or bar an associated person from further associating with a member firm based on a range of conduct that commences while the person is associated with a member, including failing to comply with an award or settlement agreement relating to an arbitration or mediation filed under NASD Rules.[2] Pursuant to Article V, Section 4 of the NASD By-Laws, NASD may also institute such proceedings for a period of two years after a person terminates his or her association with a member based on conduct that occurred while the person was associated with the member.[3] Suspending a formerly associated person prevents him or her from re-entering the industry for the duration of the suspension.

Prior to the amendments that are the subject of this Notice, however, NASD did not have jurisdiction over formerly associated persons for conduct that commenced after an associated person terminated his or her association. Because associated persons remain subject to arbitration or mediation claims for conduct that occurred during their association even after they terminate their association with a member, a claim may not be resolved, or even filed, until after that time. In such cases, NASD lacked the ability to bring suspension proceedings for failure to pay such awards.[4] In addition, NASD was concerned that a person associated with a member might deliberately terminate his or her association with the member once aware that an arbitration award was about to be entered against him or her in order to avoid sanction by NASD for failure to pay any award or settlement agreement resulting from the proceeding.

Expansion of NASD Jurisdiction for Failure to Pay Awards after Association is Terminated

To address this concern, NASD has amended Article V to add a new Section 4(b), which provides that NASD retains jurisdiction to institute suspension proceedings against formerly associated persons for failing to pay an award or settlement in a matter submitted for arbitration or mediation pursuant to the NASD Rules for a period of two years after the entry of the award or settlement. This is true regardless of when the arbitration or mediation claim was filed, as long as the failure to pay the award or settlement occurred **after** termination. Formerly associated persons who failed to pay an award or settlement while associated remain subject to suspension proceedings for that failure to pay for two years from the date of termination, pursuant to Article V, Section 4(a).[5]

In addition, NASD has amended Article VI, Section 3 of its By-Laws to clarify that its authority is not limited to suspending the registration of an associated person, but also includes the authority to suspend the ability of an associated or formerly associated person to associate with a member—meaning that a person cannot be employed even in a non-registered capacity if he or she is suspended for failing to pay an arbitration award or settlement.

NASD believes that, collectively, these two amendments will significantly enhance its ability to prevent formerly associated persons who fail to pay awards or settlements relating to arbitrations or mediations under NASD Rules from re-entering the industry until the award or settlement is paid.

Implementation Date

NASD will implement these amendments beginning on September 9, 2004.

Endnotes

1 Securities Exchange Act Rel. No. 49845 (June 10, 2004), 69 FR 33968 (June 17, 2004) (File No. SR-NASD-2003-069) (Order of Approval).

2 Article VI, Section 3 of the NASD By-Laws; NASD Rule 9554(a).

3 As a result of these amendments, Article V, Section 4 of the NASD By-Laws is now Article V, Section 4(a). The word "termination" as used in Article V, Section 4 means the following: (1) when applied to associated persons who are registered with NASD, that time when a Form U5 with respect to such person is filed with NASD; or (2) when applied to associated persons who are not registered with NASD, that time when such person ceases to be associated with a member; regardless of whether, in the case of (1) or (2), such termination is voluntary or involuntary, or with or without cause.

4 For example, in at least one case, the NASD Board of Governors directed the Office of Hearing Officers to dismiss, for lack of jurisdiction, a proceeding alleging failure to pay an arbitration award against a person who terminated his association after the arbitration proceeding commenced but before an arbitration award was entered against him. The Board reasoned that, because the conduct underlying the proceeding (i.e., the failure to pay an arbitration award) did not begin until after the person's association terminated, NASD did not retain jurisdiction over the person under Article V, Section 4 of the NASD By-Laws. *See Department of Enforcement v. Jonathan Winston*, Non-Summary Proceeding No. ARB980006 (Office of Hearing Officers, December 15, 1998).

5 As NASD stated in the rule filing, the new provision does not in any way limit the authority of NASD to act pursuant to what was Section 4, and is now Section 4(a).

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ATTACHMENT A

Text of Rule Change

New language is underlined; deletions are in brackets.

* * * * *

Article V

REGISTERED REPRESENTATIVES AND ASSOCIATED PERSONS

* * * * *

Retention of Jurisdiction

Sec. 4. (a) A person whose association with a member has been terminated and is no longer associated with any member of [the] NASD or a person whose registration has been revoked or canceled shall continue to be subject to the filing of a complaint under the NASD Rules [of the Association] based upon conduct [which] that commenced prior to the termination, revocation, or cancellation or upon such person's failure, while subject to [the] NASD's jurisdiction as provided herein, to provide information requested by [the] NASD pursuant to the NASD Rules [of the Association], but any such complaint shall be filed within:

[(a)] (i) two years after the effective date of termination of registration pursuant to Section 3, provided, however that any amendment to a notice of termination filed pursuant to Section 3(b) that is filed within two years of the original notice [which] that discloses that such person may have engaged in conduct actionable under any applicable statute, rule, or regulation shall operate to recommence the running of the two-year period under this subsection;

[(b)] (ii) two years after the effective date of revocation or cancellation of registration pursuant to the NASD Rules [of the Association]; or

[(c)] (iii) in the case of an unregistered person, [within] two years after the date upon which such person ceased to be associated with the member.

(b) A person whose association with a member has been terminated and is no longer associated with any member of NASD shall continue to be subject to a proceeding to suspend, consistent with Article VI, Section 3 of the By-Laws, his or her ability to associate with a member based on such person's failure to comply with an arbitration award or a written and executed settlement agreement obtained in connection with an arbitration or mediation submitted for disposition pursuant to the NASD Rules, provided that such proceeding is instituted within two years after the date of entry of such award or settlement.

* * * * *

Article VI

DUES, ASSESSMENTS, AND OTHER CHARGES

* * * * *

Suspension or Cancellation [of Membership or Registration]

Sec. 3. (a) [The] NASD after 15 days notice in writing, may suspend or cancel the membership of any member or the registration of any person in arrears in the payment of any fees, dues, assessments, or other charges or for failure to furnish any information or reports requested pursuant to Section 2 [, or for failure to comply with an award of arbitrators properly rendered pursuant to the Rules of the Association, where a timely motion to vacate or modify such award has not been made pursuant to applicable law or where such a motion has been denied, or for failure to comply with a written and executed settlement agreement obtained in connection with an arbitration or mediation submitted for disposition pursuant to the Rules of the Association].

(b) NASD after 15 days notice in writing, may suspend or cancel the membership of any member or suspend from association with any member any person, for failure to comply with an award of arbitrators properly rendered pursuant to the NASD Rules, where a timely motion to vacate or modify such award has not been made pursuant to applicable law or where such a motion has been denied, or for failure to comply with a written and executed settlement agreement obtained in connection with an arbitration or mediation submitted for disposition pursuant to the NASD Rules.

* * * * *

Notice to Members

AUGUST 2004

GUIDANCE

SUGGESTED ROUTING

Legal & Compliance

Operations

Senior Management

Partial Customer Account Transfers

SEC Grants Accelerated Approval of Rule Change Relating to Transfers of Specifically Designated Customer Account Assets through the Automated Customer Account Transfer Service (ACATS); **Effective Date: September 13, 2004**

KEY TOPICS

Automated Customer Account Transfer Service (ACATS)

Rule 11870

Executive Summary

On July 14, 2004, the Securities and Exchange Commission (SEC) granted accelerated approval of amendments to Rule 11870 making the procedures for transferring specifically designated customer account assets through the ACATS system consistent with the procedures for transferring securities account assets in their entirety through the ACATS system unless the customer authorizes a partial transfer of assets to be facilitated outside of ACATS.[1] The amendments also permit customers to authorize an account transfer, in whole or in part, via electronic signature in a format recognized as valid under federal law to conduct interstate commerce. These changes conform to recent amendments to New York Stock Exchange Rule 412 and the Interpretation of Rule 412. The amendments become effective on September 13, 2004, to allow firms sufficient time to develop and implement any necessary systems changes. The text of the amendments is provided in Attachment A.

Questions/Further Information

Questions concerning this *Notice* may be directed to the Financial Operations Department at (202) 728-8211.

Discussion

ACATS is a system administered by the National Securities Clearing Corporation (NSCC) that automates and standardizes procedures for the transfer of assets in a customer account from one firm to another. Rule 11870 mandates the use of ACATS when both the carrying member and the receiving member are participants in a registered clearing agency having automated customer securities account transfer capabilities and are eligible to use such capabilities, and sets forth the procedures for members to use when transferring customer assets between members.

The amendments to Rule 11870 clarify that the procedures for transferring specific assets in a customer account through ACATS are consistent with the procedures for transferring the entire account through ACATS, unless the customer specifically requests and authorizes a transfer of assets outside of ACATS. Under Rule 11870, as amended, customers continue to have the option of submitting alternate authorized instructions (*e.g.*, Letters of Authorization or LOAs) to a carrying firm in order to effect the transfer of "specifically designated assets," *i.e.*, partial transfers from one broker-dealer to another outside of the ACATS system. The transfers of such assets outside of the ACATS system continue to be subject to the requirement that members process such transfers expeditiously.[2]

Because customer and broker-dealer obligations resulting from the transfer of an entire account differ from the obligations arising from the transfer of specified assets within an account that will remain active at the delivering firm, the amendments to Rule 11870 distinguish between the transfer of security account assets "in whole" (*i.e.*, transfer of entire accounts) and security account assets "in specifically designated part" (*i.e.*, partial transfers). For example, it would not be necessary for a customer to instruct the delivering firm as to the disposition of his or her non-transferable mutual fund holdings if the customer is not transferring the account in whole.

Previously, Rule 11870 specified that a customer who wishes to transfer his or her account to another member must give "written notice of that fact to the receiving member" and must "sign" a broker-to-broker transfer instruction form. The amendments to Rule 11870 permit customers to authorize an account transfer, in whole or in part, via electronic signature "in a format recognized as valid under federal law to conduct interstate commerce."[3] Thus, under amended Rule 11870, customer authorization of a transfer instruction can be either the customer's actual signature or a valid electronic signature. Further, Rule 11870, as amended, no longer requires specific formats with respect to transfer instructions or reports, since the NSCC no longer requires specific formats with respect to transfer instructions or reports for use with the ACATS system.

Endnotes

1 *See* Release No. 34-50018 (July 14, 2004), 69 FR 43873 (July 22, 2004) (File No. SR-NASD-2004-058).

2 *See* Rule 11870(a).

3 *See* "Electronic Signatures in Global and National Commerce Act" 15 U.S.C. §§ 7001 *et seq*. (2004).

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ATTACHMENT A

Below is the text of the proposed rule change. Additions are underlined; deletions are in brackets.

* * * * *

11870. Customer Account Transfer Contracts

(a) Responsibility to Expedite Customer's Request

(1) When a customer whose securities account[(s)] is carried by a member (the "carrying member") wishes to transfer [the entire] securities account[(s)] assets, in whole or in specifically designated part, to another member (the "receiving member") and gives [written notice of that fact] authorized instructions to the receiving member, both members must expedite and coordinate activities with respect to the transfer.

(2) If a customer desires to transfer a portion of [an] his or her account outside of ACATS, [a letter of authorization] authorized alternate instructions should be transmitted to the carrying member indicating such intent and specifying the [portion of the account] designated assets to be transferred. Although such transfers are not subject to the provisions of this [r]Rule, members must expedite all authorized [partial transfers of customer securities accounts] account asset transfers, whether through ACATS or via other means permissible under this Rule, and coordinate their activities with respect thereto. Unless otherwise indicated, [T]the automated customer account transfer capabilities referred to in paragraph (m)(1) of this Rule shall be utilized for partial transfers.

(3) For purposes of this Rule, customer authorization pursuant to a transfer instruction could be the customer's actual signature, or an electronic signature in a format recognized as valid under federal law to conduct interstate commerce.

(b) Transfer Procedures

(1) Upon receipt from the customer of [a signed] an authorized broker-to-broker transfer instruction form ("TIF") to receive such customer's securities account[(s)] assets in whole or in specifically designated part, from the carrying member, the receiving member must immediately submit such instruction to the carrying member. The carrying member must, within three business days following receipt of such instruction, or receipt of a TIF received directly from the customer authorizing the transfer of assets in specifically designated part: (A) validate [and return] the transfer instruction to the receiving member (with an attachment reflecting all positions and money balances to be transferred as shown on its books); or (B) take exception to the transfer instruction for reasons other than securities positions or money balance discrepancies and advise the receiving member of the exception taken.

(2) The carrying member and the receiving member must promptly resolve any exceptions taken to the transfer instruction.

(c) Transfer Instructions

(1) Securities [A]account asset transfers accomplished pursuant to this Rule are subject to the following conditions, which the customer must be informed of, affirm, or authorize (as the case may be) through their inclusion in the transfer instruction [form] the customer is required to [be completed and signed] authorize to initiate the account asset transfer:

(A) To the extent any account assets [in the account] are not readily transferable, with or without penalties, such assets may not be transferred within the time frames required by [the] this Rule.

(B) The customer will be contacted in writing by the carrying member, and/or by the receiving member, with respect to the disposition of [any] nontransferable assets [in the account that are nontransferable.] other than proprietary money market fund assets (if any), indicated in an instruction to transfer specifically designated account assets. (See subparagraph (c)(D)(3) below for customer notification requirements pertaining to transfers of securities account assets in whole.)

(C) If [With respect to transfers of] securities accounts assets in whole other than retirement plan [securities] account[s] assets are being transferred, the customer must affirm[s] that he or she has destroyed or returned to the carrying member any credit/debit cards and/or unused checks issued in connection with the account.

(D) For purposes of this Rule, a "nontransferable asset" shall mean an asset that is incapable of being transferred from the carrying member to the receiving member because it is:

(i) an asset that is a proprietary product of the carrying member;

(ii) an asset that is a product of a third party (e.g., mutual fund/money market fund) with which the receiving member does not maintain the relationship or arrangement necessary to receive/carry the asset for the customer's account;

(iii) an asset that may not be received due to regulatory limitations on the scope of the receiving member's business;

(iv) an asset that is a bankrupt issue for which the carrying member does not possess the proper denominations to effect delivery and no transfer agent is available to re-register the shares;

(v) an asset that is an issue for which the proper denominations cannot be obtained pursuant to governmental regulation or the issuance terms of the product (e.g., foreign securities, baby bonds, etc.);

(vi) limited partnership interests in retail accounts.

(E) The carrying member and the receiving member must promptly resolve and reverse any nontransferable assets [which] that were not properly identified during validation. In all cases, each member shall promptly update its records and bookkeeping systems and notify the customer of the action taken.

(2) A proprietary product of the carrying member shall be deemed nontransferable unless the receiving member has agreed to accept transfer of the product. Upon receipt of the asset validation report, the receiving member shall designate any assets that are a product of a third party (e.g., mutual fund/money market fund) with which the receiving member does not maintain the relationship or arrangement necessary to receive/carry the asset for the customer's account. The carrying member, upon receipt of such designation, may treat such designated assets as nontransferable and refrain from transferring the designated assets.

(3) If [an] securities account assets to be transferred in whole include[s] any nontransferable assets that are proprietary products of the carrying member, the carrying member must provide the customer with a list of the specific assets and request, in writing and prior to or at the time of validation of the transfer instruction, further instructions from the customer with respect to the disposition of such assets. In particular, such request should provide, where applicable, the customer with the following alternative methods of disposition for nontransferable assets:

(A) Liquidation, with a specific indication of any redemption or other liquidation-related fees that may result from such liquidation and that those fees may be deducted from the money balance due the customer.

(B) Retention by the carrying member for the customer's benefit.

(C) Transfer, physically and directly, in the customer's name to the customer.

(4) If [an] securities account assets to be transferred in whole include[s] any nontransferable assets that the receiving member has designated as assets that are a product of a third party (e.g., mutual fund/money market fund) with which the receiving member does not maintain the relationship or arrangement necessary to receive/carry the asset for the customer's account, the receiving member must provide the customer with a list of the specific assets and request, in writing and prior to the time it makes such designation, further instructions from the customer with respect to the disposition of such assets. In particular, such request should, where applicable, provide the customer with the following alternative methods of disposition for nontransferable assets:

(A) Liquidation, with a specific indication of any redemption or other liquidation-related fees that may result from such liquidation and that those fees may be deducted from the money balance due the customer. The indication must also refer the customer to the fund prospectus or to their registered representative at the carrying firm for specific details regarding any such fees.

(B) Retention by the carrying member for the customer's benefit.

(C) Shipment, physically and directly, in the customer's name to the customer.

(D) Transfer to the third party that is the original source of the product, for credit to an account opened by the customer with that third party.

(5) If the customer has authorized liquidation or transfer of assets deemed to be nontransferable, the carrying member must distribute the resulting money balance to the customer or initiate the transfer within five (5) business days following receipt of the customer's disposition instructions.

(6) With respect to transfers of retirement plan securities account[s] assets, the customer authorizes the custodian/trustee for the account:

(A) to deduct any outstanding fees due the custodian/trustee from the credit balance in the account, or

(B) if the account does not contain a credit balance, or if the credit balance in the account is insufficient to satisfy any outstanding fees due the custodian/trustee, to liquidate assets in the account to the extent necessary to satisfy any outstanding fees due the custodian/trustee.

(d) Validation of Transfer Instructions

(1) Upon validation of an [transfer] instruction to transfer securities account assets in whole, a carrying member must "freeze" the account to be transferred, i.e., all open orders, with the exception of option positions [which] that expire within seven (7) business days, must be canceled and no new orders may be taken.

(2) A carrying member may not take exception to a transfer instruction, and therefore deny validation of the transfer instruction, because of a dispute over securities positions or the money balance in the account to be transferred. Such alleged discrepancies notwithstanding, the carrying member must transfer the securities positions and/or money balance reflected on its books for the account.

(3) A carrying member may take exception to a transfer instruction only if:

(A) additional documentation is required (additional legal documents such as death or marriage needed);

(B) the account is "flat" and reflects no transferable assets;

(C) the account number is invalid (account number is not on carrying member's books); however, if the carrying member has changed the account number for purposes of internally reassigning the account to another broker or account executive, it is the responsibility of the carrying firm to track the changed account number, and such reassigned account number shall not be considered invalid for purposes of fulfilling a transfer instruction.

(D) it is a duplicate request;

(E) violates member's credit policy;

(F) unrecognized residual credit asset (receiving member cannot identify client);

(G) client rescinds instruction (client submitted written request to cancel transfer);

(H) S.S. number/Tax ID mismatch (number does not correspond to carrying member's);

(I) account title mismatch (receiving member's account title does not correspond to carrying member's);

(J) account type mismatches (receiving member's account type does not correspond to carrying member's);

(K) missing or improper [A]authorization [Signature] (TIF requires an additional client [signature] authorization or successor custodian's acceptance [signature] authorization or custodial approval); or

(L) Client takes possession (account assets in question [(entire account is] are in transfer to deliver direct to customer).

(4) If a carrying member takes exception to a transfer instruction because the account is "flat", as provided in subparagraph (3)(B) above, the receiving member may re-submit the transfer instruction only if the most recent customer statement is attached.

(5) (A) Upon validation of [a] an [transfer] instruction[,] to transfer securities account assets in whole or in specifically designated part, the carrying member must return the transfer instruction to the receiving member with an attachment indicating all securities positions, [any] safekeeping positions, and [any] money balances to be transferred [in the account] as shown on the books of the carrying member. Except as hereinafter provided, the attachment must include a then-current market value for all assets [in the account] so indicated. If a then-current market value for an asset cannot be determined (e.g., a limited partnership interest), the asset must be valued at original cost. However, delayed delivery assets, nontransferable assets, and assets in transfer to the customer, i.e., in possession of the transfer agent at the time of receipt of the transfer instruction by the carrying member for shipment, physically and directly to the customer, need not be valued, although the "delayed delivery," "nontransferable," or "in-transfer" status, respectively, of such assets must be indicated on the attachment.

(B) For purposes of this Rule, a "safekeeping position" shall mean any security held by a carrying member in the name of the customer.

(6) Upon validation of [a] an [transfer] instruction to transfer securities account assets in whole or in specifically designated part, the carrying member must indicate on the instruction, or by attachment, any Regulation T calls outstanding as of the date of validation with respect to the account assets to be transferred.

(7) A carrying member must provide the following description, at a minimum, as asset data with respect to any municipal securities positions to be transferred that have not been assigned a CUSIP number: [in an account it is to transfer:]

(A) name of the issuer;

(B) interest rate and dated date;

(C) maturity date and put date, if applicable, and if the securities are limited tax, subject to redemption prior to maturity (callable), or revenue bonds; an indication to such effect, including in the case of revenue bonds, the type of revenue, if necessary for a materially complete description of the securities; and

(D) if necessary for a materially complete description of the securities, the name of any company or other person in addition to the issuer obligated, directly or indirectly, with respect to debt service, or if there is more than one such obligor, the statement "multiple obligors" may be shown.

(8) After validation of the transfer instruction by the carrying member, a receiving member may reject a[n account]transfer of account assets in whole only if the account is not in compliance with the receiving member's credit policies or minimum asset requirements. (A receiving member may deem an account not in compliance with Regulation T requirements as not in compliance with its credit policies.) A receiving member, however, may only reject [an] the entire account for such reasons; it may not reject only a portion of the account assets (e.g., the particular assets not in compliance with the member's credit policies or minimum asset requirement) while accepting the remainder.

(e) Completion of the Transfer

Within three business days following the validation of a transfer instruction, the carrying member must complete the transfer of the customer's security account[(s)] assets to the receiving member. The receiving member and the carrying member must immediately establish fail-to-receive and fail-to-deliver contracts at then-current market values upon their respective books of account against the long/short positions [in the customer's account[(s)] that have not been [physically] delivered/received and the receiving/carrying member must debit/credit the related money amount. The customer's security account[(s)] assets shall thereupon be deemed transferred.

(f) Fail Contracts Established

(1) Any fail contracts resulting from this securities account asset transfer procedure shall be included in a member's fail file and, not later than 10 business days following the date delivery was due, the member shall take steps to obtain physical possession or control of securities so failed to receive by initiating a buy-in procedure or otherwise; provided, that with respect to the following types of securities or instruments, not later than 30 business days following the date delivery was due, the member shall take steps to obtain physical possession or control of securities so failed to receive by initiating a buy-in procedure or otherwise:

(A) banker's acceptances;

(B) bond anticipation notes;

(C) certificates of deposit;

(D) commercial paper;

(E) FMAC certificates;

(F) FNMA certificates;

(G) foreign securities;

(H) GNMA certificates;

(I) limited partnership interests;

(J) municipal bonds;

(K) mutual fund shares (transferable);

(L) revenue anticipation notes;

(M) SBA certificates; and

(N) tax anticipation notes.

(2) A carrying member may not reject ("DK") a fail contract, including a Receive/Deliver Instruction generated by an automated customer account transfer system, in connection with assets in an account transferred that have not been delivered to the receiving member.

(3) All fail contracts established pursuant to the requirements of this Rule should be clearly marked or captioned as such. This paragraph will not apply if a fail contract participates in a repricing and reconfirmation service offered by a registered clearing agency.

(4) All fail contracts required to be established on safekeeping positions must be so indicated.

(5) Open fail contracts established pursuant to the requirements of this Rule should be marked-to-market regularly.

(6) Nontransferable assets and assets in transfer to the customer are exempt from the requirement in paragraph (e) of this Rule that fail-to-receive and fail-to-deliver contracts must be established for positions in a customer's securities account that have not been [physically] delivered.

(7) Members may agree to close out fail contracts established pursuant to the requirements of this [r]Rule through the delivery of securities that are substantially comparable to those owed with prior consent of the customer.

(8) A receiving member should reject a delivery of a security that cannot be deemed a safekeeping position against a fail contract as such.

(9) A receiving member must deem receipt of a duly executed limited partnership change of trustee form with respect to limited partnership interests or a mutual fund re-registration form with respect to mutual fund shares as adequate delivery for purposes of transferring such assets pursuant to the Rule.

(g) Prompt Resolution of Discrepancies

(1) Any discrepancies relating to positions or money balances that exist or occur after transfer of a customer's securities account assets must be resolved promptly.

(2) The carrying member must promptly distribute to the receiving member any transferable assets [which] that accrue to the account after the transfer of a customer's securities account.

(3) When a member receives a [written] claim [letter] notice relating to a[n] securities account asset transfer, the member must resolve the claim within five (5) business days from receipt of such [letter] claim or [respond in writing] take exception to the claiming member by setting forth specific reasons for denying the claim.

(h) and **(i)** No change

(j) Exemptions

(1) Pursuant to the Rule 9600 Series, [the Association] NASD may exempt from the provisions of this Rule, either unconditionally or on specified terms and conditions, (A) any member or (B) any type of account, security or financial instrument.

(2) The following assets are deemed subject to delayed delivery and are exempt from paragraph (e) of this Rule that valued fail-to-receive and fail-to-deliver contracts must be established for positions in a customer's securities account that have not been [physically] delivered:

(A) insurance policies (annuities);

(B) stripped coupons;

(C) when-issued or when-distributed securities.

(3) Zero value fail-to-receive and fail-to-deliver instructions shall be generated for the assets specified in paragraph (j)(2) hereof.

(k) Retirement Plan Securities Accounts

(1) It is the responsibility of the receiving member to obtain the approval of its custodian/trustee accepting a customer's retirement plan securities account before submitting a transfer instruction for such [an] account assets to the carrying member or its custodian/trustee to facilitate transfer of the account assets.

(2) If, with respect to the transfer of a retirement plan securities account assets, outstanding fees are due the custodian/trustee for the account, such fees must be deducted from the credit balance in the account or, if the account does not contain a credit balance or if the credit balance is insufficient to satisfy such fees, assets in the account must be liquidated to the extent necessary to satisfy such fees. If liquidation of assets in the account is not practicable, such fees must then be transferred to and accepted by the receiving member as a debit item with the account.

(l) Securities Account[s]

For the purposes of this Rule, the term "securities account[(s)]" shall be deemed to include any and all of the account's[(s')] money market fund positions or the redemption value thereof.

(m) Participant in a Registered Clearing Agency

(1) When both the carrying member and the receiving member are participants in a registered clearing agency having automated customer securities account asset transfer capabilities and are eligible to use such capabilities, the securities account asset transfer procedure, including the establishing and closing out of fail contracts, must be accomplished in accordance with the provisions of this [r]Rule and pursuant to the rules of and through such registered clearing agency[.] with the exception of specifically designated assets transferred pursuant to the submittal of a customer's authorized alternate instructions to the carrying member.

(2) When such registered clearing agency has the capability to transfer mutual fund positions or to employ functionalities including Partial Transfer Receive (PTR), Partial Transfer Delivery (PTD), Fail Reversal, Mutual Fund Fail Cleanup, or Reclaim Processing, such capability must be utilized with the exception of specifically designated assets transferred pursuant to the submittal of a customer's authorized alternate instructions to the carrying member. [both the carrying member and the receiving member are participants in a registered clearing agency having automated customer securities account transfer capabilities with an automated facility for transferring mutual fund positions such facilities must be utilized for transferring mutual fund positions.]

(3) When securities account assets are transferred in whole and [both the carrying member and the receiving member are participants in a] such registered clearing agency [having automated customer securities account transfer capabilities with a facility for] has the capability to transfer[ring] residual credit positions (both cash and securities) [which] that have accrued to an account after the account has been transferred (residual credit processing), such [facilities] capability must be utilized for transferring residual credit positions from the carrying member to the receiving member.

(4) When both the carrying member and the receiving member are participants in a registered clearing agency having automated customer securities account asset transfer capabilities with a facility permitting electronic transmittal of customer account assettransfer instructions, such facilities shall be used in accordance with the following:

(A) members using such facilities shall execute an agreement designated by the Committee specifying the rights, obligations and liabilities of all participants in or users of such facilities;

(B) customer account transfer instructions shall be transmitted in accordance with the procedures prescribed by the registered clearing agency;

(C) the transmittal of a transfer request through such electronic facilities shall constitute a representation by the receiving member that it has received a properly executed [Transfer Instruction Form] TIF or other actual authority to receive the customer's securities and funds[; and]

(D) transfer instructions transmitted through such facilities shall contain the information necessary for the clearing agency and the carrying member to respond to the transfer instruction as may be specified by this Rule and the clearing agency[.] and;

(E) non-standard ACAT processing, such as Partial Transfer Receives (PTR), Partial Transfer Deliver (PTD) Fail Reversal, and reclaim processing shall be transmitted through such facilities, if the facility permits.

(5) For purposes of this Rule, the term "registered clearing agency" shall be deemed to be a clearing agency as defined in the Act and registered in accordance with that Act.

(n) Transfers Accomplished Ex-Clearing

(1) If one or both of the members processing a customer account transfer pursuant to this Rule is not a member of a registered clearing agency, the fail-to-receive and fail-to-deliver contracts required to be established in paragraph (e) of this Rule must be established outside a clearing corporation on an "ex-clearing house" basis. Similarly, settlement of the fail contracts and any close-out executions must be made "ex-clearing house."

(2) Each member (including members that do not utilize automated customer securities account asset transfer facilities) is required, [to transfer,] for a minimum period of six (6) months after [an account] the transfer of securities account assets in whole is completed, to transfer credit balances (both cash and securities) that occur is such transferred account assets within (10) ten business days after the credit balances accrue to the account.

(3) A copy of each customer account transfer instruction issued pursuant to paragraph (b) on an "ex-clearing house" basis shall be forwarded to the local District Office of [the Association] NASD having jurisdiction over the carrying member.

[(4) Members must use the transfer instructions and provide the reports prescribed by the Association when accomplishing account transfers pursuant to this Rule. The Association deems the transfer instruction and reports required by the National Securities Clearing Corporation ("NSCC") in connection with its automated customer account transfer system, and transfer instructions and reports that are substantially similar to those required by the NSCC as acceptable for the purpose of accomplishing transfers of accounts under this Rule; except that members must use the standard transfer forms required under Rule 11580 to transfer limited partnership securities unless exempted from the requirements of that Rule.]

* * * * *

Notice to Members

AUGUST 2004

SUGGESTED ROUTING

Legal & Compliance
Registered Representatives
Senior Management

KEY TOPICS

National Adjudicatory Council
Qualifications Examinations
Rule 1070
Rule 9600 Series

GUIDANCE

Appeals of Qualification Examination Waiver Requests

SEC Announces Immediate Effectiveness of Amendments to the Rule 9600 Series Establishing Waiver Subcommittee of the National Adjudicatory Council; **Effective Date: September 1, 2004**

Executive Summary

On July 27, 2004, the Securities and Exchange Commission (SEC) announced the immediate effectiveness of amendments to the Rule 9600 Series (Procedures for Exemptions) establishing a Waiver Subcommittee of the National Adjudicatory Council (NAC). Effective September 1, 2004, the Waiver Subcommittee, rather than the full NAC, will have the authority to affirm, modify, or reverse a decision of NASD's Department of Member Regulation (Member Regulation) denying a request for a waiver from a required qualifications examination pursuant to NASD Rule 1070.[1]

Questions/Further Information

Questions concerning this *Notice* may be directed to Shirley H. Weiss, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8844.

Discussion

NASD's Rule 9600 Series sets forth the procedures under which NASD members and their associated persons may seek exemptive relief from the NASD rules enumerated in Rule 9610(a). Among those rules is Rule 1070, which governs qualification examinations and waiver of requirements. As a result of this rule change, a subcommittee of the National Adjudicatory Council (NAC), consisting of one industry NAC member and one non-industry NAC member, will have the authority to affirm, modify, or reverse a Member Regulation decision denying a request for a waiver from an applicable qualification examination requirement and issue decisions in such matters that will constitute final NASD action. The subcommittee will be appointed by the NAC annually and will be known as the "Waiver Subcommittee."

Under the Rule 9600 Series, an initial application for relief under any NASD rule for which exemptive relief may be granted, including Rule 1070, is filed with the appropriate NASD department or staff. NASD staff examines the merits of the application, determines whether to grant or deny the application for relief, and communicates its decision to the applicant. If NASD staff denies the application, the applicant may appeal the adverse decision to the NAC, which may affirm, modify, or reverse the decision.

Persons seeking a waiver of a required qualification examination under Rule 1070 must file a written application with Member Regulation, including a detailed statement of the grounds for the waiver. Member Regulation staff examines the merits of the waiver request based on the NASD Qualification Examination Waiver Guidelines (Guidelines) and communicates its decision to the applicant in a letter that grants or denies the waiver.[2] Prior to these amendments, an applicant who chose to appeal a Member Regulation decision denying a request for an exam waiver was required to appeal the decision to the NAC, which would consider the decision, determine whether to affirm, modify, or reverse the decision, and issue a decision that would constitute final NASD action.

After reviewing the qualifications examination waiver process, the NAC determined that a subcommittee of the NAC, rather than the full NAC, should have authority to consider appeals of adverse Member Regulation decisions with respect to Rule 1070 and issue final NASD decisions in such matters. In reaching this determination, the NAC recognized that a subcommittee would have the flexibility to review such decisions on a timelier basis than the full NAC, which generally meets only five times each year. The NAC considered that any delay arising from the NAC's schedule may harm the associated person on whose behalf the NASD member is appealing, as well as the member, because the associated person is unable to function in the requested registered capacity while his or her firm's appeal is pending. The NAC also considered that its specialized expertise in reviewing disciplinary matters and policy issues is not required in the examination waiver process because appellate review of examination waivers is based on application of the Guidelines to the specific facts of the case.

The Rule 9600 Series, as amended, will permit the Waiver Subcommittee to review appeals of Department denials of requests to waive an applicable qualification examination requirement and issue decisions that affirm, modify, or reverse such Department decisions. The Waiver Subcommittee will also have the authority, where appropriate, to provide expedited review, order oral argument, and consider new evidence. The Waiver Subcommittee will retain discretion to refer an appeal to the full NAC when, for example, there is a split vote or the subcommittee believes that the issues in the appeal warrant consideration by the full NAC.

Endnotes

1 *See* SEC Release No. 34-50099 (July 27, 2004), 69 FR 46607 (Aug. 3, 2004) (File No. SR-NASD-2004-100).

2 The Guidelines, last updated on April 22, 2003, are available on NASD's Web site at *http://www.nasdr.com/5200_waiver.asp*.

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ATTACHMENT A

Below is the text of the proposed rule change. Additions are underlined; deletions are in brackets.

* * * * *

9600. PROCEDURES FOR EXEMPTIONS

9610. Application

(a) Where to File

A member seeking exemptive relief as permitted under Rules 1021, 1070, 2210, 2315, 2320, 2340, 2520, 2710, 2720, 2810, 2850, 2851, 2860, Interpretive Material 2860-1, 3010(b)(2), 3020, 3150, 3210, 3230, 3350, 8211, 8212, 8213, 11870, or 11900, or Municipal Securities Rulemaking Board Rule G-37, shall file a written application with the appropriate department or staff of [the Association] NASD and provide a copy of the application to the Office of General Counsel of NASD Regulation.

(b) and (c) No change

9620. Decision

After considering an application, NASD [Regulation] staff shall issue a written decision setting forth its findings and conclusions. The decision shall be served on the Applicant pursuant to Rules 9132 and 9134. After the decision is served on the Applicant, the application and decision shall be publicly available unless NASD [Regulation] staff determines that the Applicant has shown good cause for treating the application or decision as confidential in whole or in part.

9630. Appeal

(a) Notice

An Applicant may file a written notice of appeal within 15 calendar days after service of a decision issued under Rule 9620. The notice of appeal shall be filed with the Office of General Counsel of NASD Regulation, with a copy of the notice also provided to the appropriate department or staff of [the Association] NASD. The notice of appeal shall contain a brief statement of the findings and conclusions as to which exception is taken. Appeals of decisions issued by NASD staff pursuant to Rule 9620 shall be decided by the National Adjudicatory Council, except with respect to exemptive relief under Rule 1070 (Qualification Examinations and Waiver of Requirements), which shall be decided by the Waiver Subcommittee of the National Adjudicatory Council. [The National Adjudicatory Council may order oral argument.] If the Applicant does not want the [National Adjudicatory Council's] decision on the appeal to be publicly

available in whole or in part, the Applicant also shall include in its notice of appeal a detailed statement, including supporting facts, showing good cause for treating the decision as confidential in whole or in part. The notice of appeal shall be signed by the Applicant.

(b) Expedited Review

Where the failure to promptly review a decision to deny a request for exemption would unduly or unfairly harm the applicant, the National Adjudicatory Council or the Waiver Subcommittee of the National Adjudicatory Council, as the case may be, shall provide expedited review.

(c) No change

(d) [Appointment of Subcommittee] Oral Argument

(1) Subject to paragraph (2) below, [F]following the filing of a notice of appeal, the National Adjudicatory Council or Review Subcommittee may order oral argument and may designate a Subcommittee to hear [an] such oral argument[, if ordered]. The Subcommittee may consider any new evidence [that] if the Applicant can show good cause for not including it in its application, and the Subcommittee will recommend to the National Adjudicatory Council a disposition of all matters on appeal.

(2) With respect to exemptive relief requested under Rule 1070, the Waiver Subcommittee of the National Adjudicatory Council may order oral argument and consider any new evidence if the Applicant can show good cause for not including it in its application.

(e) Decision

(1) Subject to paragraph (2) below, [A]after considering all matters on appeal, and, as applicable, the Subcommittee's recommendation, the National Adjudicatory Council shall affirm, modify, or reverse the decision issued under Rule 9620. The National Adjudicatory Council shall issue a written decision setting forth its findings and conclusions and serve the decision on the Applicant. The decision shall be served pursuant to Rules 9132 and 9134. The decision shall be effective upon service and shall constitute final action of [the Association] NASD.

(2) With respect to exemptive relief requested under Rule 1070, after considering all matters on appeal, the Waiver Subcommittee of the National Adjudicatory Council shall affirm, modify, or reverse the decision issued under Rule 9620. The Waiver Subcommittee shall issue a written decision setting forth its findings and conclusions and serve the decision on the Applicant. The decision shall be served pursuant to Rules 9132 and 9134. The decision shall be effective upon service and shall constitute final action of NASD. The Waiver Subcommittee shall retain the discretion to refer the appeal to the National Adjudicatory Council, in which case the National Adjudicatory Council shall act on such appeal pursuant to its authority under this 9600 Series.

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Notice to Members

AUGUST 2004

SUGGESTED ROUTING

Legal & Compliance

KEY TOPICS

Arbitrators
Arbitration
Fees

GUIDANCE

Arbitrator Panel Training Fee

SEC Approves Increase to the Arbitrator Panel Training Fee; **Effective Date: September 16, 2004**

Executive Summary

On June 16, 2004, the Securities and Exchange Commission (SEC) approved an NASD proposal to increase the fee for arbitrator panel training from $100 to $125.[1] The fee change is effective on September 16, 2004.

Questions/Further Information

Questions regarding this *Notice* may be directed to Barbara L. Brady, Associate Vice President and Director of Neutral Management, at (212) 858-4352 or *barbara.brady@nasd.com*; or John D. Nachmann, Counsel, at (202) 728-8273 or *john.nachmann@nasd.com*.

Discussion

As part of the process of applying to NASD's Roster of Arbitrators, it is mandatory that individuals complete successfully the forum's basic panel training course. The course consists of four parts: completion of a self-study, self-paced training manual prior to the training session; a live, on-site training session; completion of a final exam with a minimum score of 80%; and a positive evaluation of the trainee by the trainer(s).[2] Arbitrator candidates are presently required to pay a $100 fee to cover the cost of the four-part training course.

NASD Dispute Resolution is extending the length of the current four-hour training program to include viewing a new videotape titled "Civility in Arbitration." Trainees will also be provided with a study guide that accompanies the videotape. To help offset the costs associated with the enhancement of this training program, the training fee will be increased to $125. This is the first increase in this fee that the SEC has approved since March 2, 1998.

Effective Date

The fee change is effective on September 16, 2004.

Endnotes

1. Securities Exchange Act Release No. 49875 (June 16, 2004), 69 FR 35090 (June 23, 2004) (File No. SR-NASD-2004-001).
2. For further information regarding arbitrator panel training, *see http://www.nasdadr.com/training.asp*.

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Notice to Members

AUGUST 2004

SUGGESTED ROUTING

Legal & Compliance

KEY TOPICS

Arbitration
Arbitrators
Dispute Resolution

GUIDANCE

Arbitration Chairperson Selection

SEC Approves Amendments to Rule 10308 Regarding the Time for Chairperson Selection; **Effective Date: September 17, 2004**

Executive Summary

The Securities and Exchange Commission has approved amendments to Rule 10308 of the NASD Code of Arbitration Procedure to reduce the time allotted for the selection of a chairperson in an arbitration proceeding.[1]

The text of the amendments is set forth in Attachment A. The amendments will be effective on September 17, 2004.

Questions/Further Information

Questions regarding this Notice may be directed to Richard Berry, Associate Vice President and Director of Case Administration, at (212) 858-4307 or *richard.berry@nasd.com*; or John D. Nachmann, Counsel, NASD Dispute Resolution, at (202) 728-8273 or *john.nachmann@nasd.com*.

Discussion

Rule 10308 sets forth the procedures for the selection of arbitrators and chairpersons for an arbitration panel. First, the parties receive a list of potential arbitrators to serve on the arbitration panel, then they may strike the names of one or more arbitrators for any reason and rank the remaining names. Once the parties' lists are consolidated, Dispute Resolution staff sends a notice to the parties of the arbitrators who have been selected for the panel, and the

parties then have 15 days to select one of these arbitrators to be the chairperson.[2] If the parties are unable to agree on the selection of the chairperson, Dispute Resolution staff will select the chairperson of the arbitration panel based on the criteria enumerated in Rule 10308(c)(5).[3]

Since parties are unable to agree on a chairperson in nearly 80 percent of the cases, NASD has decreased the time period for parties to select the chairperson from 15 days to seven days. This reduction in the time period will expedite the arbitration process while at the same time generally providing parties with sufficient time to reach an agreement on a chairperson if they are so inclined. However, if the parties need more time in which to reach agreement on a chairperson, they can notify Dispute Resolution staff of this fact prior to expiration of the seven-day deadline and Dispute Resolution staff will extend the time to select a chairperson for an additional eight days.[4] If the parties are unable to agree on the selection of the chairperson within either of these timeframes, Dispute Resolution staff will continue to select the chairperson of the arbitration panel as described above.

Effective Date

The amendments will be effective on September 17, 2004 and will apply to any cases in which an arbitration panel is selected on or after September 17, 2004.

Endnotes

1. Securities Exchange Act Release No. 50036 (July 19, 2004), 69 FR 44071 (July 23, 2004) (File No. SR-NASD-2004-039).
2. In cases where the parties must respond to Dispute Resolution by mail, the computer system that tracks the parties' responses adds two days to the 15-day response deadline to account for mailing time and this adjusted response time is set forth in the letter sent to the parties.
3. Subject to certain exclusions listed in Rule 10308(c)(5), the public arbitrator who is the most highly ranked by the parties generally will be selected as the chairperson.
4. The request for an extension of the seven-day deadline must be in writing and must indicate that all parties have agreed to the extension.

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ATTACHMENT A

New language is underlined; deletions are in brackets.

Code of Arbitration Procedure

* * * * *

Rule 10308. Selection of Arbitrators

This Rule specifies how parties may select or reject arbitrators, and who can be a public arbitrator.

(a) – (b) No change

(c) Striking, Ranking, and Appointing Arbitrators to Lists

(1) – (4) No change

(5) Selecting a Chairperson for the Panel

The parties shall have [15] 7 days from the date the Director sends notice of the names of the arbitrators to select a chairperson. If the parties notify Dispute Resolution staff prior to the expiration of the original deadline that they need more time in which to reach an agreement, Dispute Resolution staff will extend the time to select a chairperson for an additional 8 days. If the parties cannot agree within the allotted time, the Director shall appoint a chairperson from the panel as follows:

(A) The Director shall appoint as the chairperson the public arbitrator who is the most highly ranked by the parties as long as the person is not an attorney, accountant, or other professional who has devoted 50% or more of his or her professional or business activities, within the last two years, to representing or advising public customers in matters relating to disputed securities or commodities transactions or similar matters.

(B) If the most highly ranked public arbitrator is subject to the exclusion set forth in subparagraph (A), the Director shall appoint as the chairperson the other public arbitrator, as long as the person also is not subject to the exclusion set forth in subparagraph (A).

(C) If both public arbitrators are subject to the exclusion set forth in subparagraph (A), the Director shall appoint as the chairperson the public arbitrator who is the most highly ranked by the parties.

(6) No change

(d) – (e) No change

* * * *

Notice to Members

AUGUST 2004

SUGGESTED ROUTING

Legal & Compliance

KEY TOPICS

Arbitration
Arbitrators
Dispute Resolution

GUIDANCE

Direct Communication

SEC Approves New Rule 10334 To Allow Direct Communication Between Parties and Arbitrators;
Effective Date: September 30, 2004

Executive Summary

The Securities and Exchange Commission has approved new Rule 10334 of the NASD Code of Arbitration Procedure to permit direct communication among arbitrators and the parties to the arbitration (through their counsel) where all parties and arbitrators agree, and to establish guidelines for such direct communication.[1] Included with this *Notice* is Attachment A, the text of the new rule. The rule will be effective on September 30, 2004.

Questions/Further Information

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

Background and Discussion

Under current procedures, parties must address all communications intended for the arbitrators to NASD Dispute Resolution staff, who then forward the communications to the arbitrators. If the communication includes a motion or similar request, staff members customarily solicit a response from the other parties before forwarding the motion or request to the arbitrators. Similarly, the arbitrators transmit their orders and any other communications through the staff.

In response to a recommendation of the NASD National Arbitration and Mediation Committee, the Chicago Office of NASD Dispute Resolution began a pilot project in June 2001 to determine whether direct communication between parties (through their counsel) and arbitrators would enhance the arbitration process. The Chicago Office developed the parameters governing whether a case would be eligible for inclusion in the pilot and changed the script used by the panel chairperson at the Initial Prehearing Conference (IPHC) on those cases. A modified IPHC Order also was given to the panel chairperson to memorialize all direct communication matters agreed to by the parties and the arbitrators.

In total, 839 cases were eligible for inclusion in the project. Parties (all represented by counsel) and arbitrators in 255 of these cases participated in the program. At the end of the one-year pilot period, staff formulated a survey for those arbitrators and party representatives who participated in the pilot. NASD received responses from about one-third of those surveyed: 193 came from arbitrators and 75 from party representatives. Overall, 73 percent of party representatives and 69 percent of the arbitrators who responded to the survey favored continuing direct communication with the arbitrators. Favorable comments reflected the opinion that direct communication expedited the arbitration process and was more convenient than the normal method of communicating through staff.

In light of the success of the Chicago pilot, NASD developed a nationwide rule that would permit direct communication with the arbitrators where all parties and arbitrators agree. The rule also establishes guidelines for direct communication.

New Rule 10334

The new rule is based largely on procedures used in the Chicago pilot, with a few changes to reflect NASD's experience with the pilot and to provide for possible issues that might occur in a larger-scale application of the rule. Only parties that are represented by counsel may use direct communication under the new rule. If, during the proceeding, a party chooses to appear pro se (without counsel), the rule no longer will apply. All arbitrators and all parties must agree to the use of direct communication before it can be used. The scope of direct communication will be set forth in an arbitrator order, and parties may send the arbitrators only the types of items that are listed in the order. All the arbitrators and parties must have facsimile or e-mail capability before such a delivery method may be used.

Materials must be sent at the same time and in the same manner to all parties, all arbitrators, and the Director of Arbitration (through the assigned staff member), and staff must receive copies of any orders and decisions made as a result of direct communications among the parties and the arbitrators. To avoid tying up busy fax machines and printers, however, the rule contains a provision stating that materials more than 15 pages long shall be sent to the Director only by mail or courier. Arbitrators (or parties) with similar concerns could include a similar provision as to themselves in the direct communication order. NASD has prepared a template for direct communication orders to guide the arbitrators and parties in considering these issues.

Normally, the decision to use direct communication will be made at the IPHC; however, parties and arbitrators also may agree to use direct communication later in the course of an arbitration proceeding, so long as the agreement is contained in a written order of the arbitrators as provided in Rule 10334. The new rule provides that either an arbitrator or a party may rescind his or her agreement at any time, with notice to all arbitrators and parties, if direct communication is no longer working well.

One-sided (ex parte) communications outside the scope of the new rule are still prohibited; parties must not communicate orally with the arbitrators outside the presence of all parties.

Effective Date

The new rule will be effective on September 30, 2004.

Endnotes

1. Securities Exchange Act Release No. 49950 (June 30, 2004), 69 FR 41321 (July 8, 2004) (File No. SR-NASD-2003-163).

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ATTACHMENT A

New language is underlined; deletions are in brackets.

Code of Arbitration Procedure

* * *

10334. Direct Communication Between Parties and Arbitrators

(a) This rule provides procedures under which parties and arbitrators may communicate directly.

(b) Only parties that are represented by counsel may use direct communication under this Rule. If, during the proceeding, a party chooses to appear pro se (without counsel), this Rule shall no longer apply.

(c) All arbitrators and all parties must agree to the use of direct communication during the Initial Prehearing Conference or a later conference or hearing before it can be used.

(d) Parties may send the arbitrators only items that are listed in an order.

(e) Parties may send items by regular mail, overnight courier, facsimile, or email. All the arbitrators and parties must have facsimile or email capability before such a delivery method may be used.

(f) Copies of all materials sent to arbitrators must also be sent at the same time and in the same manner to all parties and the Director. Materials that exceed 15 pages, however, shall be sent to the Director only by regular mail or overnight courier.

(g) The Director must receive copies of any orders and decisions made as a result of direct communications among the parties and the arbitrators.

(h) Parties may not communicate orally with any of the arbitrators outside the presence of all parties.

(i) Any party or arbitrator may terminate the direct communication order at any time, after giving written notice to the other arbitrators and the parties.

* * *

Notice to Members

AUGUST 2004

SUGGESTED ROUTING

Finance

Legal & Compliance

Operations

Senior Management

KEY TOPICS

Section 31 of the Exchange Act

Section 3 of Schedule A to the NASD By-Laws

Transaction Fees

INFORMATIONAL

Transaction Fees

New SEC Procedures Relating to Section 31 of the Securities Exchange Act of 1934

Executive Summary

Pursuant to Section 31 of the Securities Exchange Act of 1934 (Exchange Act), NASD, as a national securities association, and the national securities exchanges are required to pay transaction fees and assessments to the Securities and Exchange Commission (SEC) that are designed to recover the costs related to the government's supervision and regulation of the securities markets and securities professionals. On June 28, 2004, the SEC established new procedures governing the calculation, payment, and collection of fees and assessments on securities transactions owed by national securities exchanges and associations to the SEC pursuant to Section 31.[1]

In accordance with the new procedures, NASD must now provide the SEC with trade data, which the SEC will use to calculate the amount of fees and assessments due by NASD. NASD is issuing this *Notice* to inform member firms of the new SEC procedures relating to Section 31 of the Exchange Act. While the requirements of Section 31, including the new procedures established by the SEC, apply directly to NASD and the national securities exchanges and not their membership, NASD members also should be aware of these requirements. In accordance with Section 3 of Schedule A to the NASD By-Laws, NASD obtains the funds to pay its Section 31 fees and assessments from its membership. Accordingly, as discussed in this *Notice*, the new procedures adopted by the SEC will have an effect on the obligations of member firms under Section 3 of Schedule A.

Questions/Further Information

Questions concerning this *Notice* may be directed to Rob Renner, Director of Accounting Operations, NASD Finance, at (240) 386-5303; Kathleen O'Mara, Associate General Counsel, Office of General Counsel (OGC), Regulatory Policy and Oversight (RPO), at (202) 728-8071; or Afshin Atabaki, Attorney, OGC, RPO, at (202) 728-8902.

Background and Discussion

Since 1997, NASD has been required to pay the SEC a fee based on the aggregate dollar amount of sales of securities transacted by or through any member otherwise than on a national securities exchange.[2] Prior to the adoption of the new procedures described below, the SEC had allowed NASD and the national securities exchanges to adopt their own procedures for the calculation of the Section 31 fees and assessments owed to the SEC. Based on the requirements of the Accountability of Tax Dollars Act of 2002, however, the SEC has determined to centralize the calculation and collection of the fees and assessments owed to it by NASD and the national securities exchanges in accordance with Section 31. Consequently, in January 2004, the SEC proposed new Rule 31 and temporary Rule 31T under the Exchange Act[3] as well as Form R31 to establish procedures by which it could calculate and collect the Section 31 fees and assessments.[4] The new procedures were adopted on June 28, 2004 and became effective on August 6, 2004.

Based on the new procedures, NASD is required to provide to the SEC the aggregate dollar amount of all "covered sales"[5] and the total number of "covered round turn transactions"[6] occurring by or through a member firm otherwise than on a national securities exchange.[7] The SEC will then calculate the amount of Section 31 fees due from NASD for "covered sales" by multiplying the aggregate dollar amount of NASD's covered sales by the fee rate set forth in Section 31(c) of the Exchange Act, which the SEC adjusts from time to time pursuant to Section 31(j) of the Exchange Act.[8] In addition, the SEC will calculate the amount of assessment due from NASD for "covered round turn transactions" by multiplying the total number of covered round turn transactions by the assessment charge set forth in Section 31(d) of the Exchange Act.[9] Section 31 fees and assessments are due to the SEC twice per year—on March 15 and September 30. Before the due dates, the SEC will send a bill to NASD showing the total amount due from NASD for the billing period.

As adopted, the new procedures require NASD to tabulate aggregate sales volume based on information reported to its trade reporting systems and to submit this data to the SEC on SEC Form R31 on a monthly basis. Pursuant to SEC Rule 31(b)(1), NASD is required to submit to the SEC a completed Form R31 within ten business days after the end of each month. NASD currently has two trade reporting systems for purposes of Rule 31 under the Exchange Act—the Automated Confirmation Transaction Service (ACT) and the Trade Reporting and Confirmation Service (TRACS). In addition, NASD is required to compile and submit, through Form R31, similar trading activity information on trades that are not captured by ACT or TRACS.

Specifically, NASD is required to submit the aggregate dollar amount of covered sales that: (1) occurred by or through a member otherwise than on a national securities exchange; (2) had a "charge date"[10] in the month of the report; and (3) NASD captured in its trade reporting systems. NASD also is required to submit trade data to the SEC on covered sales that are not captured on either ACT or TRACS, which would include covered sales in odd lots, covered sales resulting from the exercise of options settled by physical delivery and not listed or traded on a national securities exchange, and covered sales where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security (hereinafter referred to as away from the market sales).[11]

Currently, NASD obtains trade data on covered sales in odd lots and covered sales resulting from the exercise of options settled by physical delivery and not listed or traded on a national securities exchange through a self-reporting mechanism, but trade data on away from the market sales is not captured in NASD's trade reporting systems or through a self-reporting mechanism. Moreover, NASD previously had not included away from the market sales in its calculation of the transaction fees owed to the SEC under Section 31 based upon SEC guidance that such transactions were not subject to Section 31 fees.[12] In the Adopting Release, however, the SEC stated that it now believes that such transactions are subject to Section 31 fees where consideration is given for the securities. Therefore, as explained in greater detail below, NASD will begin seeking trade information on these transactions from members through self reporting so that it can satisfy its reporting obligation under the new SEC procedures.

SEC Rule 31T authorizes the SEC to collect trade data on all covered sales retroactively for each of the months September 2003 to June 2004, inclusive. Accordingly, the Rule as written requires NASD to submit trade data on away from the market sales for each of the months in the September 2003 to June 2004 period. Such an approach would require members to retroactively self report such transactions to NASD. NASD believes that requesting historical information from member firms on away from the market sales for the period from September 2003 to June 2004 is unduly burdensome on members. Therefore, NASD has sought an exemption from the SEC with respect to NASD's retroactive reporting obligation. Consequently, in light of NASD's pending exemption request, members will not have to review transactions between September 2003 and June 2004 to identify away from the market sales for that period.[13] However, NASD will begin reporting away from the market sales effective July 2004 and for each month thereafter. To allow members more time to review their July 2004 transactions to identify away from the market sales for that month, NASD also has sought an exemption from the SEC so that NASD can report away from the market sales for July 2004 in the Form R31 that is due on September 15, 2004. The exemptions sought by NASD are intended to give member firms more time to make the necessary changes to their systems to facilitate the self reporting of away from the market sales.

Obligations of Member Firms

To recover the costs of NASD's Section 31 obligation, NASD assesses a transaction fee on its member firms under Section 3 of Schedule A to the NASD By-Laws, the amount of which is set in accordance with Section 31 of the Exchange Act.[14] As noted above, the new SEC procedures relating to Section 31 do not directly affect the obligation of member firms to pay the transaction fees assessed by NASD. NASD anticipates that the impact of SEC's new procedures on its members will be minimal. NASD will continue to bill members for covered securities transactions that are reported through ACT on a monthly basis, as it does today. In addition, NASD will bill members for transactions reported through TRACS. Nonetheless, members should be aware that the new procedures adopted by the SEC will affect NASD practices and, pursuant to such practices, member's reporting obligations. Specifically, member firms now are required to self report away from the market sales[15]—this is in addition to the currently self-reported covered sales in odd-lot transactions and covered sales resulting from the exercise of over-the-counter (OTC) options that settle by physical delivery.

In accordance with guidance provided in the SEC's Adopting Release, NASD has revised its existing self-reporting form so that members can report, in addition to odd-lot transactions and exercises of OTC options that settle by physical delivery, away from the market sales. In addition, NASD has created an Interim Self-Reporting Form to facilitate members' reporting of certain away from the market sales. NASD also will now require that trade data and applicable payments be received by NASD by the seventh calendar day of each month subsequent to the trade period covered on the report.[16] Currently, members have until the tenth calendar day of each month to submit the trade data and payments to NASD. However, given NASD's obligation to process the trade data in a shorter timeframe (NASD is required to submit the trade data to the SEC within ten business days after the end of each month), NASD is requiring members to provide the trade data and payments by the seventh calendar day of each month, beginning in September 2004.

Members must use the Interim Self-Reporting Form that is attached to this *Notice* to self report covered sales of odd-lots and OTC exercised options as well as away from the market sales for the August 2004 trade-reporting period. In addition, members must use the Interim Self-Reporting Form to report away from the market sales for the July 2004 trade-reporting period.[17] The Interim Self-Reporting Form and applicable payments must be received by NASD by September 7, 2004. The Interim Self-Reporting Form will be used once only in September 2004.

To self report covered sales, including away from the market sales, for the September 2004 trade-reporting period and for each month thereafter, members must use the Permanent Self-Reporting Form, which also is attached to this *Notice*. The Permanent Self-Reporting Form becomes effective on October 1, 2004. The first Permanent Self-Reporting Form and applicable payments must be received by NASD by October 7, 2004. NASD reminds firms to print and retain blank copies of the Permanent Self-Reporting Form for future use.

NASD also reminds firms of their continuing obligation to ensure the accuracy and timeliness of information reported to NASD, including real-time trade information reported to ACT and TRACS and self-reported trade information. Moreover, because NASD will rely on self-reported data from member firms to complete Part III of SEC Form R31, it is imperative that firms submit accurate trade data to NASD on a timely basis on covered sales of odd-lot transactions and exercises of OTC options that settle by physical delivery, as well as away from the market sales.

Rounding and Disclosure of Transaction Fees

Currently, members calculate the transaction fees on self-reported trades by: (1) multiplying the aggregate dollar amount of self-reported covered sales by the fee rate; (2) truncating the resulting amount at the fifth place after the decimal point; and (3) rounding up to the next cent, if there is any remainder. While firms need not pass transaction fees on to their customer, it is NASD's understanding that such fees are frequently passed by broker-dealers on to their customers on a trade-by-trade basis.[18] In addition, NASD understands that reconciling the amounts billed by NASD and the amounts collected by member firms has been difficult from a member firm perspective, resulting in overages at some broker-dealer firms, in part due to the practice of routinely rounding up to the next cent. To more accurately reconcile the amount that NASD bills its members and the amount collected by members from their customers, members should no longer solely round up when there is a remainder after truncating the resulting amount. Rather, if there is any remainder, members should alternate between rounding up and rounding down to the next cent.

With respect to the disclosure of the transaction fees that members pass on to their customers, the SEC does not believe that it is appropriate for members to refer to the fee assessed by NASD as "Section 31 Fees" or "SEC Fees."[19] Therefore, as noted by the SEC, members should refrain from labeling the fees as such to avoid any confusion by their customers.[20]

Endnotes

1 *See* Final Rule Regarding Collection Practices Under Section 31, Securities Exchange Act Release No. 49928 (June 28, 2004), 69 FR 41059 (July 7, 2004) (Adopting Release).

2 *See* Section 31(c) of the Exchange Act.

3 Temporary Rule 31T enables the SEC to calculate Section 31 fees and assessments using the new procedures for the whole of its fiscal year 2004.

4 *See* Securities Exchange Act Release No. 49014 (January 20, 2004), 69 FR 4018 (January 27, 2004).

5 Section 31 applies only to sales of securities. SEC Rule 31(a)(6) defines a "covered sale" as "a sale of a security, other than an exempt sale or a sale of a security future, occurring on a national securities exchange or by or through any member of a national securities association otherwise than on a national securities exchange."

6 SEC Rule 31(a)(7) defines a "covered round turn transaction" as "a round turn transaction in a security future, other than a round turn transaction in a future on a narrow-based security index, occurring on a national securities exchange or by or through a member of a national securities association otherwise than on a national securities exchange."

7 Certain sales are exempt from the application of Section 31. The following are considered exempt sales: (1) any sale of a security offered pursuant to an effective registration statement under the Securities Act of 1933 (Securities Act) (except a sale of a put or call option issued by the Options Clearing Corporation) or offered in accordance with an exemption from registration afforded by Section 3(a) or 3(b) of the Securities Act, or a rule thereunder; (2) any sale of a security by an issuer not involving any public offering within the meaning of Section 4(2) of the Securities Act; (3) any sale of a security pursuant to and in consummation of a tender or exchange offer; (4) any sale of a security upon the exercise of a warrant or right (except a put or call), or upon the conversion of a convertible security; (5) any sale of a security that is executed outside the U.S. and is not reported, or required to be reported, to a transaction-reporting association as defined in SEC Rule 11Aa3-1 and any approved plan filed thereunder; (6) any sale of an option on a security index (including both a narrow-based security index and a non-narrow-based security index); (7) any sale of a bond, debenture, or other evidence of indebtedness; and (8) any recognized riskless principal sale. *See* SEC Rule 31(a)(11). The exemption for any "recognized riskless principal sale" is new. SEC Rule 31(a)(14) defines a "recognized riskless principal sale" as a sale of a security where: (1) a broker-dealer receives from a customer an order to buy (sell) a security; (2) the broker-dealer engages in two contemporaneous offsetting transactions as principal, one in which the broker-dealer buys (sells) the security from (to) a third party and the other in which the broker-dealer sells (buys) the security to (from) the customer; and (3) the SEC, pursuant to Section 19(b)(2) of the Exchange Act, has approved a rule change submitted by the self-regulatory organization on which the second of the two contemporaneous offsetting transactions occurs that permits the transaction to be reported as riskless.

8 The fee rate currently is set at $23.40 per million. However, effective October 1, 2004, or 30 days after the date on which the SEC receives its fiscal year 2005 regular appropriation, whichever date comes later, the Section 31 fee rate will increase to $32.90 per million from the current rate. *See* SEC Fee Rate Advisory #1 for Fiscal Year 2005 at *www.sec.gov/news/press/2004-59.htm*. In the past, NASD has notified members, through Member Alerts or other means, of any periodic adjustments to the fee rate. NASD will continue to notify members of any such adjustments in the future.

9 The assessment charge currently is set at $0.009 for each round turn transaction (treated as including one purchase and one sale of a contract of sale for future delivery). *See* Section 31(d) of the Exchange Act.

10 The charge date for trades reported in Parts II and III of Form R31 is the trade date, with one exception. The charge date for covered sales resulting from the exercise of over-the-counter options that settle by physical delivery is the exercise date. In addition, NASD has sought an exemption from the SEC to permit the charge date for "as-of" trades reported by NASD in Form R31 to be the trade report date.

11 *See* Securities Exchange Act Release No. 49928, 69 FR 41059, 41063.

12 *See* Final Rule Regarding Securities Transactions Exempt From Transaction Fees, Securities Exchange Act Release No. 38073 (December 23, 1996), 61 FR 68590, 68592 n.27 (December 30, 1996).

13 In the event the SEC does not grant the requested exemption to NASD, NASD will require its members to report such information to it and will promptly inform its members of such fact and of the manner in which to report the information. At this time, however, NASD is proceeding under the assumption that such exemption will be granted.

14 Pursuant to the Investor and Capital Markets Fee Relief Act, the SEC is required to make periodic adjustments to the Section 31 fee rates. As noted above, the current fee rate is set at $23.40 per million.

15 As stated in the Adopting Release, a gift of a security without consideration is not a "sale" for purpose of Sections 31(c) of the Exchange Act, and is not subject to Section 31 fees. Therefore, member firms are not required to self report transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security if no consideration is given for the securities.

16 If the seventh calendar day falls on a weekend or a public holiday, the report must be received by NASD on the first business day following the weekend or holiday.

17 The Interim Self-Reporting Form includes two tables for purposes of reporting away from the market sales for the July and August 2004 trade-reporting periods. Members must use the first table in the form to report away from the market sales for transactions occurring in August 2004. Members must use the second table in the form to report only away from the market sales and only for the month of July 2004.

18 *See* Letter from Ernest A. Pittarelli, Chairman, Securities Industry Association Operations Committee, to Jonathan G. Katz, Secretary, SEC, dated March 5, 2004.

19 Securities Exchange Act Release No. 49928, 69 FR 41059, 41072.

20 NASD is filing a proposed rule change with the SEC to amend, among other things, the title of Section 3 of Schedule A to the NASD By-Laws from "SEC Transaction Fee" to "Regulatory Transaction Fee."

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NASD Interim Self-Reporting Form

for Odd-Lot, OTC Exercised Option, and Away from the Market Sales that Are not Reported through ACT or TRACS

P.O. Box 7777-W4230
Philadelphia, PA 19175-4230

*** Effective September 1, 2004 ***

*** Expires September 30,2004 ***

Important Note: This Interim Self-Reporting Form is to be used to report odd-lot, OTC exercised options, and away from the market sales for the August 2004 trade-reporting period. In addition, this Interim Self-Reporting Form is to be used to report away from the market sales for the July 2004 trade-reporting period.

Only NASD members that are clearing firms (including self-clearing firms) should be submitting this form to NASD. All clearing firms are expected to collect any applicable trading information from their respective correspondent firms to be included in the aggregate totals. The trade date must be used when determining aggregate odd-lot and away from the market sales transactions for the preceding calendar month. The exercise date must be used when reporting aggregate OTC exercised option sales for the preceding calendar month.

General Instructions

The purpose of this form is to facilitate the collection of transaction fees under Section 3 of Schedule A to the NASD By-Laws with respect to transactions in odd-lots, transactions effected pursuant to the exercise of OTC options, and certain transactions that occur away from the market.

If your firm does not process odd-lot transactions or if all odd-lot trades are submitted to the Automated Confirmation Transaction Service (ACT) or Trade Reporting and Comparison Service (TRACS) for trade reporting purposes, please submit the form with an "N/A" for the aggregate sales amount.

If your firm does not process any of the types of transactions identified on this form, please submit the blank form signed by an authorized representative, along with a letter of explanation detailing the reason your firm does not process any of the identified transactions. Future filings of this blank form for inactivity will not be necessary. If applicable transactions are processed in the future, your firm will be expected to file this form along with payment in a timely manner.

Odd-Lot Transactions

NASD members that are clearing firms, including self-clearing firms, must report aggregate dollar amount of covered odd-lot sales transacted by or through such member, including all such sales by the member's correspondent firm(s). Firms must report odd-lot sales under the same general rules and guidelines applicable to round lot transactions as detailed in *Special Notice to Members 96-81* dated December 3, 1996 and the SEC Billing Document from NASD in December 1996. Member firms should consider the following when accumulating odd-lot data for each reporting period:

- Odd-lot transactions are those sides for less than the normal trading unit, *e.g.*, 100 shares. Do not include "mixed lots" as part of your odd-lot reporting.
- Include all transactions where you or your correspondent firms represent the sell side of the odd-lot transaction.
- Include all transactions where you or your correspondent firms represent the buy side of a transaction with or between public customers or non-NASD member firms.
- Include all odd-lot transactions in Nasdaq securities, excluding convertible debt listed on Nasdaq.
- Include all odd-lot transactions in all non-Nasdaq OTC Equity Securities as defined in NASD Rule 6610.
- Include all odd-lot transactions in all non-Nasdaq OTC Equity Securities that are ADRs or Canadian foreign securities but exclude all non-Nasdaq non-Canadian foreign securities. Consolidate all odd-lot transactions with that of your correspondents, if any.
- Do include, in this form, odd-lot transactions in exchange registered securities traded off the exchange ("third market trades").
- <u>Do not include odd-lot transactions that are trade reported to either ACT or TRACS. This form must only be used for odd lots that are not trade reported to ACT or TRACS.</u>

OTC Options Exercise

Use this section of the form to report all transactions in a covered security effected pursuant to the exercise of an OTC option by or through a member that is a clearing firm (including self-clearing firm) or its correspondent firm(s). Covered securities are those securities that are subject to prompt last-sale-reporting and exchange-registered securities. Member firms should determine the following when accumulating options exercise data for each calendar reporting period:

- This form is only used to report transactions in covered securities that arise pursuant to the exercise of an OTC option by or through an NASD member that settle by physical delivery.
- Include all transactions where you or your correspondent firms represent the sell side of the transaction.
- Include all transactions where you or your correspondent firms represent the buy side of a transaction with or between public customers or non-NASD member firms.
- Do not include any transactions in a covered security effected pursuant to the exercise of an exchange-registered option, *e.g.*, a purchase or sale of a Nasdaq or OTC Equity Security upon the exercise of an exchange-registered option. The Options Clearing Corporation will be collecting the fee for these types of transactions.
- Do not include any exercise of an option not involving the purchase or sale of the underlying covered security, *e.g.*, a cash settled exercise.
- Report the aggregate dollar amount of the transactions determined on the basis of the exercise price.

Sales Away from the Market That Are Not Required to Be Reported by NASD Rules

NASD members that are clearing firms (including self-clearing firms) must report aggregate dollar amount of covered sales where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security and where these sales were not required to be reported pursuant to NASD Rules. Firms should not report trade data that already has been reported to ACT or TRACS. In addition, members are not required to include transactions involving a gift of a security **without** consideration because such a transaction is not considered a "sale" for purposes of this form.

This self-reporting form includes two tables for purposes of reporting sales away from the market for the July and August trade-reporting periods. Members must use the first table in the form to report sales away from the market (in addition to odd lots and OTC exercised options) as part of their regular reporting obligation for transactions occurring in August 2004. Members must use the second table in the form to report only sales away from the market and only for the month of July 2004. Please use this interim form only for the July and August 2004 trade-reporting periods and use the Permanent Self-Reporting Form (effective October 1, 2004) to report covered sales for the September 2004 trade-reporting period and going forward.

NASD Interim Self-Reporting Form

Odd-Lot, OTC Exercised Options, and Away from the Market Sales

*** Effective September 1, 2004 ***

Transaction Fees under Section 3 of Schedule A to the NASD By-Laws for the Calendar Month of August 2004 for odd-lot, OTC exercised option, and away from the market sales.

Report of Sales by: Firm Name _____

B/D # _____

Clearing # _____

Transaction	Aggregate Sales/Exercise Price	Rate	Fee Due
Odd-Lot Transactions	$	0.0000234	$
Exercised Options	$	0.0000234	$
Sales Away From the Market	$	0.0000234	$

Total Amount Due $ _____

Transaction Fees under Section 3 of Schedule A to the NASD By-Laws for the Calendar Month of July 2004 for away from the market sales.

Report of Sales by: Firm Name _____

B/D # _____

Clearing # _____

Transaction	Aggregate Sales/Exercise Price	Rate	Fee Due
Sales Away From the Market (Covering July 2004)	$	0.0000234	$

Total Amount Due $ _____

*****IMPORTANT*** PAYMENT FOR TOTAL AMOUNT DUE MUST BE SUBMITTED WITH THIS REPORT.**

NASD must receive this Form and Payment by September 7, 2004. Please submit this form and payment to:

NASD, P.O. Box 7777-W4230, Philadelphia, PA 19175-4230

_____

Signature of Authorized Representative — Title

_____

Print Name — Date/Telephone Number

_____

Address (Street, City, State, Zip)

_____

E-mail Address

NASD Permanent Self-Reporting Form

for Odd-Lot, OTC Exercised Option, and Away from the Market Sales that Are not Reported through ACT or TRACS

P.O. Box 7777-W4230
Philadelphia, PA 19175-4230

*** Effective October 1, 2004 ***

Important Note: Only NASD members that are clearing firms (including self-clearing firms) should be submitting this form on a monthly basis to NASD. All clearing firms are expected to collect any applicable trading information from their respective correspondent firms to be included in the aggregate totals. The trade date must be used when determining aggregate odd-lot and away from the market sales transactions for the preceding calendar month. The exercise date must be used when reporting aggregate OTC exercised option sales for the preceding calendar month.

General Instructions

The purpose of this form is to facilitate the collection of transaction fees under Section 3 of Schedule A to the NASD By-Laws with respect to transactions in odd-lots, transactions effected pursuant to the exercise of OTC options, and certain transactions that occur away from the market.

Please retain a copy of this blank form for your firm's monthly reporting. Additional copies of this form may be obtained by contacting the NASD Finance Department at (240) 386-5354.

If your firm does not process odd-lot transactions or if all odd-lot trades are submitted to the Automated Confirmation Transaction Service (ACT) or Trade Reporting and Comparison Service (TRACS) for trade reporting purposes, please submit the form with an "N/A" for the aggregate sales amount.

If your firm does not process any of the types of transactions identified on this form, please submit the blank form signed by an authorized representative, along with a letter of explanation detailing the reason your firm does not process any of the identified transactions. Future filings of this blank form for inactivity will not be necessary. If applicable transactions are processed in the future, your firm will be expected to file this form along with payment in a timely manner.

Odd-Lot Transactions

NASD members that are clearing firms, including self-clearing firms, must report aggregate dollar amount of covered odd-lot sales transacted by or through such member, including all such sales by the member's correspondent firm(s). Firms must report odd-lot sales under the same general rules and guidelines applicable to round lot transactions as detailed in *Special Notice to Members 96-81* dated December 3, 1996 and the SEC Billing Document from NASD in December 1996. Member firms should consider the following when accumulating odd-lot data for each reporting period:

- Odd-lot transactions are those sides for less than the normal trading unit, *e.g.*, 100 shares. Do not include "mixed lots" as part of your odd-lot reporting.
- Include all transactions where you or your correspondent firms represent the sell side of the odd-lot transaction.
- Include all transactions where you or your correspondent firms represent the buy side of a transaction with or between public customers or non-NASD member firms.
- Include all odd-lot transactions in Nasdaq securities, excluding convertible debt listed on Nasdaq.
- Include all odd-lot transactions in all non-Nasdaq OTC Equity Securities as defined in NASD Rule 6610.
- Include all odd-lot transactions in all non-Nasdaq OTC Equity Securities that are ADRs or Canadian foreign securities but exclude all non-Nasdaq non-Canadian foreign securities. Consolidate all odd-lot transactions with that of your correspondents, if any.
- Do include, in this form, odd-lot transactions in exchange registered securities traded off the exchange ("third market trades").
- <u>Do not include odd-lot transactions that are trade reported to either ACT or TRACS. This form must only be used for odd lots that are not trade reported to ACT or TRACS.</u>

OTC Options Exercise

Use this section of the form to report all transactions in a covered security effected pursuant to the exercise of an OTC option by or through a member that is a clearing firm (including self-clearing firm) or its correspondent firm(s). Covered securities are those securities that are subject to prompt last-sale-reporting and exchange-registered securities. Member firms should determine the following when accumulating options exercise data for each calendar reporting period:

- This form is only used to report transactions in covered securities that arise pursuant to the exercise of an OTC option by or through an NASD member that settle by physical delivery.
- Include all transactions where you or your correspondent firms represent the sell side of the transaction.
- Include all transactions where you or your correspondent firms represent the buy side of a transaction with or between public customers or non-NASD member firms.
- Do not include any transactions in a covered security effected pursuant to the exercise of an exchange-registered option, *e.g.*, a purchase or sale of a Nasdaq or OTC Equity Security upon the exercise of an exchange-registered option. The Options Clearing Corporation will be collecting the fee for these types of transactions.
- Do not include any exercise of an option not involving the purchase or sale of the underlying covered security, *e.g.*, a cash settled exercise.
- Report the aggregate dollar amount of the transactions determined on the basis of the exercise price.

Sales Away from the Market That Are Not Required to be Reported By NASD Rules

NASD members that are clearing firms (including self-clearing firms) must report aggregate dollar amount of covered sales where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security and where these sales were not required to be reported pursuant to NASD Rules. Firms should not report trade data that already has been reported to ACT or TRACS. In addition, members are not required to include transactions involving a gift of a security **without** consideration because such a transaction is not considered a "sale" for purposes of this form.

NASD Permanent Self-Reporting Form

Odd-Lot, OTC Exercised Options, and Away from the Market Sales

*** Effective 10/01/04 ***

Transaction Fees under Section 3 of Schedule A to the NASD By-Laws for the Calendar Month of _____, 200( ) for odd-lot, OTC exercised option, and away from the market sales.

Report of Sales by: Firm Name _____

B/D # _____

Clearing # _____

Transaction	Aggregate Sales/Exercise Price	Rate	Fee Due
Odd-Lot Transactions	$	0.0000234	$
Exercised Options	$	0.0000234	$
Sales Away From the Market	$	0.0000234	$

Total Amount Due $ _____

*****IMPORTANT*** PAYMENT FOR TOTAL AMOUNT DUE MUST BE SUBMITTED WITH THIS REPORT.**

NASD must receive this Form and Payment by the seventh calendar day[1] subsequent to the subject trade-reporting period. Please submit this form and payment to:

NASD, P.O. Box 7777-W4230, Philadelphia, PA 19175-4230

_____
Signature of Authorized Representative — Title

_____
Print Name — Date/Telephone Number

_____
Address (Street, City, State, Zip)

_____
E-mail Address

1 If the seventh calendar day falls on a weekend or a public holiday, the report must be received by NASD on the first business day following the weekend or public holiday.

Notice to Members

AUGUST 2004

SUGGESTED ROUTING

Legal & Compliance
Registered Representatives
Senior Management

KEY TOPICS

Obsolete Rules
Rule 3400 Series

GUIDANCE

Deletion of Obsolete Rules

SEC Announces Immediate Effectiveness of the Deletion of IM-2210-4(b) and Rule Series 3400 as Obsolete; **Effective Date: August 10, 2004**

Executive Summary

The Securities and Exchange Commission (SEC) has announced the immediate effectiveness of an amendment to delete as obsolete IM-2210-4(b) (Certification of Membership) and Rule Series 3400 (Computer Systems). The rule change is immediately effective on its August 10, 2004 filing date.

The text of the amendment is set forth in Attachment A.

Questions/Further Information

Questions concerning this *Notice* may be directed to Patricia Albrecht, Assistant General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8026.

Discussion

NASD recently repealed IM-2210-4(b) and the Rule 3400 Series as obsolete rules. Specifically, IM-2210-4(b) provides that, upon request to NASD, a member may receive an appropriate certification of membership. However, because NASD no longer issues Membership Certifications, IM-2210-4(b) is no longer necessary.

Additionally, Rule 3420 (Mandatory Decimal Pricing Testing), the sole remaining rule in the Rule 3400 Series,[1] is also unnecessary. Rule 3420 was enacted to require clearing firms and market makers that are NASD members to conduct or participate in the securities industry's decimalization pricing tests. Such testing was required by NASD in compliance with the SEC's order for certain securities industry participants to develop plans for the initial, and now completed, conversion to decimal pricing.[2]

On August 10, 2003, NASD filed with the SEC a rule filing that became immediately effective deleting these obsolete rules from the *NASD Manual*.

Endnotes

1 The only other rule in the series, Rule 3410 (Mandatory Year 2000 Testing), automatically expired by its own terms on January 1, 2001, and has already been deleted from the Rule 3400 Series.

2 *Order Directing the Exchanges and NASD to Submit a Decimalization Implementation Plan*, Securities Exchange Act Rel. No. 42360 (Jan. 28, 2000).

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ATTACHMENT A

New text is underlined; deletions are in brackets.

* * * * *

IM-2210-4. Limitations on Use of NASD's Name

[(a) Statements of Membership]

Members may indicate NASD membership in conformity with Article XV, Section 2 of the NASD By-Laws in one or more of the following ways:

(1) in any communication with the public, provided that the communication complies with the applicable standards of Rule 2210 and neither states nor implies that NASD or any other regulatory organization endorses, indemnifies, or guarantees the member's business practices, selling methods, the class or type of securities offered, or any specific security;

(2) in a confirmation statement for an over-the-counter transaction that states: "This transaction has been executed in conformity with the NASD Uniform Practice Code."

[(b) Certification of Membership

Upon request to NASD, a member will be entitled to receive an appropriate certification of membership, which may be displayed in the principal office or a registered branch office of the member. The certification shall remain the property of NASD and must be returned by the member upon request of the NASD Board or its Chief Executive Officer.]

* * * * *

[3400. COMPUTER SYSTEMS]

[3420. Mandatory Decimal Pricing Testing]

[(a) Clearing firms and market makers of the Association must conduct or participate in the testing of their computer systems to ascertain decimal pricing conversion compatibility of such systems in such manner and frequency as the Association may prescribe.]

[(b) Every clearing firm and market maker required by the Association to conduct or participate in testing of computer systems shall provide to the Association such reports relating to the testing as the Association may prescribe.]

[(c) Clearing firms and market makers shall maintain adequate documentation of tests required pursuant to this Rule and the results of such testing for examination by the Association.]

Disciplinary and Other NASD Actions

REPORTED FOR AUGUST

NASD® has taken disciplinary actions against the following firms and individuals for violations of NASD rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this *Notice* is current as of the end of July 2004.

Firms Suspended, Individuals Sanctioned

First Geneva Securities, Inc. (CRD #47000, San Diego, California) and Roland Lee Chapin (CRD #2494038, Registered Principal, San Diego, California) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined $100,000 jointly and severally with Chapin, and suspended from writing or contributing to the preparation of any research report for six months. Following the suspension, the firm is required to submit any research reports prepared by or for the firm to NASD's Advertising Department for approval prior to any report's distribution to the public for a period of two years. Chapin is suspended from association with any NASD member in any capacity for 60 days, and suspended from writing or contributing to the preparation of any research report for six months.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Chapin, knew, or should have known, of omitted facts in research reports, and, at a minimum, was reckless in failing to include them in research reports. The findings also stated that Chapin knew, or should have known, that a disclaimer in a research report failed to mention that the firm held shares for the co-author of the report. NASD also found that the firm, acting through Chapin, failed to establish and maintain a system to supervise the activities of the firm with respect to research reports. In addition, NASD determined that no one at the firm was given the responsibility to supervise Chapin's preparation of the reports or to review the reports to ensure that they complied with NASD rules and federal securities laws. Furthermore the findings stated that no system was in place at the firm with regard to research reports generally, and no one at the firm supervised adequately Chapin's preparation of the reports or reviewed Chapin's work for compliance.

The firm's suspension from writing or contributing to the preparation of any research report began August 2, 2004, and will conclude at the close of business February 1, 2005. Chapin's suspension in any capacity began July 19, 2004, and will conclude on September 16, 2004. Chapin's suspension from writing research reports began July 19, 2004, and will conclude at the close of business January 18, 2005. **(NASD Case #CAF040048)**

Vertical Capital Partners, Inc. (CRD #35909, New York, New York), Ronald Mark Heineman (CRD #241924, Registered Principal, New York, New York) and David Bruce Morris (CRD #340402, Registered Representative, Fairlawn, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined $22,500, and suspended from writing or contributing to the preparation of any research report for six months. Following the six-month suspension from writing or contributing to research reports, the firm must submit any research reports prepared by or for the firm to NASD's Advertising Department for approval prior to any report's distribution to the public for two years. Heineman was fined $22,500, and suspended from association with any NASD member in any capacity for 30 days. Morris was fined $30,000, suspended from association with any NASD member in any capacity for 30 days, and suspended from writing or contributing to the preparation of any research report for three months. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Heineman, failed to adequately supervise the preparation of research reports disclosures regarding the amount of consideration received by the firm, Heineman, and Morris from the issuers. The findings also stated that the firm, acting through Heineman, did not adequately supervise Morris' preparation of a report, in that Heineman knew of the nature of the Securities and Exchange Commission (SEC) action against a company, but failed to ensure that the SEC action and its resolution were adequately described in the text of the report.

The firm's suspension from writing or contributing to the preparation of any research report began August 2, 2004, and will conclude at the close of business February 1, 2005. Heineman's suspension began August 2, 2004, and will conclude at the close of business August 31, 2004. Morris' suspension in any capacity began August 2, 2004, and will conclude at the close of business August 31, 2004. Morris' suspension from writing or contributing to the preparation of any research report began August 2, 2004, and will conclude at the close of business November 1, 2004. **(NASD Case #CAF040050)**

Firms Fined, Individuals Sanctioned

F1 Trading.com, Inc. f/k/a Gold Country Securities (CRD #20375, Mineola, New York) and Charles Vaccarro (CRD #2796589, Registered Principal, Port Washington, New York) submitted an Offer of Settlement in which the firm was censured and fined $30,000, jointly and severally, with Vaccarro. Vaccarro was suspended from association with any NASD member in any principal capacity for 30 business days. The fine must be paid before Vaccarro reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, the firm and Vaccarro consented to the described sanctions and to the entry of findings that the firm, acting through Vaccarro, failed to supervise adequately the inter-customer lending practices of the firm by permitting non-principal associated persons of the firm to review customer cash journal request forms and sign Vaccarro's initials to those forms to memorialize his purported review when he had not reviewed such forms; and by permitting the use of cash journal forms containing photocopied signatures of the borrowing and/or lending customer and/or photocopied signatures of the notary public to facilitate inter-customer loans to meet day trading margin requirements or calls.

The findings also found that the firm, acting through Vaccarro, failed to establish, maintain, and enforce special procedures for supervising the telemarketing activities of all its registered representatives as required by the Taping Rule, and failed to ensure that all tape recordings made pursuant to the Taping Rule were retained for not less than three years from the date the tape was created, the first two in an easily accessible place. NASD found that the firm, acting through Vaccarro, failed to register an associated person, who was required to be registered as a general securities representative. NASD also found that the firm, acting through Vaccarro, failed to file any reports, including an arbitration settlement that was required to be reported through the NASD Rule 3070 reporting system. In addition, NASD concluded that the firm, acting through Vaccarro, failed to maintain the required minimum net capital while conducting a securities business. The findings also stated that the firm, acting through Vaccarro, failed to prepare and keep current, accurate books and records, including its general ledger, trail balance, balance sheet, and computations of net capital and aggregate indebtedness. Moreover, NASD found that the firm, acting through Vaccarro, failed to prepare and file an accurate Financial and Operation Combined Uniform Single Report (FOCUS) Report Part IIA. NASD found that the firm, acting through Vaccarro, failed to employ an independent auditor to prepare the firm's 2001 Annual Audit as required by SEC Rule 17a-5(f)(3). NASD also found that the firm, acting through Vaccarro, failed to file an Annual Audit in a timely manner.

Vaccarro's suspension began July 19, 2004, and will conclude at the close of business August 27, 2004. **(NASD Case #C10030046)**

Network 1 Financial Securities Inc. (CRD #13577, Red Bank New Jersey) and William Richard Hunt, Jr. (CRD #830575, Registered Representative, Robbinsville, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm and Hunt were censured and fined $12,500, jointly and severally. Hunt was also ordered to requalify as a financial and operations principal by passing the Series 27 examination within 90 days. If Hunt fails to pass the exam, he may not perform any functions requiring registration in that capacity until he passes

the exam. Without admitting or denying the allegations, the firm and Hunt consented to the described sanctions and to the entry of findings that the firm, acting through Hunt, utilized the instrumentalities of commerce to conduct a securities business while failing to maintain the minimum required net capital. **(NASD Case #C9B040053)**

Firm and Individuals Fined

National Clearing Corp., (CRD 14343, Beverly Hills, California), James Gordon Lewis (CRD #3093203, Registered Principal, Nashville, Tennessee), and Michael J. Chiodo (CRD #2097132, Registered Principal, Thousand Oaks, California) submitted a Letter of Acceptance, Waiver, and Consent in which the firm and Chiodo were censured and fined $10,000, jointly and severally. The firm was also fined $25,500, $10,000, jointly and severally with Lewis. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Lewis and Chiodo, failed to accurately compute the amount required to be deposited in the Special Reserve Bank Account for the Exclusive Benefit of Customers, and failed to deposit into the Reserve Bank Account the amount required to satisfy the firm's reserve requirement. The findings also stated that the firm reported trades to the Automated Confirmation Transactions Service℠ (ACT℠) without including the seconds information for the time of execution, and failed to report within 90 seconds of execution NASDAQ National Market® (NNM®) trades and Consolidated Quotation System (CQS) trades. The findings further stated that the firm incorrectly double media reported NNM trades and CQS trades, and failed to reflect the ".w" to report transactions at prices based on average-weighting. **(NASD Case #C02040019)**

Firms Fined

BNY Clearing Services, LLC (CRD #15879, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined $10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report accurately, or facilitated the inaccurate reporting of, transactions in municipal securities. The findings also stated that the firm stamped or accepted inter-dealer trade information to facilitate trade comparisons rather than comparing and identifying information on confirmations to ascertain whether any discrepancies existed, resulting in inaccurate trade information being submitted to the Municipal Securities Rulemaking Board (MSRB). NASD also found that the firm failed to prepare and maintain adequate written supervisory procedures that addressed the firm's reporting of transactions in municipal securities. **(NASD Case #C8A040046)**

Burlington Capital Markets Inc. (CRD #26991, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined $20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, in connection with transactions, when acting as principal, the firm failed to disclose to its customers that the firm was a market maker in the security and failed to disclose the reported trade price and the commission or commission equivalent. The findings also stated that the firm reported transactions through ACT when it was not the appropriate reporting party, and failed to report timely transactions in debt securities reportable under the Trade Reporting and Compliance Engine (TRACE). **(NASD Case #C05040047)**

Investec Ernst & Company (CRD #266, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined $11,000, and required to pay $988.86, plus interest, in restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it employed an individual in a principal capacity who did not have the required registration for a principal. The findings also stated that the firm failed to execute orders fully and promptly. NASD also found that the firm, in transactions for or with public customers, failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions. In addition, NASD found that the firm, when it acted as principal for its own account, failed to provide written notification disclosing to its customers that it was a market maker in each such security. **(NASD Case #CMS040087)**

Ladenburg, Thalmann & Co., Inc. (CRD #505, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined $30,000, and ordered to pay $483.02, plus interest, in restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed in transactions for or with a customer to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to its customer was as favorable as possible under prevailing market conditions. **(NASD Case #CMS040085)**

Pan-American Financial Advisers (CRD #15578, New Orleans, Louisiana) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined $225,000, and required to retain an outside consultant to prepare a report to the firm and NASD containing recommendations for the adoption of policies and procedures by the firm regarding firm supervision. The firm will provide NASD with a report attesting to the firm's implementation of the consultant's recommendations within 90 days after issuance of the report.

Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm, acting through individuals, failed to establish and maintain an adequate system to supervise the activities of each registered representative and failed to establish and maintain a supervisory system reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules regarding review of exception reports, the sale of variable annuity and variable life contracts, annual compliance conferences with registered representatives, and the prevention of abuse of the firm's proprietary trading account in a branch office. The findings also stated that the firm, acting through an individual, failed to supervise adequately certain principals of the firm and failed to establish and maintain a reasonable system for imposing heightened supervision upon registered representatives with a history of complaints. NASD also found that the firm, acting through an individual, failed to provide an Office of Supervisory Jurisdiction principal with the necessary training or support to properly carry out his supervisory function by failing to provide him with access to the customer account database system and appropriate training concerning the trading activity and systems he was required to supervise. In addition, NASD found that the firm, acting through an individual, failed to maintain an internal record of the names of all persons designated as supervisory personnel and the dates for which such designation was effective. **(NASD Case #C05040034)**

Strand, Atkinson, Williams & York, Inc. (CRD #1254, Portland, Oregon) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined $10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm failed to report timely transactions in debt securities reportable under TRACE. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with NASD Marketplace Rules 6210-6260. **(NASD Case #C3B040020)**

Tradition Asiel Securities, Inc. (CRD #28269, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined $22,500, and required to revise the firm's written supervisory procedures regarding trade reporting within 30 business days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm failed, within 90 seconds after execution, to transmit through ACT last sale reports of transactions in NNM securities and failed to designate through ACT such last sale reports as late. The findings also stated that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning trade reporting. NASD also found that the firm failed within 90 seconds after execution, to transmit through ACT last sales reports of transactions in OTC Equity securities and failed to designate through ACT such last sale reports as late. **(NASD Case #CMS040088)**

Individuals Barred or Suspended

Bradley Paul Adams (CRD #867706, Registered Principal, Springhouse, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Adams consented to the described sanction and to the entry of findings that he maintained and controlled a bank account under the name of a financial group and induced public customers to invest in or through the fund. The findings also stated that Adams received checks totaling $546,000 payable to the fund, deposited the checks into the bank account he controlled, and converted the funds to his own use and benefit. NASD also found that Adams failed to respond to an NASD request to appear and give testimony. **(NASD Case #C9A040021)**

Darren Ray Adams (CRD #3180366, Registered Representative, Chicago, Illinois) was barred from association with any NASD member in any capacity. The sanction was based on findings that Adams forged a public customer's signature on letters of authorization to effect the wire transfer of $42,500 to an individual and on withdrawal requests to transfer $35,000 from the customer's annuity to her brokerage account at Adams' member firm. The findings also stated that Adams forged the customer's signature on a check authorization for $6,000 payable to the individual and deposited the bank check and wire transfers in the individual's account, thereby converting the customer's funds. The findings also stated that Adams failed to respond to NASD requests for information. **(NASD Case #C8A030097)**

Wendi Lynn Adler (CRD #4056768, Associated Person, North Hills, New York) submitted a Letter of Acceptance, Waiver, and Consent in which she was fined $2,500 and suspended from association with any NASD member in any capacity for 30 business days. The fine must be paid before Adler reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Adler consented to the described sanctions and to the entry of findings that she failed to respond timely to NASD requests for information.

Adler's suspension began July 19, 2004, and will conclude at the close of business August 27, 2004. **(NASD Case #CLI040016)**

Justin Edward Apgar (CRD #2770606, Registered Representative, Wall Township, New Jersey) was fined $52,000, suspended from association with any NASD member in

any capacity for two months, and required to requalify by exam in any capacity requiring qualification. The National Adjudicatory Council (NAC) imposed the sanctions following the appeal of an Office of Hearing Officers (OHO) decision. The sanctions were based on findings that Apgar fraudulently misrepresented to a public customer that a mutual fund offered a guaranteed percent rate of return.

Apgar's suspension began June 21, 2004, and will conclude at the close of business August 20, 2004. **(NASD Case #C9B020046)**

Anthony Harold Barkate (CRD #1255255, Registered Principal, Bakersfield, California) was barred from association with any NASD member in any capacity. The SEC affirmed the decision following the appeal of a NAC decision. The sanction was based on findings that Barkate participated in private securities transactions without prior written notice to, and approval from, his member firm.

Barkate has petitioned the U.S. Court of Appeals for review and the sanctions, except for the bar, are not in effec pending consideration of the appeal. **(NASD Case #C02010041)**

James Isaac Barrick, III (CRD #1088520, Registered Representative, Martinsville, Indiana) was fined $33,820 and barred from association with any NASD member in any capacity. The fine must be paid if and when Barrick re-enters the securities industry. The sanctions were based on findings that Barrick engaged in an outside business activity without providing his member firm with prompt written notice of his activity. The findings also stated that Barrick failed to respond to an NASD request to appear for an on-the-record interview. **(NASD Case #C8A030034)**

Danny Robert Baxley (CRD #1417104, Registered Principal, High Point, North Carolina) submitted an Offer of Settlement in which he was fined $15,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Baxley reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Baxley consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, and approval from, his member firm.

Baxley's suspension began July 9, 2004, and will conclude at the close of business January 5, 2005. **(NASD Case #C07040031)**

Brian Joseph Begos (CRD #1876563, Registered Principal, Ridgefield, Connecticut) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Begos consented to the described sanction and to the entry of findings that he transferred $240,000 of a public customer's funds into accounts controlled by him for his own use and benefit without customer authorization. The findings also stated that Begos failed to respond to NASD requests for documents and information. **(NASD Case #C11040021)**

Randy Lee Beltramea (CRD #1759651, Registered Representative, Mount Vernon, Iowa) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Beltramea consented to the described sanction and to the entry of findings that he engaged in private securities transactions without prior written notice to, or approval from, his member firm. The findings also stated that Beltramea failed to respond to NASD requests for information. **(NASD Case #C04040032)**

Paul Joseph Benz (CRD #1548330, Registered Principal, Chester, New Jersey) was fined $7,500, required to re-qualify by exam as a general securities principal, and suspended from association with any NASD member in any principal capacity for 30 days. The NAC imposed the sanctions following appeal of an OHO decision. The sanctions were based on findings that Benz failed to respond timely to NASD requests for information and allowed his member firm to conduct a securities business when it did not meet its net capital requirement.

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

James Parker Billington (CRD #2428951, Registered Representative, Vancouver, Washington) submitted an Offer of Settlement in which he was fined $10,000 and suspended from association with any NASD member in any capacity for nine months. The fine must be paid before Billington reassociates with any NASD member following the suspension or before requesting any statutory disqualification. Without admitting or denying the allegations, Billington consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, and approval from, his member firm.

Billington's suspension began July 19, 2004, and will conclude at the close of business April 19, 2005. **(NASD Case #C3B040017)**

James Joseph Boggs, Jr. (CRD #1377904, Registered Representative, Mt. Laurel, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Boggs reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Boggs consented

to the described sanctions and to the entry of findings that he forged the signature of a public customer on a variable annuity application.

Boggs' suspension began July 19, 2004, and will conclude at the close of business October 18, 2004. **(NASD Case #C9B040057)**

Donald Joseph Boyles (CRD #3040178, Registered Representative, Austin, Texas) was barred from association with any NASD member in any capacity. The sanction was based on findings that Boyles signed the name of a public customer on a homeowner insurance application and submitted it to his member firm for processing without the knowledge or consent of the customer. The findings also stated that, by submitting the application, Boyles caused funds to be removed from the public customer's escrow account without the customer's knowledge or consent to pay the insurance premium. NASD also found that Boyles failed to respond to NASD requests to appear and give testimony. **(NASD Case #C06040001)**

William Scott Bradley (CRD #2133899, Registered Representative, Moore, South Carolina) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $15,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Bradley reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Bradley consented to the described sanctions and to the entry of findings that he misrepresented to public customers the maturity dates or information regarding the maturity dates of brokered callable certificates of deposit (CDs) to public customers. The findings also stated that Bradley led the public customers to believe that the long-term callable CDs could be liquidated without penalty after one year.

Bradley's suspension will begin August 16, 2004, and will conclude at the close of business November 15, 2004. **(NASD Case #C05040036)**

Marco Anthony Casale (CRD #1663936, Registered Representative, Freehold, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $25,942.86, including disgorgement of $18,442.86 in commissions, and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Casale consented to the described sanctions and to the entry of findings that he exercised control over the account of a public customer and effected numerous and excessive securities transactions in the account in a manner that was inconsistent with the customer's investment objectives.

Casale's suspension began July 19, 2004, and will conclude at the close of business January 18, 2005. **(NASD Case #C9B040054)**

Clyde Allen Christensen (CRD #1505051, Registered Representative, Vancouver, Washington) was barred from association with any NASD member in any capacity. The sanction was based on findings that Christensen solicited and accepted payments from public customers totaling $105,000 to be used to purchase securities and, without the customers' knowledge or consent, Christensen deposited the funds into a bank account and a money market account that he controlled. NASD found that Christensen subsequently returned approximately $20,900 of the funds, but retained the remaining funds and converted them to his own use and benefit. NASD also found that Christensen failed to respond to NASD requests for information. **(NASD Case #C3B040006)**

James Joseph Crew (CRD #2102428, Registered Representative, Wantagh, New York) submitted an Offer of Settlement in which he was fined $10,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Crew reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Crew consented to the described sanctions and to the entry of findings that he intentionally or recklessly engaged in manipulative or deceptive conduct in connection with the trading activity in the account of a public customer. The findings stated that Crew settled a customer complaint without the knowledge or consent of his member firm. NASD also found that Crew effected the settlement by misrepresenting the facts and using false pretenses to have his member firm cancel half of a transaction, and by paying the customer checks totaling $22,000.

Crew's suspension began July 9, 2004, and will conclude at the close of business July 8, 2006. **(NASD Case #C10030007)**

Sean Imanol Dalton (CRD #2190439, Registered Representative, Stamford, Connecticut) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $10,000 and suspended from association with any NASD member in any capacity for 18 months. The fine must be paid before Dalton reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Dalton consented to the described sanctions and to the entry of findings that he effected unauthorized purchase transactions in the account of a public customer without the customer's knowledge, authorization, or consent. The findings also stated that Dalton failed to respond timely to NASD requests for documentation and information.

Dalton's suspension began July 19, 2004, and will conclude at the close of business January 18, 2006. **(NASD Case #C10040067)**

Thomas Robert Diorio (CRD #2305605, Registered Representative, Owego, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $5,000 and suspended from association with any NASD member in any capacity for 30 business days. The fine must be paid before Diorio reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Diorio consented to the described sanctions and to the entry of findings that he signed a public customer's name on a life insurance policy amendment, without the permission or knowledge of the customer, for a policy that was about to expire.

Diorio's suspension began July 19, 2004, and will conclude at the close of business August 27, 2004. **(NASD Case #C9B040056)**

George Alexander Deussen (CRD #2545262, Registered Principal, Orem, Utah) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and ordered to pay $60,000, plus interest, in restitution to a public customer. Without admitting or denying the allegations, Deussen consented to the described sanctions and to the entry of findings that he received $80,000 from a public customer for investment, took custody of the funds, caused the funds to be deposited into a personal bank account under his control, and used the funds for his personal benefit without the customer's authorization. The findings also stated that Deussen returned $20,000 to the customer but failed to return the remaining $60,000. NASD also found that Deussen failed to provide the customer with documentation verifying the investment despite the customer's request. **(NASD Case #C3A040033)**

Brian Doyle (CRD #4553410, Associated Person, Indianapolis, Indiana) was barred from association with any NASD member in any capacity. The sanction was based on findings that Doyle failed to respond to NASD requests for information and willfully failed to disclose material information on his Form U4. **(NASD Case #C8A030092)**

Allen Earl Drake (CRD #1145018, Registered Principal, Virginia Beach, Virginia) was barred from association with any NASD member in any capacity. The sanction was based on findings that Drake, while manager and owner of the general partner of limited partnerships, caused the limited partnerships to make a series of loans totaling $1,939,675.07 to Drake in his individual capacity; all of these loans were made without the knowledge or consent of the limited partners of the limited partnerships and were expressly prohibited by the terms of the limited partnership agreements. The findings also stated that proceeds of the loans were used to pay Drake's personal and business expenses, as well as expenses of associated entities, unrelated to the limited partnerships and were prohibited by the limited partnership agreements. In addition, NASD determined that Drake has not repaid any of the loans and has not notified the limited partners of any of the limited partnerships of the loans. **(NASD Case #C07040006)**

Jamie Arnold Engelking (CRD #3120784, Registered Representative, Arvada, Colorado) submitted an Offer of Settlement in which he was fined $26,280, including $8,780 in disgorgement of financial benefits received, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Engelking consented to the described sanctions and to the entry of findings that he made an unsuitable recommendation to public customer without having reasonable grounds for believing that the customers had the financial ability to purchase the recommended variable annuity without mortgaging their home to do so. The findings also stated that Engelking had no reasonable grounds for believing that the customers would be able to meet their mortgage commitment should the variable annuity not perform at the very optimistic levels needed to avoid depletion of principal.

Engelking's suspension will begin August 16, 2004, and will conclude at the close of business September 14, 2004. **(NASD Case #C3A040006)**

Clayton Dale Farrell (CRD #1872227, Registered Representative, Lakeland, Tennessee) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Farrell consented to the described sanction, and to the entry of findings that he improperly obtained $9,000 from his member firm and another employer by requesting payment of expenses for which he had already been reimbursed. The findings also stated that Farrell engaged in outside business activities without providing prior written notice to his member firm. **(NASD Case #C05040048)**

Rizwan Fazeel (CRD #4476016, Registered Representative, Mineola, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $5,000, suspended from association with any NASD member in any capacity for four months, and ordered to disgorge $14,175 in commissions in partial restitution to a public customer. Without admitting or denying the allegations, Fazeel consented to the described sanctions and to the entry of findings that he exercised control over a public customer's account and effected numerous and excessive securities transactions in the account using unsuitable levels of margin in a manner inconsistent with the customer's investment objectives.

Fazeel's suspension began July 19, 2004, and will conclude at the close of business November 18, 2004. **(NASD Case #C9B040052)**

Rafael Enricque Febus, Sr. (CRD #1256860, Registered Principal, Flushing, New York) submitted a Letter of

Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Febus consented to the described sanction and to the entry of findings that he engaged in private securities transactions and failed to provide written notification to his member firm prior to effecting these private securities transactions. The findings also stated that Febus intentionally and/or recklessly misrepresented and omitted material facts concerning securities, including guaranteed monthly interest payments and overall value of the securities as a good investment when soliciting sales of securities to public customers. The findings further stated that Febus failed to respond to NASD requests for information. **(NASD Case #C10040069)**

Richard Allan Finger (CRD #4432634, Registered Representative, Seattle, Washington) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $5,000 and suspended from association with any NASD member in any capacity for 20 business days. Without admitting or denying the allegations, Finger consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to his member firm.

Finger's suspension began June 25, 2004, and concluded at the close of business July 23, 2004. **(NASD Case #C3A040032)**

Eloy Gomez (CRD #4393584, Associated Person, Mission, Texas) was barred from association with any NASD member in any capacity. The sanction was based on findings that Gomez received $1,572 from public customers as insurance premium payments and mishandled the funds by using $972 for his own use and benefit. The findings also stated that Gomez failed to respond to NASD requests to appear for an on-the-record interview. **(NASD Case #C06030028)**

Adam Douglas Grodin (CRD #1818807, Registered Principal, Pittsburgh, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $51,744, including $46,744 in disgorgement of commissions received, and suspended from association with any NASD member in any capacity for 20 business days. Without admitting or denying the allegations, Grodin consented to the described sanctions and to the entry of findings that he recommended that a public customer purchase Class B mutual fund shares that were unsuitable for the customer because the customer could have purchased Class A shares that would have paid lower 12b-1 fees and would have avoided being subject to contingent deferred sales charges.

Grodin's suspension began July 19, 2004, and concluded at the close of business August 13, 2004. **(NASD Case #C9A040018)**

Yosif ("Joseph") Hananiya (CRD #2423855, Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hananiya consented to the described sanction and to the entry of findings that he failed to comply with an NASD request to provide testimony. **(NASD Case #CLI040017)**

Andrew C. Hanes, Jr. (CRD #4713043, Associated Person, Harrisburg, North Carolina) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hanes consented to the described sanction and to the entry of findings that he willfully failed to disclose a material fact on his Form U4. The findings also stated that Hanes failed to respond to NASD requests for information. **(NASD Case #C07040056)**

Neill N. Henain (CRD #4147298, Registered Representative, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Henain consented to the described sanction and to the entry of findings that he executed a $400,685.67 promissory note on behalf of himself and a public customer without his member firm's authority in order to settle a customer complaint without the firm's knowledge or approval. **(NASD Case #C11040026)**

Jeffrey Mark Herber (CRD #1091122, Registered Principal, Rome, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Herber consented to the described sanction and to the entry of findings that he received a check from a public customer payable to a fictitious company for investment in a fixed annuity, failed to invest the money, and misappropriated the customer's funds without the customer's permission or authority. The findings also stated that Herber created and gave the customer a false account statement reflecting the purported value of the fixed annuity. NASD also found that Herber received $25,000 from public customers for investment in securities and, instead of investing the funds, misused the customers' money for other purposes without the customers' permission or authority. In addition, NASD found that Herber created and gave the customers false transaction confirmations and account summary statements reflecting their purported securities holdings. **(NASD Case #C11040024)**

Sander Icelso Hernandez (CRD #4712021, Associated Person, Hillside, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $5,000 and suspended from association with any NASD member in any capacity for 30 business days. The fine must be paid before

Hernandez reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Hernandez consented to the described sanctions and to the entry of findings that he willfully failed to disclose material information on his Form U4.

Hernandez' suspension began July 19, 2004, and will conclude at the close of business August 27, 2004. **(NASD Case #C9B040055)**

Delicia Josette Hurdel-Boakye (CRD# 4175385, Registered Representative, Herndon, Virginia) submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hurdel-Boakye consented to the described sanction and to the entry of findings that she converted approximately $12,000 from a bank by making debits to the bank's ledger accounts, and then used the funds to make payments to certain bank customers who had complained to her about issues relating to home loans the customers held with the bank. **(NASD Case #C9A040019)**

Amani Hussein (CRD #4486111, Registered Representative, Fairfax, Virginia) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hussein consented to the described sanction and to the entry of findings that he made unauthorized debit entries totaling $88,000 in a bank's general ledger account and caused the funds to be transmitted to unauthorized third parties. **(NASD Case #C07040057)**

Cynthia Marie Jenchowski (CRD #1620609, Registered Principal, Nutley, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which she was fined $10,000 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Jenchowski consented to the described sanctions and to the entry of findings that a member firm, acting through Jenchowski, purchased 1.2 million warrants from the lead underwriter of an initial public offering (IPO) on the first day of trading and sold in the immediate aftermarket nearly all of the warrants to retail customers within approximately 45 minutes. The findings included that the reselling of these warrants was of a substantial magnitude and was accompanied by special selling efforts and methods so as to constitute a distribution for purposes of SEC Rule 10b-6. The findings further stated that during the distribution, Jenchowski, at the direction of her firm, made a market in the warrants and bid for, purchased, or induced others to purchase the security.

Jenchowski's suspension began July 6, 2004, and concluded at the close of business July 12, 2004. **(NASD Case #CAF000010)**

Denise Lee Johnson (CRD #4607716, Registered Representative, Des Moines, Iowa) submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity and ordered to pay $2,508.15, plus interest, in restitution to a public customer. Without admitting or denying the allegations, Johnson consented to the described sanctions and to the entry of findings that she made unauthorized transactions in a bank account of an employee-run committee, including withdrawing cash from the account and using the account's debit card, thereby converting $2,508.15 to her personal use. **(NASD Case #C04040031)**

Samuel Kluft Koltun (CRD #1739664, Registered Representative, Jupiter, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $12,500, including disgorgement of $7,864.14 in commissions, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Koltun consented to the described sanctions and to the entry of findings that he recommended numerous Class B mutual fund transactions to public customers that were unsuitable for the customers. The findings also stated that the recommendations were unsuitable since Class A shares should have been recommended instead of Class B shares. The findings also stated that, had Class A shares been recommended, the customers would have been eligible to receive breakpoints on Class A share purchases, paid lower 12b-1 fees, and avoided being subject to contingent deferred sales charges.

Koltun's suspension began August 2, 2004, and concluded at the close of business August 13, 2004. **(NASD Case #C9B040060)**

Tonino Gaetano Labella (CRD #1066893, Registered Principal, Drexel Hill, Pennsylvania) was barred from association with any NASD member in any capacity. The sanction was based on findings that Labella failed to respond to NASD requests to appear and provide testimony. **(NASD Case #C9A040001)**

William Matthew Lawlor (CRD #2537909, Registered Representative, Branford, Connecticut) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $11,250, including disgorgement of $1,250 in commissions, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Lawlor consented to the described sanctions and to the entry of findings that he recommended and initiated numerous transactions in the securities account of a public customer without having reasonable grounds for believing that his recommendations and resultant transactions were suitable for the customer on the basis of her financial situation, investment objective, and needs.

Lawlor's suspension began July 19, 2004, and will conclude at the close of business August 17, 2004. **(NASD Case #C11040022)**

Robert Waldo Leavenworth (CRD #2766524, Registered Representative, Atlanta, Georgia) submitted an Offer of Settlement in which he was fined $7,318.85, including disgorgement of $2,318.85 in commissions received, and suspended from association with any NASD member in any capacity for 45 days. The fine must be paid before Leavenworth reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Leavenworth consented to the described sanctions and to the entry of findings that he recommended and purchased unsuitable speculative securities for public customers without considering the customers' age, employment status, income needs, net worth, and investment experience.

Leavenworth's suspension began July 19, 2004, and will conclude at the close of business September 1, 2004. **(NASD Case #C07040012)**

Guang Lu (CRD #2691821, Registered Representative, Gaithersburg, Maryland) was barred from association with any NASD member in any capacity. The NAC imposed the sanction following appeal of an OHO decision. The sanction was based on findings that Lu failed to notify his member firm in writing that he was exercising discretion in an account maintained by another firm and also failed to notify the firm at which he was trading of his association with a member firm. The findings also stated that Lu exercised discretion in the account of a public customer without prior written authorization from the customer and his member firm. NASD also found that Lu effected unsuitable options trades in the account of a public customer. In addition, NASD found that Lu failed to provide accurate information on his Form U4.

Lu has appealed the decision to the SEC, and the sanctions, except for the bar, are not in effect pending consideration of the appeal. **(NASD Case #C9A020052)**

Gary Mackie (CRD #2641092, Registered Representative, Crawley, Great Britain) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Mackie consented to the described sanction and to the entry of findings that he caused the wire transfer of funds from a client's securities account to his personal bank account in the amount of GBP 4,581.62, without the knowledge or consent of the client, thereby converting the funds. **(NASD Case #C10040063)**

Glenn Geoffrey Malloff (CRD #730369, Registered Representative, Melville, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Malloff consented to the described sanction and to the entry of findings that he churned the account of a public customer by effecting, or causing to be effected, over 700 securities transactions in the account by exercising discretion over the account. The findings also stated that Malloff's trading was excessive in view of the customer's objectives, financial situation, and the nature of the account. NASD also found that the cost/equity ratio for the account was approximately 65 percent (56 percent on an annualized basis) during a specific time period. In addition, NASD found that Malloff, by the use of any means or instrumentality of interstate commerce or of the mails, knowingly or recklessly engaged in manipulative or deceptive devices or contrivances in connection with the purchase or sale of securities, and knowingly or recklessly effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive, or other fraudulent devices or contrivances. Furthermore, NASD found that Malloff failed to respond to NASD requests for information and documents. **(NASD Case #C10040070)**

Christopher Scott Maury (CRD #2778197, Registered Representative, Manalapan, Florida) was barred from association with any NASD member in any capacity and ordered to pay $13,500, plus interest, in restitution. The sanctions were based on findings that Maury received $13,500 from a public customer for investment purposes and converted the funds for his own use and purpose by depositing the funds into his personal bank account. The findings also stated that Maury failed to respond to NASD requests for information. **(NASD Case #C07040011)**

Robert Steven Meyer (CRD #3074785, Registered Principal, Staten Island, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $7,500 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Meyer consented to the described sanctions and to the entry of findings that he purchased stocks for public customer accounts without the consent or authority of the customers.

Meyer's suspension began July 19, 2004, and will conclude at the close of business August 18, 2004. **(NASD Case #C9B040045)**

Tad Enrique Mihalopoulos, Sr. (CRD #2035916, Registered Representative, Tracy, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that Mihalopoulos provided public customers with investment order authorization (IOA) forms that contained misleading contingent surrender deferred sales charges (CDSC) schedules for their particular security purchases. The findings also stated that Mihalopoulos provided customer-signed IOA forms to his member firm that falsely represented that he had

accurately completed the CDSC schedules on the IOA forms provided to the customers. **(NASD Case #C01030004)**

Glenn Clark Moore (CRD #1877447, Registered Representative, Manassas, Virginia) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $8,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Moore consented to the described sanctions and to the entry of findings that he signed the names of a public customer and his wife and completed certain information on an account agreement without the customers' knowledge or consent.

Moore's suspension began August 2, 2004, and concluded at the close of business August 13, 2004. **(NASD Case #C07040061)**

Suzanne J. Morris (CRD #3226656, Associated Person, Columbus, Ohio) submitted a Letter of Acceptance, Waiver, and Consent in which she was fined $5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Morris reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Morris consented to the described sanctions and to the entry of findings that she scanned a Client General Account Agreement Signature Page into a computer and then cut and pasted signatures of clients from applications previously signed by the clients onto forms without the customers' knowledge or consent.

Morris' suspension began July 19, 2004, and will conclude at the close of business January 18, 2005. **(Case #C8A030107)**

Jaime Alyson Nortman (CRD #4353970, Associated Person, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which she was fined $2,500 and suspended from association with any NASD member in any capacity for 30 business days. The fine must be paid before Nortman reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Nortman consented to the described sanctions and to the entry of findings that she failed to respond timely to NASD requests for information.

Nortman's suspension began July 19, 2004, and will conclude at the close of business August 17, 2004. **(NASD Case #CLI040015)**

Theresa Bentura Oldham (CRD #1932328, Registered Representative, Middleton, Idaho) submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Oldham consented to the described sanction and to the entry of findings that she solicited and accepted funds totaling $38,325 from public customers to purchase securities and converted the funds for her own use and benefit without the knowledge or consent of the customers. **(NASD Case #C3B040019)**

Susan Margaret Palmatier (CRD #1788644, Registered Principal, St. Louis Park, Minnesota) submitted a Letter of Acceptance, Waiver, and Consent in which she was suspended from association with any NASD member in any capacity for 10 days. In light of the financial status of Palmatier, no monetary sanctions were imposed. Without admitting or denying the allegations, Palmatier consented to the described sanction and to the entry of findings that while she was an investor services representative at a member firm, she approved numerous investments in securities offered to the public that were unsuitable based on the customers' investment objectives and financial conditions, and resulted in customers being over-concentrated in high-risk securities.

Palmatier's suspension began July 6, 2004, and concluded at the close of business July15, 2004. **(NASD Case #CAF040045)**

David Richmond Palmer (CRD #3057939, Registered Representative, Elkton, Maryland) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Palmer consented to the described sanction and to the entry of findings that he effected withdrawals totaling $8,900 from his insurance company's Premium Fund Account (PFA), and converted the funds to his own benefit. The findings also stated that, after the insurance company requested a copy of the PFA statement in connection with an audit of the account, Palmer altered the account statement or a copy thereof and provided the insurance company the altered statement, representing it to be genuine. **(NASD Case #C9A040022)**

Ben John U. Pangilinan, Jr. (CRD #4306880, Registered Principal, Lincroft, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $5,000 and barred from association with any NASD member in any principal or supervisory capacity. The fine must be paid before Pangilinan reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Pangilinan consented to the described sanctions and to the entry of findings that he failed to take appropriate action to supervise an individual that was reasonably designed to detect and prevent the creation of false documents in connection with variable annuity transactions for public customers in violation of firm policy and to achieve compliance with applicable securities laws and regulations. **(NASD Case #C9B040058)**

Benjamin Agleham Pangilinan (CRD #1123349, Registered Representative, Lincroft, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Pangilinan consented to the described sanction and to the entry of findings that he created false documents in connection with the purchase and sale of variable annuity transactions for public customers that were made in violation of his member firm's policy. The findings also stated that Pangilinan made false statements to firm management when questioned about such transactions to avoid detection of his violation of firm policy. **(NASD Case #C9B040062)**

Jhoanny E. Pena (CRD #4401861, Associated Person, Bronx, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Pena had access to confidential public customer information, including customer account numbers and improperly divulged customer account numbers to a third party not associated with her member firm. The findings also stated that Pena failed to respond to NASD requests to provide testimony. **(NASD Case #C10030135)**

Walter Eugene Phillips, Jr. (CRD #4503098, Registered Representative, Murfreesboro, Tennessee) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Phillips consented to the described sanction and to the entry of findings that he willfully failed to disclose material facts on his Form U4. **(NASD Case #C05040049)**

Walter Edward Powers, IV (CRD #3145275, Registered Representative, Windsor, Connecticut) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Powers consented to the described sanction and to the entry of findings that he caused the transfer of at least $33,774 from the retirement accounts of public customers to a separate bank account over which he exerted control, without the authorization or consent of the customers, and converted the funds for his own personal use. The findings also stated that Powers failed to respond to NASD requests for documents and information. **(NASD Case #C11040025)**

Jay Lee Quinton (CRD #2829452, Registered Representative, Ada, Oklahoma) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Quinton consented to the described sanction and to the entry of findings that he induced the purchase of securities by making misrepresentations to the purchasers and omitting material facts regarding the risks and features of the securities. The findings also stated that Quinton failed to respond to NASD requests for information. **(NASD Case #C05040033)**

Edwin Everett Reardon, Jr. (CRD #859951, Registered Supervisor, Mandeville, Louisiana) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Reardon consented to the described sanction and to the entry of findings that he failed to respond completely to NASD requests for information. **(NASD Case #C05040035)**

Michael James Rogers (CRD #708558, Registered Representative, Danville, California) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Rogers consented to the described sanction and to the entry of findings that he participated in securities transactions outside the normal scope of his employment with his member firm and failed to give prior written notice to, and receive approval from, his member firm for his participation in the transactions. The findings also stated that Rogers failed to respond to NASD requests for information and documentation. **(NASD Case #C01040014)**

Steven Walter Schaefer (CRD #1894353, Registered Principal, Kings Park, New York) was barred from association with any NASD member in any capacity and ordered to pay $64,396, plus interest, in restitution to public customers. The sanctions were based on findings that Schaefer recommended and sold shares of a security to public customers and made fraudulent omissions of material fact and baseless price predictions. The findings also stated that Schaefer failed to tell the customers that he could or would receive compensation that exceeded the markup disclosed on the trade confirmations. **(NASD Case #C3A030053)**

Terrence Richard Sprague (CRD #1612506, Registered Representative, Seattle, Washington) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sprague consented to the described sanction and to the entry of findings that he made oral and written misrepresentations to public customers in selling long-term CDs to public customers. The findings also stated that Sprague misrepresented that the CDs had short-term maturities, that the customers could call the CDs whenever needed, and that the CDs could be redeemed without penalty and without risk to the principal. NASD also found that Sprague failed to respond to NASD requests for information. **(NASD Case #C05030045)**

Roger Paul Stewart (CRD #1190849, Registered Representative, Morgantown, West Virginia) was barred from association with any NASD member in any capacity. The

sanction was based on findings that Stewart consented to the described sanction and to the entry of findings that he received $400 from a public customer to pay the premiums on the customer's automobile insurance policy, failed to apply the funds as directed, and instead converted the funds for his own use and benefit. The findings also stated that Stewart failed to respond to NASD requests for information. **(NASD Case #C9A040002)**

William Michael Stickney (CRD #2094062, Registered Principal, Hopkinton, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Stickney consented to the described sanction and to the entry of findings that he failed to respond to an NASD request to appear for an on-the-record interview. **(NASD Case #C11040023)**

Samson Su (CRD #4034920, Registered Representative, Rancho Palos Verdes, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $12,500 and suspended from association with any NASD member in any capacity for 225 days. The fine must be paid before Su reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Su consented to the described sanctions and to the entry of findings that he provided a public customer a business card that reflected false and misleading information that he was a vice president of a member firm. NASD also found that, without the knowledge or consent of his member firm, Su entered into a written agreement to pay $75,000 to a public customer whose investment portfolio had sustained losses and to secure payment of the settlement agreement, Su provided the customer with an assignment of a deed of trust on Su's residence.

Su's suspension began July 19, 2004, and will conclude with the close of business February 28, 2005. **(NASD Case #C02040020)**

Brooke Sasha Toribio (CRD #4700604, Registered Representative, Tampa Florida) submitted a Letter of Acceptance, Waiver, and Consent in which she was fined $5,000 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Toribio consented to the described sanctions and to the entry of findings that during the course of a Series 7 examination, Toribio was in possession of a small sheet of paper containing notes relevant to the Series 7 examination which is prohibited.

Toribio's suspension began August 2, 2004, and will conclude at the close of business August 1, 2005. **(NASD Case #C07040060)**

Anthony Rahama Whitter (CRD #2733252, Registered Representative, Mt. Vernon, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $5,000 and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, Whitter consented to the described sanctions and to the entry of findings that he failed to respond fully and completely during an NASD on-the-record interview.

Whitter's suspension began July 19, 2004, and will conclude at the close of business September 16, 2004. **(NASD Case #C10040065)**

Joseph Michael Williams, Sr. (CRD #467974, Registered Representative, West Deal, New Jersey) submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for 30 days and ordered to pay $10,000 in partial restitution to a public customer. Without admitting or denying the allegations, Williams consented to the described sanctions and to the entry of findings that he made recommendations to a public customer to purchase securities without having reasonable grounds for believing that the recommendations were suitable for the customer based on the customer's financial needs and investment objectives.

Williams' suspension began August 2, 2004, and will conclude at the close of business August 31, 2004. **(NASD Case #C9B040027)**

Decisions Issued

The following decisions have been issued by the District Business Conduct Committee (DBCC) or the OHO and have been appealed to or called for review by the NAC as of July 2, 2004. The findings and sanctions imposed in the decisions 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 *Notice to Members*.

Todd Grafenauer (CRD #4408817, Registered Representative, Mukwonago, Wisconsin) was barred from association with any NASD member in any capacity. The sanction was based on findings that Grafenauer forged the signatures of college officials on hold harmless agreements and letters on the college's letterhead and provided the documents to his member firm that purportedly confirmed that student interns would receive college credit for working at the firm.

This decision has been appealed to the NAC, and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C8A030068)**

Michael Bernard O'Hare (CRD #2522972, Registered Representative, Bridgewater, New Jersey) was fined $7,848.55 and suspended from association with any NASD

member in any capacity for 10 business days. The sanctions were based on findings that O'Hare engaged in unsuitable transactions in the account of a public customer.

This decision has been called for review by the NAC, and the sanctions are not in effect pending consideration of the review. **(NASD Case #C9B030045)**

Scott Emil Wiard (CRD #1509365, Registered Principal, Ypsilanti, Michigan) and James Davis Reisinger (CRD #1275258, Registered Principal, Dexter, Michigan) were barred from association with any NASD member in any capacity. The sanctions were based on findings that Wiard and Reisinger made a material change in the investment strategy they were employing for clients without the authorization of the clients. The findings also stated that Wiard and Reisinger failed to determine the suitability of leaving their clients fully invested in volatile equities sub-accounts or mutual funds. NASD also found that Wiard exercised discretion over the investment decisions of public customers even though his continued association with his member firm required that he not maintain discretionary accounts. In addition, NASD found that Wiard failed to update his Form U4 in a timely manner.

This decision has been appealed to the NAC, and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C8A030078)**

Terrance Yutaka Yoshikawa (CRD #474700, Registered Principal, Seattle, Washington) was barred from association with any NASD member in any capacity. The sanction was based on findings that Yoshikawa, on behalf of securities accounts he owned or controlled at his member firm, engaged in a series of transactions designed to increase or decrease the national best bid or offer (NBBO) quote for NASDAQ securities to enable him to trade in those securities at more favorable prices. The findings also stated that Yoshikawa's repeated placing of a small limit order priced away from the market through Instinet had the effect of changing the NBBO, followed immediately by the execution of a larger order at the new NBBO; the cancellation of the small order constituted market manipulation.

This decision has been appealed to the NAC, and the sanction is not in effect pending consideration of the appeal. **(NASD Case #CMS020247)**

Complaints Filed

The following complaints were issued by 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.

John Joseph Donadio (CRD #2924386, Registered Representative, Staten Island, New York) was named as a respondent in an NASD complaint alleging that, in connection with the purchase or sale of securities, he directly or indirectly, by the use of any means or instrumentalities of interstate commerce or of the mails, or of any facility or any national securities exchange, employed artifices, devices, or schemes to defraud; made untrue statements of material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices, or courses of business that operated or would operate as a fraud or deceit.

The complaint also alleges that Donadio effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive, or other fraudulent device or contrivance by inducing public customers to purchase shares of stock by falsely representing that the issuer had entered into an agreement with another company to be acquired and that the projected stock would double in price within three to six weeks. The complaint further alleges that Donadio failed to disclose that the stock issuer had virtually no assets or earning and that its auditors had issued a "going concern" warning in connection with the company's audit. In addition, the complaint alleges that Donadio's predictions, representations, and omissions were material, false, misleading, and/or without a reasonable basis, and in making the predictions, representations, and omissions, Donadio acted intentionally and/or recklessly. (**NASD Case #C10040064)**

Francisco Galvan (CRD #1164780, Registered Principal, Stockton, California) was named as a respondent in an NASD complaint alleging that he engaged in private securities transactions without providing prior written notice to his member firm. The complaint also alleges that Galvan made unsuitable recommendations to a public customer based upon the facts disclosed by her regarding her other securities holdings, her financial situation and needs, and the fact that the purchases required the investments of the customer's entire liquid net worth and required her to borrow funds against her credit cards. The complaint further alleges that Galvan failed to respond to NASD requests for information and documentation concerning customer complaints. **(NASD Case #C01040017)**

Patrick Jesse Garcia (CRD #3211453, Registered Representative, Yukon, Oklahoma) was named as a respondent in an NASD complaint alleging that he received $8,179.18 in cashier's checks from a public customer for the purchase of securities, endorsed the cashier's checks, neglected to purchase the securities, and held the funds until a later date when he provided the funds to his former member firm. The

complaint also alleges that Garcia failed to respond to NASD requests for information. **(NASD Case #C05040038)**

William Robert Goodhue (CRD #225161, Registered Representative, Wellington, Florida) was named as a respondent in an NASD complaint alleging that he recommended to, and purchased for, a public customer Class B shares of his member firm's proprietary mutual funds even though Class D shares had lower annual costs, carried a front-end sales charge that was eliminated for purchases over $1 million, and rights of accumulation and letters of intent were available for the Class D shares. The complaint also alleges that Goodhue earned $8,844.82 more in commissions by selling Class B shares rather than Class D shares. The complaint further alleges that Goodhue did not have reasonable grounds for believing that the recommendations and resultant transactions were suitable for the customer on the basis of his financial situation and needs. **(NASD Case #C07040054)**

Todd William Kmiec (CRD #1726325, Registered Supervisor, Chicago, Illinois) was named as a respondent in an NASD complaint alleging that he recommended and effected transactions in the accounts of public customers without having reasonable grounds for believing that the recommendations and resultant transactions were suitable for the customers based on the customers' financial situations, investment objectives, and needs. The complaint also alleges that Kmiec failed to respond to NASD requests for information and documents. **(NASD Case #C8A040056)**

Charles Vito Koubek, Jr. (CRD #2068434, Registered Representative, Forest Hills, New York) was named as a respondent in an NASD complaint alleging that Koubek engaged in private securities transactions and failed to provide prior written notice to his member firm. The complaint also alleges that Koubek, while using the means and instrumentalities of interstate commerce to offer securities for sale, omitted to state material facts necessary in order to make the statements made in connection with such offers, in light of the circumstances in which they were made, not misleading; engaged in acts, practices, or courses of business that operated or would operate as fraud or deceit; effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive, or other fraudulent device or contrivance; and failed to observe high standards of commercial honor and just and equitable principals of trade. The complaint further alleges that Koubek induced a public customer to purchase $30,000 worth of securities by representing to the customer that he would triple his investment within six months. In addition, the complaint alleges that Koubek's price predictions were materially false and/or made without a reasonable basis. Moreover, the complaint alleges that Koubeck failed to respond to NASD requests for information. **(NASD Case #C10040072)**

Wayne Davis Shook (CRD #2837213, Registered Representative, Old Orchard Beach, Maine) was named as a respondent in an NASD complaint alleging that Shook engaged in trading that was excessive in size and frequency in a public customer's account in view of the customer's financial circumstances and investment objectives. The complaint also alleges that Shook executed the transactions in the customer's account without reasonable grounds for believing that the level of activity represented by such transactions was suitable for the customer on the basis of her financial condition, investment objectives, and needs. **(NASD Case #C8A040047)**

Marty Derwin Simpson (CRD #2631722, Registered Representative, Stuttgart, Arizona) was named as a respondent in an NASD complaint alleging that he received $15,272.64 from a public customer for the purchase of a deferred variable annuity, deposited the check into his own personal checking account, and neglected to purchase a deferred variable annuity for the account of the customer, thereby converting the funds to his own use and benefit. The complaint further alleges that Simpson failed to respond to NASD requests for information. **(NASD Case #C05040037)**

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

A. B. Watley, Inc.
New York, New York
(July 2, 2004)

Day International Securities (DIS)
San Jose, California
(July 2, 2004)

DuPont Securities Group, Inc.
New York, New York
(July 2, 2004)

Firm Suspended for Failure to Supply Financial Information

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

Geek Securities, Inc.
Boca Raton, Florida
(July 2, 2004)

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

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

Foreman, James A.
Lafayette, Louisiana
(June 17, 2004)

Gilbert, Martin
Jersey City, New Jersey
(June 28, 2004)

Zander, Melinda J.
Sterling Heights, Michigan
(June 23, 2004)

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

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

Fernandez, George I.
Miami, Florida
(June 25, 2004)

Goldstein, Jeffrey W.
New York, New York
(June 7, 2004)

Individuals Suspended Pursuant to NASD Rule Series 9510 for Failure to Comply With an Arbitration Award or a Settlement Agreement

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

Appleyard, David J.
Linwood, New Jersey
(June 22, 2004)

Ramos, Jr., Moises
Miami, Florida
(July 7, 2004)

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

Day, Douglas Conant
San Jose, California
(July 2, 2004)

Dooley, Robert M.
Highlands Ranch, Colorado
(July 2, 2004)

Helfer, Louis A.
Summit, New Jersey
(July 2, 2004)

Levine, George
Boca Raton, Florida
(July 2, 2004)

Rabinovich, Alex
Brooklyn, New York
(July 2, 2004)

Wood, Ronald W.
Lincoln, California
(July 2, 2004)

NASD Hearing Panel Dismisses Complaint against Peter R. Kellogg

An NASD Hearing Panel dismissed a complaint against Peter R. Kellogg alleging that he engaged in fraudulent wash and matched trades during August 2001. The Hearing Panel found that there was no evidence that Kellogg carried out the four transactions at issue with the intention to defraud, manipulate, or deceive. Rather, the panel found that Kellogg conducted the transactions for legitimate business and tax purposes.

NASD Fines Morgan Stanley $2.2 Million for Late Reporting, Firm Temporarily Suspended from Registering New Brokers

NASD ensured and fined Morgan Stanley DW Inc. $2.2 million for more than 1,800 late disclosures of reportable information about its brokers. The late reports concerned, among other things, customer complaints and disciplinary actions by regulators. NASD also charged Morgan Stanley for supervisory failures relating to the late filings.

In addition to ordering the fine, NASD prohibited Morgan Stanley from registering any new brokers for one week, required it to hire an independent consultant to assess the firm's supervisory systems and procedures in the reporting area, and imposed specific ongoing reporting obligations.

NASD concluded that the late filings by Morgan Stanley had delayed several NASD investigations. The late filings also may have hampered the investing public's ability to accurately assess the background of certain brokers through NASD's public disclosure program, BrokerCheck, and compromised the ability of state securities regulators to review applications from brokers changing firms.

"Every firm has a fundamental obligation to accurately and promptly file information about its brokers that NASD, other regulators and—most importantly—the investing public rely on to learn of potential misconduct," said NASD Vice Chairman Mary L. Schapiro. "Those obligations cannot be ignored, and negligence on the scale demonstrated in this case merits particularly strong sanctions."

Under NASD rules, after a securities firm hires a broker, it must ensure that information disclosed on the broker's application for registration (Form U4) is kept current in the Central Registration Depository (CRD). The firm must file amendments with NASD promptly to update the information on the form when significant events occur—including regulatory actions against the broker, customer complaints and settlements involving the broker, and criminal charges and convictions. Normally, the amendments must be filed within 30 days. If the reportable event involves a statutory disqualification, the event must be disclosed within 10 days. In addition, firms must notify NASD within 30 days of learning that information disclosed on a termination notice (Form U5) filed for a broker has become inaccurate or is incomplete.

NASD found that, from January 2002 to March 2004, Morgan Stanley failed to file in a timely manner approximately 67 percent of the required Form U4 and Form U5 updates that were the subject of NASD's review. Those updates were filed from one to several hundred days late, and approximately 52 percent of all late filings were more than 90 days late. NASD also found that Morgan Stanley failed to maintain and enforce effective supervisory systems and procedures to achieve compliance with its reporting obligations. The firm, among other things, failed to assign clear responsibilities and tasks to its management and employees; to ensure that employees were accountable for the performance of their assigned tasks within clearly defined time periods, and to allocate sufficient resources, including personnel and other resources, to ensure timely filings.

Morgan Stanley previously has been the subject of four New York Stock Exchange disciplinary actions for similar reporting violations. State securities regulators in Maryland, Florida, and Vermont also have previously filed charges against the firm for failing to update reportable information pertaining to its representatives.

Morgan Stanley agreed to the sanctions while neither admitting nor denying the allegations.

NASD currently is engaged in a number of ongoing investigations involving similar types of reporting violations at other firms, including both late filings and failures to report information about brokers.

Goldman Sachs, Deutsche Bank, Miller Tabak Roberts, Citigroup Global Markets to Pay Total $20 Million for Corporate High-Yield Bond Trade Violations

NASD ordered Goldman, Sachs & Co.; Deutsche Bank Securities, Inc.; Miller Tabak Roberts Securities, LLC; and Citigroup Global Markets Inc. to pay $5 million each for rule violations relating to trading in corporate high-yield bonds. All four firms were cited for charging excessive markups or markdowns, inadequate record keeping, and supervision violations. The firms were also ordered to revise their written supervisory procedures for high-yield bond sales and purchases within 60 days.

All four firms were ordered to make restitution payments for the markup/markdown violations: nearly $344,000 for Goldman Sachs, $422,000 for Deutsche Bank, $182,000 for Miller Tabak Roberts, and $486,000 for Citigroup Global Markets.

NASD also charged three of the firms—Goldman Sachs, Deutche Bank, and Citigroup Global Markets—with trade-reporting violations. Two of the firms—Deutsche Bank and Miller Tabak Roberts—were charged with failure to register one or more supervisors on the firms' high-yield desks.

"NASD rules require that firms sell all securities, including corporate high-yield debt, at fair prices," said NASD Vice Chairman Mary L. Schapiro. "NASD markup policy has been clear that markups and markdowns generally should not exceed 5 percent and, for most debt transactions, that figure should be lower. Numerous SEC and court rulings have reiterated these principles throughout the years. In the cases we announce today, markups and markdowns were clearly outside these well-established guidelines."

NASD found that in 2000 and 2001, Goldman Sachs charged markdowns ranging from 9.4 percent to 30.4 percent on five pairs of trades. From mid-2000 through early 2002, Deutsche Bank charged markdowns ranging from 9.6 percent to 16.6 percent on seven pairs of trades. In 2001 and early 2002, Miller Tabak Roberts charged markdowns ranging from 9.4 percent to 18 percent on three pairs of trades. Finally, from 2000 to early 2002, Citigroup charged markups and markdowns ranging from 13.1 percent to 32.2 percent on three pairs of trades. The firms bore little or no risk in these transactions.

In addition, all four firms failed to create or maintain records that clearly and accurately reflected the time customer orders were entered or the time those orders were executed. Such basic recordkeeping is required by SEC and NASD rules. Furthermore,

the systems used by Goldman Sachs and Deutche Bank to report the high-yield bond transactions did not allow the firms to report accurate execution times when the trades were input late. Reliance on systems that prevent compliance with applicable rules is an unacceptable practice.

NASD also found that supervision at all four firms was deficient. For nearly two years at Goldman Sachs and for at least six months at Deutsche Bank, there was confusion as to who was responsible for reviewing certain high-yield bond trades. As a result, it was not clear that any supervisory review of those trades occurred. Even when high-yield bond trades were reviewed, the supervisory reviews at Goldman Sachs and Deutche Bank failed to conform to the policies or standards set forth in the firms' own written supervisory procedures. At Miller Tabak Roberts, the review of these trades was based on an unwritten internal guideline that was inconsistent with the NASD Markup Policy. At Citigroup, the supervisory procedures did not provide for a review to determine compliance with NASD's markup policy. The firms did not identify these fundamental supervisory failures until NASD initiated its investigations.

In concluding these settlements, the firms neither admitted nor denied the charges.

NASD Uses Cease-and-Desist Authority for First Time, Seeks Halt to Ongoing Fraud by Brokerage LH Ross

NASD Charges Brokerage with Illegally Raising over $7 Million through Self-Offering

NASD has filed for a Temporary Cease-and-Desist Order against Boca Raton, FL-based brokerage LH Ross, seeking an immediate halt to ongoing fraudulent and illegal sales activities relating to unregistered private placement self-offerings that have raised more than $7 million for the firm.

This is the first time NASD has used its temporary cease-and-desist authority, which was approved by the SEC in June 2003.

In its complaint, NASD charged that at least 15 brokers in at least eight LH Ross branch offices in Florida and New York have made material misrepresentations and failed to provide important information to investors in connection with private sales of LH Ross stock in 2003 and 2004. Since January 2003, LH Ross has raised more than $7 million by selling its own securities to more than 140 customers throughout the country. More recently, the firm has also solicited customers to lend the firm money on a short-term, unsecured basis using false and misleading statements.

"LH Ross is engaging in an ongoing campaign of deceit designed to lure unsuspecting and unqualified customers into making highly risky private investments based on misleading and incomplete information," said NASD Vice Chairman Mary L. Schapiro. "NASD must act now to protect investors and must use every tool at its disposal and therefore is seeking a temporary cease and desist order against LH Ross to immediately stop its improper activities."

NASD charged that among the misrepresentations that LH Ross brokers made to customers were: that the firm would pay a dividend ranging from 5 percent to 9 percent on the stock; that LH Ross was going to engage in an initial public offering (IPO) of the stock in the near future, and that self-offering shares that customers bought were a short-term investment that could be sold for a quick windfall after the firm's IPO. Many customers were given a specific price prediction for the stock ranging from $17 to $60 per share. Most were also told that their investments in the firm had already appreciated. All of the representations were untrue.

NASD charged that LH Ross also failed to disclose important information to prospective investors in the firm's stock. For example, investors were not told that the firm had lost more than $6 million since 2001. They were not told about the firm's extensive and serious disciplinary history, including disciplinary actions filed by NASD and several state regulators. The firm rarely provided investors with the offering documents it was required to give customers before selling them stock in the firm. Most of the investors who did receive the documents received them weeks or months after the date of purchase and sometimes in incomplete form.

NASD also charged that several LH Ross brokers invested customer funds in the firm's stock without the customers' knowledge or consent, and in some instances refused to cancel or reverse the purchases even when the customers complained.

If the Temporary Cease-and-Desist Order is granted, it will generally remain in effect until the underlying disciplinary action against the firm for this misconduct has been resolved. NASD may seek to suspend or expel a firm for violating a TCDO.

LH Ross is currently the subject of three other actions pending before NASD disciplinary panels: CAF030055, filed October 10, 2003, alleging a scheme to illegally manipulate the market in Trident Systems International stock; CAF040042, filed May 26, 2004, alleging that LH Ross and its president, Franklyn Michelin, failed to timely pay an arbitration award; and C07040054, filed July 7, 2004, alleging that LH Ross and Michelin participated in a fraudulent scheme to profit at the expense of its customers through unauthorized trades.

Last month, NASD filed a fraud action against another brokerage firm—Investprivate of New York, NY—in connection with self-offerings (*see www.nasdr.com/news/pr2004/release_04_041.html*). At the same time, NASD issued an Investor Alert on the issue

(see NASD Investor Alert—Brokerage Firm Private Securities Offerings: Buying Your Brokerage at *www.nasd.com/Investor/Alerts/bdos.htm*).

Under NASD rules, the individuals and firms named in a complaint can file a response and request a hearing before an NASD disciplinary panel. Possible sanctions include a fine, an order to pay restitution, censure, suspension, or bar from the securities industry.

NASD Fines Citigroup, Merrill Lynch, and Morgan Stanley a Total of $750,000 for Failing to Comply with Discovery Obligations in Arbitrations

NASD censured and fined Citigroup Global Markets, Inc., formerly Salomon Smith Barney; Merrill Lynch, Pierce, Fenner & Smith Incorporated; and Morgan Stanley DW Inc. $250,000 each for failing to comply with their discovery obligations in 20 arbitration cases during the period 2002 through 2004.

All three firms must also implement written procedures designed to ensure that future discovery violations that lead to sanctions are elevated to senior officers for review and appropriate corrective action.

"NASD is committed to making our arbitration forum faster, fairer, and less expensive than court procedures," said Robert Glauber, NASD Chairman and CEO. "We cannot deliver on this commitment if firms fail to produce all required documents in a timely manner to opposing parties. We will not tolerate any failure by NASD-regulated firms to cooperate fully in the arbitration process and we will bring enforcement actions as necessary to assure full compliance with our arbitration code."

These cases arise from arbitrations conducted before NASD Dispute Resolution, Inc. arbitration panels as well as arbitration panels sponsored by other regulatory forums. Citigroup was a party in six of the arbitrations. Merrill Lynch and Morgan Stanley were parties in seven arbitrations each.

In these arbitrations, arbitration panels cited the firms for failing to produce documents to the claimants, as required by rules involving document discovery. After finding in each of the arbitrations that the firms failed to fully comply with their discovery obligations to produce documents—even after arbitration panels had issued orders compelling that production—the panels sanctioned the firms in amounts as high as $52,000.

As recently as last year, NASD formally reminded firms that "NASD rules require parties to NASD arbitrations to cooperate in the voluntary exchange of documents and information, and to respond to discovery requests from other parties" in a timely manner. NASD's *Notice to Members 03-70* pointed out that it had become clear that "despite the guidance provided in the Code and the Discovery Guide, NASD continues to receive complaints regarding possible abuses of the discovery process."

The Notice further stated that "some parties believe that noncompliance with their duty to cooperate in the discovery process—to voluntarily turn over documents listed on applicable Document Production Lists, or requested by other parties under Rule 10321—is a routine and acceptable part of arbitration strategy."

In the cases announced today, NASD found that by failing to comply with their discovery obligations, each of the firms violated NASD's rule requiring that securities firms adhere to just and equitable principles of trade. NASD also found that in arbitrations conducted before NASD Dispute Resolution, each of the firms violated NASD's Code of Arbitration Procedure, which provides that a failure to produce any document pursuant to the provisions of the Code is deemed a violation of the just and equitable principles of trade.

As part of today's settlements, each firm has agreed to establish a written procedure requiring review, at the management level of the firm, of any instance where an arbitration panel has sanctioned the firm for discovery violations and of instances where the firm is required to produce documents in response to a motion to compel filed in an arbitration. Each firm also agreed to notify all counsel handling arbitration proceedings on its behalf of the firm's policy to comply with discovery requirements in arbitration proceedings.

Citigroup, Merrill Lynch, and Morgan Stanley agreed to the sanctions while neither admitting nor denying the allegations.

NASD Fines Piper Jaffray $2.4 Million for IPO Spinning

Corporate Executives Favored in Bid for Investment Banking Business

NASD censured and fined Piper Jaffray & Co. $2.4 million for engaging in improper spinning of hot initial public offerings (IPOs). Piper Jaffray violated NASD rules by allocating and selling profitable hot IPOs to executives of corporations from which Piper Jaffray was seeking, or had obtained, investment banking business.

During 1999 through 2001, Piper Jaffray improperly allocated and sold shares of these hot IPOs to 22 corporate executives, primarily CEOs and CFOs of public companies. None of these executives did any personal business with Piper Jaffray during the relevant period. The only activity in each executive's account was the purchase and sale of hot IPO shares. Each individual was a key executive officer (or spouse) of an existing or potential Piper Jaffray investment banking client and was in a position to

influence the selection of the investment banker for their employer.

Piper Jaffray earned over $16 million dollars from these issuers, while the 22 key executives made a total of approximately $2.4 million in profits from the hot IPO shares. Individual profits ranged from $9,000 to approximately $242,000. Each executive was allocated at least five hot IPOs, with some executives receiving as many as 20.

"Spinning contributes to the public's perception that the IPO market is rigged in favor of company insiders who receive highly profitable IPO shares as a payoff for lucrative investment banking business," said NASD Vice Chairman Mary L. Schapiro. "NASD is committed to an IPO allocation process that is transparent and fair."

Sales of hot IPO shares to corporate executives were made by Piper Jaffray's Corporate Client Services (CCS) desk, a function within Piper's Investment Banking Department. The head of Piper Jaffray's Investment Banking Department determined the annual bonuses and salaries of CCS employees, and discretionary bonus payments to CCS employees and investment bankers were made from one bonus pool. CCS made it clear, both within the company and to clients, that its role was to add value to the investment banking operation. As one CCS employee wrote in a May 2001 e-mail to a client: "We are not part of our retail business. We are part of Piper Jaffray's Equity Capital Market Group. This is unique to the Street."

Piper Jaffray's investment bankers identified certain corporate executives to CCS for hot IPO allocations, and, in some instances, gave direction on the number of shares the executives should receive. In making allocation decisions, CCS asked investment bankers to rank company executives in order of priority. The ranking of key executives for the allocation of hot IPOs was accomplished in several different ways. For example, a CCS relationship manager sent a list of individuals to an investment banker, asking him to add executives as necessary and "put in a ranking number." The CCS manager suggested that the investment banker use the following ranking system that was used by other investment bankers:

1. *Very important*
2. *Somewhat important*
3. *[G]et him about 4 deals a year*
0. *No stock for you*

Piper Jaffray made numerous allocations to key executives. For example, Piper Jaffray sold shares to the CFO of Liquid Audio on numerous occasions prior to Liquid Audio's IPO and its secondary offering five months later. The CFO made over $92,000 in profits from his IPO sales. Piper earned over $764,000 as co-manager of Liquid Audio's IPO and more than $703,000 as co-manager of Liquid Audio's secondary offering.

Piper Jaffray also allocated hot IPO shares to three executives of Go America—the CEO, the CFO, and an EVP—shortly after being selected to co-manage that company's IPO. These three individuals collectively made over $330,000 in profits. At the same time, the investment banking transaction by Go America generated over $1.1 million in investment banking fees for Piper Jaffray.

In settling this matter, Piper Jaffray & Co. neither admitted nor denied the charges.

NASD Charges Florida Discount Securities with Fraud

High-Pressure, Boiler-Room Sales Practices Cost Investors more than $4.5 Million

NASD announced charges against Florida Discount Securities, Inc., formally of Boca Raton, FL, its former President and owner, Bruce Rich, and eight brokers with engaging in high-pressure, boiler-room type sales practices that defrauded investors more than $4.5 million.

NASD charged that, from the spring of 2001 through the fall of 2002, Rich and eight Florida Discount brokers engaged in a variety of fraudulent and manipulative sales practices in soliciting customers to purchase shares of two highly speculative securities, Combined Professional Services, Inc. (CPFS) and BSD Software, Inc. (BSDS). Both CPFS and BSDS were non-operational "shell" or "blank check" companies with no operating histories, no significant financial resources, minimal assets, and no operating income or revenues. Each company's plan was to seek a business it could acquire or with which it could merge. Neither company ever identified a prospective target business.

NASD's Complaint charges that under Rich's direction, Florida Discount became a "boiler room" that sold CPFS and BSDS common stock through an aggressive cold-calling campaign that involved high-pressure sales tactics; misrepresentations and omissions of material facts; failing to disclose adverse information about the risks of investing in CPFS and BSDS and their bleak business prospects; making baseless optimistic predictions about the companies' future business prospects and the value of their securities; making unauthorized transactions in customers' accounts; engaging in a "no net-selling" practice in which brokers refused to take customer sell orders, delayed taking sell orders, and attempted to persuade customers not to sell; and deceived customers into believing that Florida Discount had an investment banking department and investment banking relationships with CPFS and BSDS.

The Florida Discount brokers (identified by their Central Registration Depository numbers) charged with participating in the illegal scheme are: Dante F. Calicchio (CRD No. 2812117); Charles P. Celestin (CRD No. 4276880); Mark W. Eshleman (CRD No. CRD No. 1244069); Fernando Fernandez (CRD No. CRD No. 4008751); Adam T. Forman (CRD No. 2826964); Marc S. Kimmel (CRD No. 2805550); Shannon L. Norris (CRD No. 2983568); and. Kristian F. Sierp (CRD No. 2428092).

NASD's Complaint also charges Florida Discount and Rich (CRD No. 2005846) with supervisory failures, which contributed to violations of NASD Rules and federal securities laws.

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