

FEBRUARY 2005

# Notice to Members

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# Notice to Members

FEBRUARY 2005

## SUGGESTED ROUTING

Finance  
Legal & Compliance  
Operations  
Senior Management

## KEY TOPICS

Regulatory Transaction Fees  
Section 31 of the Exchange Act  
Section 3 of Schedule A to the NASD  
By-Laws

## GUIDANCE AND REQUEST FOR COMMENT

### Regulatory Transaction Fees

NASD Issues Further Guidance Regarding Members' Obligations under Section 3 of Schedule A to the NASD By-Laws; NASD Also Seeks Member Comment on Related Automation Issues; **Comment Period Expires March 30, 2005**

#### Executive Summary

In August 2004, NASD issued *Notice to Members (NtM) 04-63* (Transaction Fees: New SEC Procedures Relating to Section 31 of the Securities Exchange Act of 1934) informing member firms of the new Securities and Exchange Commission (SEC) 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 of the Securities Exchange Act of 1934 (Exchange Act). *NtM 04-63* also discussed the obligations of member firms under Section 3 of Schedule A to the NASD By-Laws in light of the new SEC procedures.

More specifically, *NtM 04-63* stated that members are required to self-report the following covered securities transactions that are not reported to NASD's trade reporting systems: (1) odd-lot transactions; (2) exercises of over-the-counter (OTC) options that settle by physical delivery; and (3) away from the market sales. In addition, NASD notified members that beginning in September 2004, members must self-report the relevant trade data and submit their payments by the seventh calendar day of each month. Further, NASD informed members that if they pass this regulatory transaction fee onto their customers, they should no longer consistently round up if there is a remainder. Instead, members should alternate between rounding up and rounding down to the next cent when calculating the transaction fees on individual trades. Last, based on statements made by the SEC in its order approving the new SEC procedures, NASD cautioned member firms that they must refrain from labeling the fees assessed by NASD as "Section 31 Fees" or "SEC Fees."

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Today, NASD staff is announcing that, beginning in February 2005, all NASD member clearing and self-clearing firms will be required to submit a monthly Self-Reporting Form to NASD regardless of whether they have qualifying transactions for a specific month. The form must be signed by a registered principal indicating the firm has done the necessary review to ensure all qualifying transactions have been properly reported. In addition, **NASD staff is advising NASD members that they should disregard the advice on rounding provided in any previous *NtMs* (including *NtM 04-63*) and *Member Alerts* (including the December 28, 2001, *Member Alert*).** Attachment A to this *NtM* is an updated Self-Reporting Form.

NASD staff is also providing further guidance in this *NtM* in response to a significant number of questions from member firms regarding these obligations.<sup>1</sup> These questions have prompted NASD to seek input from the membership on automating the reporting process for odd-lot transactions, OTC exercised options and away from the market sales. Specifically, NASD is seeking member comment on requiring that all transactions subject to the Regulatory Transaction Fee be reported to an NASD trade reporting system. This proposal would include amending NASD transaction reporting rules to allow for odd-lot transactions, OTC exercised options and away from the market sales to be submitted to an NASD trade reporting system for regulatory reporting purposes. Transactions submitted in this manner would be flagged by NASD's billing system and included in the Regulatory Transaction Fee billing process, but would not be disseminated to the media. NASD foresees that these regulatory reports would follow the same Automated Confirmation Transaction Service (ACT) or Trade Reporting and Confirmation Service (TRACS) fee structure for non-tape, non-clearing entries as exists today (*i.e.*, no ACT or TRACS fee would be charged for the submission of these entries.)

## Questions/Further Information

Questions concerning this *NtM* may be directed to NASD Finance, at (240) 386-5397; and the Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8071.

## Action Requested

NASD encourages all interested parties to comment on the proposed changes to the reporting process for the Regulatory Transaction Fee. Comments must be received by **March 30, 2005**. Members and other interested parties can submit their comments using the following methods:

- ♦ **Mail** comments in hard copy to the address below
- ♦ **E-mail** comments to [pubcom@nasd.com](mailto:pubcom@nasd.com)

To help NASD process and review comments more efficiently, persons commenting on this proposal should use only one method; however, if a person wishes to submit comments using both of the methods listed above, he or she should indicate that in the submissions.

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Comments sent by hard copy should be mailed to:

Barbara Z. Sweeney  
Office of the Corporate Secretary  
NASD  
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.<sup>2</sup>

Before becoming effective, a proposed rule change must be authorized for filing with the SEC by the NASD Board, and then must be approved by the SEC, following publication for public comment in the *Federal Register*.<sup>3</sup>

## Question and Answers

The following Questions and Answers address a variety of issues that have arisen since the publication of *NtM 04-63*.

### Q1. What are away from the market sales?

A1. Pursuant to NASD's transaction reporting rules, members are required to report transactions in designated securities, with few exceptions. One such exception is transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security, and consideration is provided. Such sales are called away from the market sales. Away from the market sales historically have been excluded from the reporting requirements under NASD's transaction reporting rules, including the rules applicable to ACT.<sup>4</sup>

However, given the underlying goals of transaction reporting, NASD interprets the exception from the transaction reporting rules for away from the market sales very narrowly. Specifically, as noted in *NtM 02-76*, an away from the market sale is an execution that occurs without reference to current market pricing and investment, commercial, or trading considerations.<sup>5</sup> Consequently, NASD staff anticipates that the number of away from the market sales subject to self-reporting pursuant to Section 3 of Schedule A to the NASD By-Laws should be *de minimis*. Members also should note that any sales that are reported to ACT or TRACS are not subject to self-reporting. Moreover, members are not required to self-report transactions involving a gift of a security *without* consideration because such a transaction is not considered a "sale" for reporting purposes.

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- Q2.** In *NtM 04-63*, NASD stated that members should calculate the regulatory transaction fees by: (1) multiplying the aggregate dollar amount of covered sales by the fee rate; (2) truncating the resulting amount at the fifth place after the decimal point; and (3) alternating between rounding up and rounding down to the next cent, if there is any remainder. How should members apply the alternating round up/down methodology? Do members still have the option of solely rounding up to the next cent if there is any remainder following the calculation?
- A2. The guidance provided in *NtM 04-63* regarding the rounding methodology was intended to prevent the accumulation of any overages that may result from routinely rounding up to the next cent when calculating the transaction fees that firms pass on to their customers by suggesting that firms adopt a standard mid-point rounding convention. Section 3 of Schedule A to the NASD's By-Laws does not dictate whether or how members should charge customers to recover amounts paid to NASD; accordingly, members should disregard the advice on rounding provided in the *NtM 04-63* or any other previous *NtMs* and *Member Alerts* (including the December 28, 2001, *Member Alert*).
- Q3.** Are all member firms required to self-report the applicable trade data and submit payments to NASD?
- A3. No. Although reporting obligations are ultimately the responsibility of each member firm, only member firms that are clearing firms (including self-clearing firms) should be submitting the self-reported trade data and applicable payments to NASD. Clearing firms are expected to collect any applicable trading information from their respective correspondent firms to be included in the aggregate totals.
- Q4.** Can odd-lot transactions be reported to ACT or TRACS in order to fulfill a member's self-reporting obligation for covered odd-lot sales?
- A4. Yes. Odd-lot transactions submitted to ACT or TRACS for clearing purposes pursuant to NASD Rule 6130(a) will satisfy a member's self-reporting obligation.<sup>6</sup> Therefore, any odd-lot sale submitted to ACT (in the manner as prescribed in endnote six) or TRACS for clearing should not be included on the member's Self-Reporting Form. Members should be aware, however, that NASD rules prohibit odd-lot transactions from being reported to NASD trade reporting systems for media dissemination only.<sup>7</sup> Members, therefore, must use the Self-Reporting Form to satisfy their reporting obligation with respect to odd-lot transactions that are not cleared through ACT or TRACS.

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**Q5. Does my firm have to submit a Self-Reporting Form if we have no transactions that are subject to the self-reporting requirement?**

A5. Yes. Previously, clearing and self-clearing firms were only required to submit an initial Self-Reporting Form indicating that they did not process any transactions falling within the self-reporting requirement. After the initial form, there was no requirement to submit blank forms on a monthly basis. However, to ensure firms' on-going compliance with self-reporting obligations, NASD is now requiring that each clearing and self-clearing firm submit a Self-Reporting Form each month regardless of whether they have qualifying transactions. Additionally, the form must be signed by a registered principal of the firm representing that a review has been performed to ensure all qualifying transactions have been properly reported. This new requirement will begin with January trade data that is due to NASD by February 7, 2005. An updated Self-Reporting Form is included in this *NtM* as Attachment A.

**Q6. Does NASD pay the SEC a Section 31 fee on all sales transacted by or through an NASD member?**

A6. NASD is responsible for paying fees for sales transacted by or through its members in securities subject to prompt last sale reporting pursuant to the rules of the SEC or NASD and securities that are off-exchange trades of exchange-registered securities. This means that, as a general matter, transactions in equity securities submitted to an NASD trade reporting system for last sale reporting are subject to the fee.<sup>8</sup> However, certain sales are exempt from the fee. SEC Rule 31(a)(11) states that the following sales are exempt: (i) any sale of a security offered pursuant to an effective registration statement under the Securities Act of 1933 (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 of 1933, or a rule thereunder; (ii) any sale of a security by an issuer not involving any public offering within the meaning of section 4(2) of the Securities Act of 1933; (iii) any sale of a security pursuant to and in consummation of a tender or exchange offer; (iv) 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; (v) any sale of a security that is executed outside the United States and is not reported, or required to be reported, to a transaction reporting association as defined in §240.11Aa3-1 and any approved plan filed thereunder; (vi) any sale of an option on a security index (including both a narrow-based security index and a non-narrow-based security index); (vii) any sale of a bond, debenture, or other evidence of indebtedness; and (viii) any recognized riskless principal sale.

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**Q7. Our firm has decided to pass on the Regulatory Transaction Fees assessed by NASD to our broker-dealer customers. Is it acceptable to use the Step-Out function in ACT for the specific purpose of transferring the transaction fees to broker-dealer customers?**

A7. No. As explained in *NtM 98-40* (Nasdaq To Incorporate Trade Acceptance And Reconciliation Service Into Automated Confirmation Transaction Service) (May 1998), ACT provides a Step-Out function to allow members to “step out,” or allocate, all or part of a previously executed trade to another broker-dealer. In other words, a Step-Out functions as a position transfer, rather than a trade. The Step-Out function was designed and implemented to facilitate the clearing process for members involved in these types of transactions. As part of the Step-Out function, ACT also provides the ability to move the transaction fee associated with the trade to the ultimate seller of the security when the trade is allocated. However, the Step-Out functionality was not intended to serve as a means to transfer transaction fees related to trades that do not fit ACT’s definition of a Step-Out. Using the Step-Out flag on transactions that do not meet ACT’s definition of a Step-Out results in such transactions being incorrectly characterized in NASD’s audit trail. Because NASD relies on the audit trail for regulatory and surveillance purposes, it is critical that all transactions submitted to ACT be reported in accordance with the ACT rules to ensure the integrity of the information contained in the audit trail.

**Q8. Where do member firms send the monthly self-reporting form?**

A8. Member firms should submit the Permanent Self-Reporting Form and payment to NASD, P.O. Box 7777-W4230, Philadelphia, PA 19175-4230.

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## Endnotes

- 1 NASD filed this *NtM* on February 4, 2005, with the SEC for immediate effectiveness. See SR-NASD-2005-021 (Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Additional Guidance Regarding Members' Obligations under Section 3 of Schedule A to the NASD By-Laws).
- 2 See *NtM 03-73* (November 2003) (NASD Announces Online Availability of Comments). Personal identifying information, such as names or e-mail addresses, will not be edited from submissions. Persons commenting on this proposal should submit only information that they wish to make publicly available.
- 3 Section 19 of the 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 within 60 days of filing. See Exchange Act Section 19 and rules thereunder.
- 4 See NASD Rules 4632(e)(5), 4642(e)(4), 4652(e)(3), 6230(e)(3), 6420(e)(5), and 6920(e)(2) (providing that away from the market sales—for example, to make a gift—need not be reported).
- 5 See *NtM 02-76* (November 2002) (Corporate Debt Securities Transactions Subject to Reporting and Dissemination; NASD Issues Interpretive Guidance to the Trade Reporting and Compliance Engine Rules (TRACE Rules)).
- 6 Firms should note that in order for odd-lot transactions submitted to ACT to be billed automatically by NASD, the trade must be submitted to ACT for both reporting and clearing. The reporting designation of the entry is used to identify the trade as eligible for the Regulatory Transaction Fee in NASD's billing system. Note that ACT automatically suppresses the trade from media dissemination.
- 7 See, e.g., Rule 4623(e)(2).
- 8 The fee, however, does not apply to non-Canadian foreign securities submitted to an NASD trade reporting system since these securities are generally not subject to prompt last sale reporting (reported on a T+1 basis).

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## ATTACHMENT A

### NASD Permanent Self-Reporting Form for Odd-Lot Transactions, OTC Exercised Options, and Away from the Market Sales

\*\*\*Effective January 7, 2005\*\*\*

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.

Transactions of the clearing firm and its correspondents should be consolidated for reporting purposes.

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.

Each clearing firm must submit this form each month regardless of whether it has reportable transactions. If your firm does not have any reportable transactions for the current month, your firm must submit the blank form signed by an authorized principal, along with a statement that your firm had no reportable transactions for the month.

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## Odd-Lot Transactions

NASD members that are clearing firms, including self-clearing firms, must report the 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 Equity Securities.
- Include all odd-lot transactions in non-NASDAQ OTC Equity Securities as defined in NASD Rule 6610.
- Include all odd-lot transactions in non-NASDAQ OTC Equity Securities that are ADRs or Canadian foreign securities but exclude all non-NASDAQ non-Canadian foreign securities.
- Include all odd-lot transactions in exchange-registered securities traded off the exchange ("third market trades").
- Do *not* include odd-lot transactions that were reported to TRACS or that were submitted to ACT for clearing and reporting (see endnote three in *NTM 05-11*). This form must only be used for odd lots that are not reported to TRACS or that were not submitted to ACT for *both* reporting and clearing (e.g., an entry marked as clearing only will not be automatically billed by NASD).

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## OTC Option 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. 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.
- 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. The Options Clearing Corporation will collect the fee for these types of transactions.
- Report the aggregate dollar amount of the transactions determined on the basis of the exercise price.

## Sales Away from the Market

NASD members that are clearing firms (including self-clearing firms) must report the 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 are prohibited from being reported to an NASD trade reporting system pursuant to NASD Rules. Firms should not include transactions involving a gift of a security **without** consideration because such a transaction is not considered a "sale" for purposes of this form.

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**NASD Permanent Self-Reporting Form for Odd-Lot Transactions,  
OTC Exercised Options, and Away from the Market Sales**

**\*\*\* Effective January 7, 2005 \*\*\***

Regulatory Transaction Fees under Section 3 of Schedule A to the NASD By-Laws for the Calendar Month of \_\_\_\_\_, 200( ) for odd-lot transactions, OTC exercised options, 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	\$	0.0000329	\$
OTC Exercised Options	\$	0.0000329	\$
Away from the Market Sales	\$	0.0000329	\$

**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<sup>1</sup> 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 Principal \_\_\_\_\_ Title \_\_\_\_\_

Print Name \_\_\_\_\_ Date/Telephone Number \_\_\_\_\_

Address (Street, City, State, Zip) \_\_\_\_\_

E-mail Address \_\_\_\_\_

<sup>1</sup> 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

FEBRUARY 2005

## SUGGESTED ROUTING

Executive Representatives  
Registered Representatives  
Legal & Compliance  
Senior Management

## KEY TOPICS

Clerical and Ministerial Activities  
MC-400 Application  
Rule 9520 Series—Eligibility Proceedings  
Rule 9522  
Statutory Disqualification

## GUIDANCE

### Eligibility Proceedings

SEC Approves Amendments to Rule 9522 Regarding Applications of Statutorily Disqualified Persons Who Will Be Engaged Solely in Clerical and/or Ministerial Activities; **Effective Date: March 7, 2005**

#### Executive Summary

NASD's Rule 9520 Series sets forth NASD's eligibility procedures, under which statutorily disqualified persons may become or remain associated with a member firm. On December 14, 2004, the Securities and Exchange Commission (SEC) approved amendments to NASD Rule 9522(e)(2), giving NASD's Department of Member Regulation (Member Regulation) the authority to approve, without review by NASD's National Adjudicatory Council (NAC), the Member Continuance Applications (MC-400 Applications or Applications) of statutorily disqualified persons who will be engaged solely in clerical and/or ministerial activities.<sup>1</sup>

#### Questions/Further Information

Questions concerning this *Notice* may be directed to Lorraine Lee, Statutory Disqualification Administrator, Member Regulation, at (240) 386-4783; or Shirley H. Weiss, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8844.

#### Discussion

The Rule 9520 Series, among other things, sets forth procedures for a statutorily disqualified person to become or remain associated with a member. These procedures are referred to as "eligibility proceedings." Generally, a member firm wishing to sponsor a disqualified person must file an MC-400 Application with NASD,

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and the Application must be approved (or denied) by the NAC after consideration by the Statutory Disqualification Committee (SD Committee). If NASD's Member Regulation Department determines that an Application should be approved, but with specific supervisory requirements, the parties have the option of proceeding under Rule 9523. Rule 9523 provides that the Chairman of the SD Committee (Chairman), acting on behalf of the NAC, may accept or reject Member Regulation's recommendation and supervisory plan or refer them to the NAC for acceptance or rejection. If the parties cannot agree on a supervisory plan, the sponsoring member may request NAC consideration of the matter under Rule 9524.

Rule 9522(e)(1) permits Member Regulation to approve, but not deny, certain requests made by a member on behalf of a disqualified person for relief from the eligibility requirements. Prior to this rule change, however, Member Regulation was not authorized to approve Applications of persons seeking to engage solely in clerical and/or ministerial activities. Rather, Rule 9523 required the Chairman and Rule 9524 required the NAC to determine whether a statutorily disqualified person could associate with a member firm in a purely clerical and/or ministerial capacity.

Starting on March 7, 2005, Member Regulation will have the authority to consider and approve the Applications of statutorily disqualified persons who would associate with a member firm in a purely clerical and/or ministerial capacity. The sponsoring firms will still be required to file MC-400 Applications for statutorily disqualified persons who intend to associate with a member firm solely in a clerical and/or ministerial capacity. In the event Member Regulation does not approve an Application, the sponsoring member will have the right to proceed under Rule 9524 (*i.e.*, to have the matter decided by the NAC after a hearing and consideration by the SD Committee).<sup>2</sup>

## Effective Date

These amendments become effective on **March 7, 2005**.

## Endnotes

- 1 See Exchange Act Rel. No. 50848 (Dec. 14, 2004), 69 FR 76510 (Dec. 21, 2004) (SR-NASD-2004-133).
- 2 Member Regulation also retains the discretion to refer any matter to the NAC, rather than exercise its authority under Rule 9522(e)(1) to approve an Application or other request for relief.

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## ATTACHMENT A

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

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### 9500. OTHER PROCEEDINGS

\* \* \* \* \*

#### 9522. Initiation of Eligibility Proceeding; Member Regulation Consideration

(a) through (e)(1) No change

(e)(2) Matters that may be Approved by the Department of Member Regulation after the Filing of an Application

The Department of Member Regulation, as it deems consistent with the public interest and the protection of investors, may approve an application filed by a disqualified member or sponsoring member if a disqualified member or disqualified person is subject to one or more of the following conditions but is not other subject to disqualification (other than a matter set forth in subparagraph (e)(1)):

(A) through (C) No change

(D) The disqualification consists of a court order or judgment of injunction or conviction, and such order or judgment:

(i) No change

(ii) includes such restrictions or limitations for a specified time period and such time period has run out[.]; or

(E) The disqualified person's functions are purely clerical and/or ministerial in nature.

\* \* \* \* \*

# Notice to Members

FEBRUARY 2005

## SUGGESTED ROUTING

Continuing Education  
Executive Representatives  
Legal & Compliance  
Registered Representatives  
Registration  
Research  
Senior Management  
Training

## KEY TOPICS

Qualification Examinations  
Registration  
Research Reports  
Rule 1050  
Supervision

## GUIDANCE

### Research Analysts and Research Reports

NASD Reminds Firms of April 4, 2005, Expiration Date of Grace Period to Meet NASD Research Analyst Qualification and Examination Requirements (Series 86/87)

#### Executive Summary

In *Notice to Members (NTM) 04-25*, NASD announced that the research analyst registration requirements and examination program went into effect on March 30, 2004. As of that date, any associated person functioning as a research analyst must pass the Research Analyst Qualification Examination (Series 86/87) or obtain an exemption or waiver. Persons functioning as research analysts on March 30, 2004, were granted a grace period until April 4, 2005, within which to meet the registration requirements, provided the member firm with which they are associated applied for the research analyst registration by June 1, 2004. NASD reminds such persons and member firms that the grace period will end on April 4, 2005, and should a research analyst fail to pass (or receive an exemption from) the necessary examination(s) by April 4, 2005, such individual's registration as a research analyst will terminate on April 4, 2005. NASD will not grant any extensions of the grace period.

#### Questions/Further Information

Questions concerning this *Notice* may be directed to Joe McDonald, Associate Director, NASD Testing and Continuing Education Department (TCE), at (240) 386-5065; or Carole Hartzog, Senior Analyst, TCE, at (240) 386-4678.

05-13

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## Background and Discussion

NASD Rule 1050 requires all persons associated with a member who function as research analysts to be registered as such with NASD and pass a qualification examination. Those individuals required to be registered as research analysts must pass the Research Analyst Qualification Examination (Series 86/87) or qualify for an exemption. That examination consists of two parts: Analysis (Series 86), which tests fundamental analysis and valuation of equity securities; and Regulatory Administration and Best Practices (Series 87), which tests knowledge of applicable rules and regulations, including NASD Rule 2711, NYSE Rule 344, and SEC Regulation AC.

NASD announced in *NTM 04-25* that the research analyst registration requirements and examination program went into effect on March 30, 2004. As of that date, all associated persons functioning as research analysts must pass the required examinations (or obtain an exemption or waiver) to continue to function in that capacity. However, candidates who were functioning as research analysts on the effective date of March 30, 2004, were allowed a grace period until April 4, 2005, to meet the research analyst registration requirements. The grace period was intended to provide these analysts sufficient time to study and pass the examination without causing undue disruption in carrying out their responsibilities to their member firm and its customers.

To avail a research analyst of the grace period, the member firm needed to submit to NASD a registration application (or amendments thereto) for the research analyst on or before June 1, 2004. Individuals who applied for registration as a research analyst after June 1, 2004, were and are subject to NASD's normal qualification requirements and procedures.

NASD is issuing this reminder to firms and individuals that the expiration of the grace period is approaching. NASD will not grant an extension of the grace period to any individuals. This includes individuals who have failed one or both parts of the qualification examination or who have requested and been denied an exemption from Part I (Series 86), the Analysis section of the examination.

The usual policy regarding waiting periods for candidates retaking a failed exam was modified for candidates subject to the one-year grace period described above. Typically, a candidate must wait 30 days before retaking a failed exam and 180 days after the third and all subsequent failures. Candidates who qualified for the grace period must wait 30 days before retaking a failed Series 86 and/or Series 87 Exam, but are not subject to any 180-day waiting period irrespective of whether the candidate fails an exam three times or more. NASD reminds firms and individuals that this special exemption from the waiting period ends on April 4, 2005. For those research analysts who received the grace period and failed the Series 86 and/or 87, the normal waiting period of 30 days after first and second attempts and 180 days after third and subsequent attempts will be enforced as of April 4, 2005.

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Finally, NASD states that it will not waive the 30-day waiting period before retaking a failed exam. Therefore, if an individual fails one or both parts of the exam less than 30 days before expiration of the grace period (March 4, 2005, or later), the individual will not be able to retake the exam until after April 4, 2005. The individual's registration as a research analyst will terminate on April 4, 2005, and the individual will not be able to function in the capacity of a research analyst until he or she has passed each part of the exam (or has received an exemption from the Series 86 and passed the Series 87).

### Examination Appointments

The Series 86 and 87 examination is administered at conveniently located test centers operated by Pearson Vue and Prometric. Appointments to take the examination can be scheduled through either network:

- ▶ **Pearson Professional Centers:** contact Pearson VUE's National Registration Center at **1-866-396-6273 (toll free)**, or **1-952-681-3873 (toll number)**, or go to [www.pearsonvue.com/nasd](http://www.pearsonvue.com/nasd) for Web-based scheduling.
- ▶ **Prometric Testing Centers:** contact Prometric's National Call Center at **1-800-578-6273 (toll free)** or go to [www.prometric.com/nasd](http://www.prometric.com/nasd) for Web-based scheduling.

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# Notice to Members

**FEBRUARY 2005**

## **SUGGESTED ROUTING**

Continuing Education  
Executive Representatives  
Legal & Compliance  
Registered Representatives  
Registration  
Research  
Senior Management  
Training

## **KEY TOPICS**

Qualification Examinations  
Registration  
Research Reports  
Rule 1050  
Supervision

## **GUIDANCE**

### **Research Analysts and Research Reports**

**NASD Announces Exemption from the Analysis Portion of the Research Analyst Qualification Examination (Series 86) for Certain Applicants Who Prepare Only “Technical Research Reports”**

#### **Executive Summary**

NASD has amended NASD Rule 1050 to provide an exemption from the analysis portion of the Research Analyst Qualification Examination (Series 86) for certain applicants who prepare only “technical research reports” and have passed Levels I and II of the Chartered Market Technician (CMT) Certification Examination administered by the Market Technicians Association (MTA). There will be no extension to the April 4, 2005, grace-period deadline for applicants who are eligible for the grace period to satisfy the research analyst registration requirements. Therefore, those individuals who wish to avail themselves of the CMT exemption must complete the process set forth below and meet the other registration requirements by that date.

#### **Questions/Further Information**

Questions concerning this *Notice* may be directed to Joe McDonald, Associate Director, NASD Testing and Continuing Education Department (TCE), at (240) 386-5065; or Carole Hartzog, Senior Analyst, TCE, at (240) 386-4678.

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## Background and Discussion

NASD Rule 1050 requires all persons associated with a member who function as research analysts to be registered as such with NASD and pass a qualification examination. Rule 1050 is intended to ensure that research analysts possess a certain competency level to perform their jobs effectively and in accordance with applicable rules and regulations. In the context of this requirement, Rule 1050 defines "research analyst" as "an associated person who is primarily responsible for the preparation of the substance of a research report or whose name appears on a research report." The term "research report" in Rule 1050 has the meaning as defined in Rule 2711(a)(8): "a written or electronic communication that includes an analysis of equity securities of individual companies or industries, and that provides information reasonably sufficient upon which to base an investment decision."

Pursuant to Rule 1050, and in conjunction with the New York Stock Exchange (NYSE), NASD in 2004 implemented the Research Analyst Qualification Examination (Series 86/87) (See *NASD Notice to Members 04-25*). The examination consists of an analysis part (Series 86) and regulatory part (Series 87). Prior to taking either the Series 86 or 87, a candidate also must have passed the General Securities Representative Examination (Series 7), the Limited Registered Representative (Series 17), or the Canada Module of Series 7 (Series 37 or 38). Persons who were functioning as research analysts on the effective date of March 30, 2004, and submitted a registration application to NASD by June 1, 2004, have until April 4, 2005, to meet the registration requirements. Individuals who applied for registration as a research analyst after June 1, 2004, are not eligible for the grace period and are subject to NASD's normal qualification requirements.

The Series 86 examination consists of 100 multiple-choice questions that test fundamental analysis and valuation of equity securities. In contrast, technical research is a discipline that eschews fundamental analysis of companies and valuation of their securities and instead focuses on stock price movements and trading volume. For the purposes of NASD Rule 2711, technical research of securities is treated the same as fundamental research because the same conflicts that the rule addresses can exist, and investors similarly benefit from the required disclosures under the rule. However, the content of the Series 86 examination focuses exclusively on fundamental analysis and does not test technical research concepts.

NASD believes that investors will be better served by having a qualification standard directly applicable to persons preparing technical research reports, which will demonstrate their competency based on the job functions and knowledge needed to perform such functions. NASD staff has analyzed the process in which the MTA has developed its examination and is satisfied that it meets generally accepted test development procedures.

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Therefore, NASD has added an exemption from the Series 86 for certain associated persons who function as a research analyst but prepare only “technical research reports.” Such a technical research analyst who has passed both Levels I and II of the CMT Certification Examination that is administered by the MTA may request an exemption from Part I (Series 86), the analysis portion of the Research Analyst Qualification Examination. To be eligible for the exemption, an applicant must have passed Levels I and II of the CMT Certification Examination and must either (1) have functioned continuously as a research analyst since having passed Level II of the CMT Certification Examination, or (2) have passed Level II of the CMT Certification Examination within two years of application for registration as a research analyst. These requirements parallel a similar existing exemption for research analysts who have passed Levels I and II of the Chartered Financial Analysts examination.

For the purposes of this exemption, a “technical research report” is a research report (as that term is defined in NASD Rule 2711(a)(8)) that is based solely on stock price movement and trading volume and not on the subject company’s financial information, business prospects, contact with the subject company’s management, or the valuation of the subject company’s securities. The exemption is available only to research analysts who exclusively prepare technical research reports. An associated person who prepares any research report or whose name appears on a research report that does not meet this definition of a “technical research report” would be required to pass the Series 86 or qualify for another exemption or waiver.

### Exemption Procedures

In addition to submitting to NASD via Web CRD a Uniform Application for Securities Industry Registration or Transfer Form (Form U4) to register a person as a Research Analyst, member firms are also required to request the exemption in writing for eligible candidates. To request the exemption, the member must submit the following information to the NASD Testing and Continuing Education Department via e-mail at [RSCMT@nasd.com](mailto:RSCMT@nasd.com):

- ◆ Candidate’s name (Last, First, Middle Initial)
- ◆ Candidate’s CRD Number
- ◆ Candidate’s Birth Date (MM/DD/YR)
- ◆ Broker-Dealer Name and CRD#
- ◆ A statement of which prerequisite the candidate meets (*i.e.*, whether candidate has either (1) functioned continuously as a research analyst since having passed Level II of the CMT examination, or (2) passed Level II of the CMT examination within two years of application for registration as a research analyst.)

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NASD staff will then contact MTA to confirm the candidate's eligibility. Upon receipt of a positive response from MTA, the exemption will be posted to the candidate's CRD record and notification will be sent to the member firm. Candidates who have not completed the required MTA examinations must pass both the Series 86 and 87. For candidates seeking a Series 86 exemption, note that registration approval will not be posted until the candidate also passes the Series 87.

As stated above, candidates who were functioning as research analysts on the effective date of March 30, 2004, have been granted a grace period until April 4, 2005, to meet the research analyst registration requirements. NASD will not extend the grace period to individuals who are seeking the exemption from the Series 86 portion of the exam discussed in this *Notice*.

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# Special Notice to Members

FEBRUARY 2005

## SUGGESTED ROUTING

Legal & Compliance  
Operations  
Registration  
Senior Management

## KEY TOPICS

District Elections

## INFORMATIONAL

### District Elections

NASD Announces Election Results for the District Committee for District 1

#### Executive Summary

Through this *Notice*, NASD announces the results of the contested election for membership on the District Committee for District 1. Four candidates were seeking to fill the three open seats on the District Committee for District 1. Three of the candidates were nominated by the District Nominating Committee for District 1. A fourth candidate satisfied the requirements of Article VIII of the By-Laws of NASD Regulation to contest the election.

The Executive Representative of each NASD member eligible to vote in District 1 was asked to vote for up to three of the four candidates listed on the ballot, and to return the ballot postmarked on or before December 7, 2004. The ballots were counted on December 15, 2004, at the District 1 Office by an independent Inspector of Elections. It was determined that the three individuals identified in Attachment A received the largest number of votes cast and were therefore declared elected. The newly elected members of the District Committee for District 1 will serve until January 2008.

#### Questions/Further Information

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

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## ATTACHMENT A

### District Committee for District 1

#### Elisabeth P. Owens, Regional Director, West Region

525 Market Street, Suite 300, San Francisco, CA 94105-2711 (415) 882-1200

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

#### 2005 Incoming Members

Howard Bernstein	Pacific Growth Equities, LLC	San Francisco, CA
Bruce Nollenberger	Nollenberger Capital Partners, Inc.	San Francisco, CA
Daniel W. Roberts	Roberts & Ryan Investments, Inc.	San Francisco, CA

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# Special Notice to Members

FEBRUARY 2005

## SUGGESTED ROUTING

Legal & Compliance  
Operations  
Registration  
Senior Management

## KEY TOPICS

District Elections

## INFORMATIONAL

### District Elections

NASD Announces Election Results for the District Committee for District 10

#### Executive Summary

Through this *Notice*, NASD announces the results of the contested election for membership on the District Committee for District 10. Five candidates were seeking to fill the four open seats on the District Committee for District 10. Four of the candidates were nominated by the District Nominating Committee for District 10. A fifth candidate satisfied the requirements of Article VIII of the By-Laws of NASD Regulation to contest the election.

The Executive Representative of each NASD member eligible to vote in District 10 was asked to vote for up to four of the five candidates listed on the ballot, and to return the ballot postmarked on or before January 27, 2005. The ballots were counted on February 1, 2005, at the District 10 Office by an independent Inspector of Elections. The newly elected members of the District Committee for District 10 (see Attachment A) will serve until January 2008.

Additionally, Margaret M. Caffrey was duly elected to fill an existing vacancy on the District Committee for District 10 and will serve the remaining one-year term of this position, which began in January 2005.

#### Questions/Further Information

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

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## **ATTACHMENT A**

### **District Committee for District 10**

**Hans Reich, Regional Director, New York Region**

One Liberty Plaza, New York, NY 10006 (212) 858-4000

*New York (the counties of Nassau and Suffolk, and the five boroughs of New York City)*

#### **2005 Incoming Members**

Vincent A. Buchanan	Buchanan Associates Inc.
Clifford H. Goldman	Marco Polo Securities Inc.
Jeffrey T. Letzler	Instinet, LLC
Howard Spindel	Integrated Management Solutions

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# Disciplinary and Other NASD Actions

## REPORTED FOR FEBRUARY

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 January 2005.

### Firms Expelled, Individuals Sanctioned

**Castle Securities Corp. (CRD #16077, Freeport, New York) and Michael Thomas Studer (CRD #707394, Registered Principal, Amityville, New York)** The firm was expelled from NASD membership and Studer was barred from NASD membership in any capacity. The firm was fined \$98,300, solely, and fined \$37,500, jointly and severally with Studer. The Securities and Exchange Commission (SEC) affirmed the National Adjudicatory Council (NAC) decision imposing sanctions following appeal of an Office of Hearing Officers (OHO) decision. The sanctions were based on findings that the firm churned the account of a public customer, and that Studer and the firm failed to reasonably supervise trading in the account of a public customer by ignoring "red flags" that indicated potential problems with the account. The findings also stated that the firm and Studer induced a public customer to execute margin guarantees that benefited the firm and exposed the customer to significant risk. (NASD Case #C3A010036)

**Harrison Securities, Inc. (CRD #14103, Port Washington, New York), Frederick Clark Blumer (CRD #1574325, Registered Principal, Merrick, New York), and Raymond Alan Leventhal (CRD #3120615, Registered Principal, Great Neck, New York)** submitted Letters of Acceptance, Waiver, and Consent in which the firm was expelled from NASD membership. Blumer was barred from association with any NASD member firm in any capacity, and Leventhal was fined \$40,000, suspended from association with any NASD member firm in any principal or supervisory capacity for one year, and required to requalify as a registered principal (Series 24). The fine must be paid before Leventhal reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification.

Without admitting or denying the allegations, the firm, Blumer, and Leventhal consented to the described sanctions and to the entry of findings that the firm, acting through Blumer and Leventhal, failed to establish and maintain a system to supervise the activities of each registered representative and associated person reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules, and failed to develop an adequate supervisory system for review of customer accounts to detect and prevent excessive trading or churning. The findings also stated that Blumer and Leventhal failed to develop an adequate supervisory system for review of customer accounts to detect and prevent excessive trading or churning, and failed to respond to "red flags" indicating that excessive trading or churning

was occurring in the customer accounts of certain registered representatives, including excessive account activity, excessive commissions earned, and customer complaints.

NASD also found that the firm and Blumer permitted advertisements and sales literature to be disseminated to the investing public that contained material misstatements and omissions and contravened NASD's rules relating to communications with the public. The findings also stated that the firm and Blumer permitted individuals to maintain registrations with NASD through the firm while the individuals were not actively engaged, or to be engaged, in the investment banking business or securities business of the firm. NASD also found that the firm and Leventhal failed to enforce the firm's written supervisory procedures (WSPs) related to options transactions by failing to conduct, and memorialize, periodic reviews of options activities in customer accounts. The findings also included findings that the firm, acting through Leventhal, failed to report, and to report timely customer complaints in violation of NASD Conduct Rule 3070. Moreover, NASD found that the firm and Leventhal failed to enforce the firm's WSPs related to compliance with NASD Conduct Rule 3050 dealing with transactions for or by associated persons, and failed to establish and maintain adequate procedures to ensure compliance with NASD Rule 2711 dealing with research analyst and research reports.

The firm, acting through Blumer and Leventhal, failed to timely amend registered representatives' Forms U4 (Uniform Applications for Securities Industry Registration or Transfer) or Forms U5 (Uniform Termination Notices for Securities Industry Registration) and the firm's Form BD (Uniform Application for Broker-Dealer Registration) to disclose reportable events. In addition, NASD determined that the firm, Blumer, and Leventhal failed to register properly the firm's office of supervisory jurisdiction (OSJ) with NASD, and the firm and Blumer failed to conduct an annual inspection of the firm's businesses and supervisory systems, including a periodic examination of customer accounts to detect and prevent irregularities or abuses, an annual inspection of each OSJ, and the maintenance of a written record of each such review and inspection. Furthermore, NASD found that the firm operated without a properly registered financial and operations principal (FINOP); failed to establish and maintain an adequate anti-money laundering (AML) compliance program; failed to file an application, pursuant to NASD Membership and Registration Rule 1017, for approval of a change in ownership, control, or business operations upon the direct or indirect acquisition of substantially all of the firm's assets by another member firm; and failed to make or keep current its arbitration, correspondence, and financial books and records, or to preserve such records, in a readily accessible place.

The findings also stated that the firm, acting through Blumer, failed to comply with SEC Rule 17a-5(a)(2)(iii), in that the firm failed to file its quarterly FOCUS report and, acting through Leventhal, permitted a registered representative to continue to conduct a securities business while his registration was inactive due to his failure to complete the Regulatory Element of the Continuing Education Requirement. In addition, NASD found that Blumer failed to respond to NASD requests for information and or documents.

Leventhal's suspension began February 7, 2005, and will conclude at the close of business February 6, 2006. (NASD Cases #CLI040039, CLI040040, CLI040042)

## Firms Fined, Individuals Sanctioned

**Blue Moon Financial, LLC (CRD #123224, Denver, Colorado) and Patricia Elizabeth Hyde-Laudano (CRD #2479575, Registered Principal, Littleton, Colorado)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$30,000, \$10,000 of which was jointly and severally with Hyde-Laudano. Hyde-Laudano was also suspended from association with any NASD member in all supervisory capacities for 60 days. Without admitting or denying the allegations, the firm and Hyde-Laudano consented to the described sanctions and to the entry of findings that they closed escrow prior to meeting the minimum contingency for a private placement. NASD also found that the firm should not have counted the affiliated investment towards the minimum necessary to meet the contingency. The findings also stated that the firm and Hyde-Laudano failed to comply with the firm's membership agreement by not obtaining the required report from a securities lawyer within 30 days following the close of each offering discussing the firm's conformance with relevant regulations including any findings of non-compliance. NASD found that the firm and Hyde-Laudano did obtain a report for its next offering to close, though the report was late and did not contain the complete analysis required by the restriction. Moreover, NASD found that the firm and Hyde-Laudano permitted non-registered persons to engage in activities requiring registration and to receive transaction-based compensation.

Hyde-Laudano's suspension began February 7, 2005, and will conclude at the close of business April 7, 2005. (NASD Case #C3A050002)

**Crown Financial Group, Inc. (CRD #540, Jersey City, New Jersey) and Mark Dennis Goldsmith (CRD #1016459, Registered Principal, Lido Beach, New York)** submitted Letters of Acceptance, Waiver, and Consent in which the firm was censured and fined \$50,000; and Goldsmith was fined

\$10,000, suspended from association with any NASD member in a FINOP capacity, and required to requalify as a FINOP by passing the Series 27 exam prior to acting again in that capacity with a member firm. The fine must be paid before Goldsmith 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 Goldsmith consented to the described sanctions and to the entry of findings that the firm, acting through Goldsmith, failed to accrue virtually all of its liabilities and to record such liabilities in its financial statements. The findings also stated that the firm, acting through Goldsmith, utilized the instrumentalities of interstate commerce to conduct a securities business while failing to maintain the minimum required net capital. NASD also found that the firm, acting through Goldsmith, prepared financial statements and filed periodic reports with the SEC and NASD that contained misstatements.

Goldsmith's suspension began February 7, 2005, and will conclude at the close of business June 6, 2005. (NASD Case #C9B040110)

**Itradedirect.com Corp. (CRD #18281, Fort Lauderdale, Florida) and Eric David Arlt (CRD #2306499, Registered Principal, Boca Raton, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was fined \$20,000, \$7,500 of which was jointly and severally with Arlt. Arlt was also suspended from association with any NASD member in all principal capacities for 30 business days. Without admitting or denying the allegations, the firm and Arlt consented to the described sanctions and to the entry of findings that they failed to establish, maintain, and enforce an adequate supervisory system reasonably designed to achieve compliance with industry rules and regulations regarding sales of private placements, Form U4 updates, and customer complaint reporting. The findings also stated that the firm and Arlt failed to supervise a representative of the firm by allowing him to conduct business without being properly registered in two states, failed to monitor reasonably the progress of a criminal case against the representative to ensure his Form U4 was properly amended and a Rule 3070 report was filed timely upon his guilty plea to fraud charges, and failed to ensure that the firm did not associate itself with a statutorily disqualified person.

Arlt's suspension began January 18, 2005, and will conclude at the close of business February 28, 2005. (NASD Case #C07040101)

**Stuart Financial Corporation (CRD #47076, Norcross, Georgia) and Kelvin Gordon Tonner (CRD #4525875, Registered Principal, Barrie, Ontario, Canada)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm

was censured and fined \$35,000, \$15,000 of which was jointly and severally with Tonner. Tonner was also suspended from association with any NASD member in any principal or supervisory capacity for 10 business days. The firm was also required to retain an independent outside consultant to conduct a review of, prepare a written report, and make recommendations as to the adequacy of the firm's supervisory and compliance policies and procedures and its system for applying and enforcing such policies and procedures. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm, acting through Tonner, failed to maintain a supervisory system, including written supervisory procedures, internal operating procedures, and compliance procedures, reasonably designed to prevent and detect violations of federal securities laws, rules, regulations, and NASD rules.

The findings also stated that the firm failed to maintain a copy of its written supervisory procedures on site at the firm, and that the firm's procedures were not specifically tailored to its business activities and did not address how the firm's activities would be supervised, including the type of supervisory reviews to be performed and who would perform such reviews. NASD also found that the firm had no procedures for the review of incoming and outgoing correspondence and failed to maintain copies of any correspondence to or from customers. In addition, NASD found that the firm failed to ensure that all of its registered personnel attended its annual compliance meeting. Moreover, the firm failed to develop and implement a written AML program reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act and the implementing regulations promulgated thereunder by the Department of Treasury.

Tonner's suspension began February 7, 2005, and will conclude at the close of business February 18, 2005. (NASD Case #C07040100)

**VMR Capital Markets US (CRD #38755, Beverly Hills, California) and Todd Michael Ficeto (CRD #1927084, Registered Principal, Malibu, California)** were fined \$40,000, jointly and severally. Ficeto was also suspended from association with any NASD member in all supervisory capacities for 15 business days. The NAC imposed the sanctions following appeal of an OHO decision. The sanctions were based on findings that the firm and Ficeto failed to supervise reasonably a registered representative who engaged in excessive and unsuitable trading in the accounts of public customers.

Ficeto's suspension will begin February 22, 2005, and will conclude at the close of business March 14, 2005. (NASD Case #C02020055)

## Firms and Individuals Fined

**Gates Capital Corporation (CRD #29582, New York, New York) and Young Whi Kim (CRD #1394474, Registered Principal, Hartsdale, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm and Kim were censured and fined \$12,500, jointly and severally. Without admitting or denying the allegations, the firm and Kim consented to the described sanctions and to the entry of findings that the firm, acting through Kim, permitted an individual unqualified as a municipal securities representative to solicit municipal underwriting and advisory business for the firm. The findings also stated that the firm failed to create memoranda for equity transactions he effected and the firm, acting through Kim, failed to create a blotter or other record of original entry reflecting these transactions. (NASD Case #C10040115)

**JLM Securities Company (CRD #30355, Farmington Hills, Michigan) and Lionel Sydney Margolick (CRD #1436107, Registered Principal, Farmington Hills, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$10,000, jointly and severally. Without admitting or denying the allegations, the firm and Margolick consented to the described sanctions and to the entry of findings that the firm, acting through Margolick, commenced offerings in limited partnerships through the use of an Offering Memoranda and Subscription Agreements and failed to segregate properly purchasers' funds while the funds were being raised and improperly forwarded the funds to the partnerships prior to raising the minimum required. (NASD Case #C8A040124)

**Midas Securities, LLC (CRD #103680, Buena Park, California) and Jay S. Lee (CRD #4338187, Registered Principal, La Palma, California)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$10,000, jointly and severally. Without admitting or denying the allegations, the firm and Lee consented to the described sanctions and to the entry of findings that the firm sold unregistered securities, authorized by Lee, without asserting or relying on any applicable exemption from registration under Section 5 of the Securities Act of 1933. (NASD Case #C02040052)

**Thor Capital LLC (CRD #45716, New York, New York) and Peter Kambolin (CRD #2637562, Registered Principal, New York, New York)** submitted an Offer of Settlement in which they were censured and fined \$10,000, jointly and severally. Without admitting or denying the allegations, the firm and Kambolin consented to the described sanctions and to the entry of findings that the firm, acting through Kambolin, failed to maintain the required minimum net capital while conducting a securities business. The findings also stated that the firm and Kambolin failed to comply with the

Regulatory Element of the Continuing Education Requirement and allowed registered representatives to engage in securities-related business at the firm while they were inactive for failure to complete the requirement. (NASD Case #C10040092)

## Firms Fined

**Aegis Capital Corp. (CRD #15007, 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 it published quotations for an OTC Equity Security, or, directly or indirectly, submitted such quotations for publication in a quotation medium and did not have in its records the documentation required by SEC Rule 15c2-11(a) (Paragraph (a) information); did not have a reasonable basis under the circumstances for believing that the paragraph (a) information was accurate in all material respects; or did not have a reasonable basis under the circumstances for believing that the sources of the paragraph (a) information were reliable. The findings stated that the firm failed to file a Form 211 with NASD at least three business days before the firm's quotations were published or displayed in a quotation medium. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning SEC Rule 15c2-11 and NASD Marketplace Rule 6740. NASD found that the firm failed to accept or decline in the Automated Confirmation Transaction Service<sup>SM</sup> (ACT<sup>SM</sup>) transactions in NASDAQ securities within 20 minutes after execution and failed within 90 seconds after execution to transmit through ACT last sale reports of transactions in OTC equity securities. NASD also found that the firm failed to designate such last sale reports as late and the firm incorrectly designated as ".T." through ACT transactions in OTC equity securities that were executed during normal market hours. (NASD Case #CMS040218)

**American Express Financial Advisors, Inc. (CRD #6363, Minneapolis, Minnesota)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$20,000, and required to demonstrate the adequacy and effectiveness of the supervisory tools the firm devised to detect and prevent mishandling of public customer accounts by registered representatives and to improve the accuracy of firm Redemption/Purchase Reports. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm failed to supervise a general securities representative with respect to his handling of public customer accounts. The findings also stated that the firm assigned four consecutive supervisors to the representative who failed to take corrective action when the

accounts of the representative's customers appeared on numerous Redemption/Purchase Reports, disclosing unsuitable trading through redemptions and subsequent purchases of different share funds of different mutual fund families within a 30-day period. NASD also found that the Redemption/Purchase Reports that the firm prepared for the supervisory review of significant activity in customer accounts contained inaccuracies and were difficult to decipher, severely limiting their usefulness as a supervisory tool. (NASD Case #C8A040126)

**Apex Millennium Group n/k/a Bannockburn Partners, LLC (CRD #109761, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to develop and implement an AML program reasonably designed to achieve and monitor its compliance with the requirements of the Bank Secrecy Act and the implementing regulations promulgated thereunder by the Department of the Treasury. The findings also stated that the firm, acting through an individual, incorrectly reported in its Financial and Operational Combined Uniform Single (FOCUS) reports that it maintained net capital in excess of its minimum net capital requirement and failed to notify the SEC and NASD when its net capital had fallen below 120 percent of its required minimum net capital. (NASD Case #C10040119)

**Benson York Group, Inc. (CRD #40231, Melville, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$27,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm was not approved to conduct options transactions in its membership agreement although the firm's customers were actively trading options. The findings also stated that the firm completed a change in the equity ownership or partnership capital of the firm that resulted in a person or entity directly owning, indirectly owning, or controlling 25 percent or more of the equity or the partnership capital prior to the filing with NASD of an application for approval of change in ownership, control, or business operations at least 30 days prior to the change. NASD found that the firm failed to report customer complaints through the Rule 3070 reporting system, and that the firm executed settlement agreements with its customers that contained language that restricted the customers from disclosing the settlement terms or underlying facts of the dispute to NASD. In addition, the findings further stated that the firm, while participating in a private placement, made certain prohibited material misrepresentations in connection with the offering and failed to transmit properly, or maintain the payments received, in connection with the offering. (NASD Case #CLI040038)

**Burnham Securities, Inc. (CRD #22549, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$85,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to establish, maintain, or enforce supervisory systems and written procedures reasonably designed to prevent and detect late trading. The findings also stated that the firm's systems did not prevent or restrict representatives from accepting and entering orders received from public customers after 4 p.m. Eastern Time (ET) at the current day's net asset value (NAV). NASD also found that the firm's written procedures failed to instruct representatives that late trading was prohibited. In addition, NASD found that the firm failed to have procedures in place regarding the time mutual fund orders could be placed into its order entry system; that representatives were not required to enter orders promptly after receipt; and that the firm's written supervisory procedures did not require supervisory review or approval of mutual fund orders submitted after 4 p.m. ET. Moreover, NASD found that the firm failed to conduct surveillance or auditing efforts to ensure that late trades were not being executed and processed. Furthermore, NASD found that the firm failed to create and preserve records reflecting the time of order entries and the time of order receipts to purchase or sell securities, including shares of mutual funds. (NASD Case #C10040127)

**Charter One Securities (CRD #13373, Cleveland, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to ensure that public customers received available breakpoint discounts on sales charges based on rights of accumulation involving purchases of Class A shares of mutual funds, resulting in overcharges totaling \$5,993 to the customers. The findings also stated that the firm failed to establish and maintain a system to supervise the activities of its registered representatives reasonably designed to achieve compliance with applicable securities laws and NASD rules, in that the firm failed to have a supervisory system designed to inform its registered representatives that mutual fund breakpoints are not automatically applied by the mutual fund principal underwriters or distributors, and that the representatives had the responsibility to inform the mutual fund companies about accounts eligible for a reduced breakpoint. (NASD Case #C8A040123)

**CIBC World Markets Corp. (CRD #630, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$75,500, and—if the firm begins marketing or selling hedge funds—required to file all advertising materials relating to hedge funds with NASD's

Advertising Department at least 10 business days prior to use for three years from the date of acceptance of this AWC. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it used various types of sales literature in the marketing of hedge funds and funds of hedge funds that contained inadequate risk disclosure and improper comparisons. NASD determined that many of the materials contained generalized risk disclosure but failed to address the specific risk attributed to the investments offered. The findings also stated that the advertising materials failed to contain a fair and balanced presentation of the risks as well as the benefits of a particular investment or strategy being promoted. NASD also found that sales presentations made improper comparisons that failed to include any material differences between the subjects of comparison. In addition, NASD found that the firm failed to maintain evidence of approval by a registered principal for pieces of sales material for three years. (NASD Case #CAF040114)

**Fox-Pitt Kelton, Incorporated (CRD #10485, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,000, and required to revise its written supervisory procedures with respect to order route reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to make publicly available for the fourth calendar quarter of 2003 a report on its routing of non-directed orders in covered securities during that quarter. NASD also found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning order routing reporting. (NASD Case #CMS040216)

**Intercontinental Asset Management Group, Ltd. (CRD #22408, San Antonio, Texas)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,000, and required to revise its written supervisory procedures with respect to Trade Reporting and Compliance Engine (TRACE) reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report TRACE transactions, and the correct execution time in transactions, in TRACE-eligible securities within 45 minutes after execution. NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning TRACE reporting. (NASD Case #CMS040213)

**Investors Brokerage of Texas, Ltd. (CRD #13037, Waco, Texas)** 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 develop and implement a written AML program reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act and the regulations promulgated thereunder. (NASD Case #C06040042)

**Kensington Capital Corporation (CRD #1742, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$12,500, and required to revise its written supervisory procedures with respect to trade reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to accept or decline transactions in eligible securities in ACT within 20 minutes after execution that the firm had an obligation to accept or decline in ACT. NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning trade reporting, specifically NASD Rule 6130(b). (NASD Case #CMS040197)

**King Financial Services, Inc. (CRD #25843, Old Bridge, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$13,000, and required to revise the firm's supervisory procedures with respect to Order Audit Trail System<sup>SM</sup> (OATS<sup>SM</sup>) reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it submitted to OATS Reportable Order Events (ROEs) with respect to equity securities traded on NASDAQ that were not in the electronic form prescribed by NASD and were repairable. The findings stated that the subject reports were rejected by the OATS system and notice of such rejection was made available to the firm on the OATS Web site, but the firm failed to correct or replace any of the subject reports. The findings also stated the firm failed to timely report ROEs to OATS. NASD also found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning OATS reporting. (NASD Case #CMS040195)

**Moors & Cabot, Inc. (CRD #594, Boston, Massachusetts)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$17,000 and required to revise its written supervisory procedures with respect to TRACE reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report to TRACE transactions in TRACE-eligible securities within 45 minutes after execution. NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with TRACE reporting. (NASD Case #CMS040200)

**Morgan Stanley & Co., Incorporated (CRD #8209, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report to ACT the correct symbol indicating whether the transaction was a buy, sell, sell short, sell short exempt, or cross for transactions in eligible securities. The findings also stated that the firm failed to provide written notification disclosing to its customer that the transaction was executed at an average price. NASD found that the firm accepted customer short sale orders in certain securities and, for each order, failed to make and annotate an affirmative determination that the firm would receive delivery of the security on behalf of the customer or that the firm could borrow the security on behalf of the customer for delivery by settlement date. In addition, NASD found that the firm effected short sales in certain securities for the firm's proprietary accounts and failed to make and annotate an affirmative determination that the firm could borrow the securities or otherwise provide for delivery of the securities by settlement date. **(NASD Case #CMS040198)**

**National Securities Corporation (CRD #7569, Seattle, Washington)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$32,500, and required to revise its written supervisory procedures to address SEC Rules 11Ac1-5 and 11Ac1-6, anti-intimidation and coordination, trade reporting of riskless principal trades, OATS accuracy and timeliness, and books and records requirements. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to display immediately customer limit orders in NASDAQ securities in its public quotation, when each such order was at a price that would have improved the firm's bids or offer in each such security; or when the order was priced equal to the firm's bid or offer and the national best bid offer for each such security, and the size of the order represented more than a de minimis change in relation to the size associated with the firm's bid offer in each security. The findings also stated that the firm failed to submit, for the offsetting, "riskless" portion of "riskless principal" transactions in NASDAQ National Market® (NNM®) securities, either a clearing-only report with a capacity indicator of "riskless principal," or a non-tape, non-clearing report with a capacity indicator of "riskless principal." The findings also stated that the firm failed to submit a last sale report for the initial leg of a "riskless principal" transaction in an NNM security and failed to submit, for the offsetting "riskless" portion of "riskless" principal transactions in OTC equity securities, either a clearing-only report with a capacity indicator of "riskless principal," or a non-tape, non-clearing report with a capacity indicator of "riskless principal."

The findings also stated that the firm executed customer limit orders at prices inferior to the customers' limit order price, and failed to contemporaneously or partially execute the customer limit orders in NASDAQ securities after it traded each subject security for its own market-making account at a price that would have satisfied each customer's limit order and failed to execute orders fully and promptly. NASD found that the firm failed to report to ACT the correct symbol indicating whether the transaction was a buy, sell, sell short exempt, or cross for transactions in eligible securities. The firm made available a report that included incorrect information by including a "not held" order as a covered order and classifying an order as an inside quote limit order instead of marketable limit order. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with SEC Rules 11Ac1-5 and 11Ac1-6, anti-intimidation and coordination, trade reporting of riskless principal trades, OATS accuracy and timeliness, and books and records requirements. **(NASD Case #CMS040221)**

**NFB Investment Services Corp. (CRD #25658, Melville, 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 it failed to amend Forms U4 and Forms U5 to disclose customer complaints in a timely manner. NASD found that the firm's failure to file amendments to Forms U4 and U5 in a timely manner may have impeded the investing public's ability to assess the background of certain brokers through NASD's public disclosure program (NASD BrokerCheck), may have potentially denied member firms access to relevant information in making hiring determinations, may have enabled some brokers to transfer firms without having their application reviewed by the appropriate state securities regulator, and may have hindered NASD from promptly investigating certain disclosure items. **(NASD Case #CLI040036)**

**Preferred Trade, Inc. f/k/a Preferred Capital Markets, Inc. (CRD #10993, San Francisco, California)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$20,000, and required to revise its written supervisory procedures with respect to trade reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit through ACT last sale reports of transactions in NNM and Consolidated Quotations Services System<sup>SM</sup> (CQS<sup>SM</sup>) securities and failed to designate through ACT such last sale reports as late. The findings also stated that the firm incorrectly designated ".T" through ACT last sale reports of transactions in NNM securities executed during normal market hours. NASD found that the firm also incorrectly designated as

“.SLD” through ACT last sale reports of transactions in CQS securities reported to ACT within 90 seconds of execution. In addition, NASD determined that the firm’s supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning trade reporting. (NASD Case #CMS040223)

**Reef Securities, Inc. (f/k/a Western American Securities Corporation) (CRD #31951, Richardson, Texas)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$17,500, \$7,500 of which was jointly and severally. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to develop and implement an AML program reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act. The findings also stated that the firm, acting through an individual, failed to conduct annual follow-up needs analysis or to develop written training plans for its covered representatives. (NASD Case #C06040037)

**Steven L. Falk & Associates, Inc. (CRD #14297, Springfield, 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 establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with all requirements imposed by the Bank Secrecy Act and the regulations promulgated thereunder. The findings also stated that the firm failed to identify an individual responsible for implementing and monitoring the firm’s AML program; failed to address in the firm’s AML program the firm’s responsibility to provide prompt notification to NASD regarding changes to the individual’s contact information; failed to conduct an independent testing of the firm’s AML program; and failed to have the firm’s AML program approved, in writing, by a member of the firm’s senior management. (NASD Case #C9B040104)

**Track Data Securities Corporation (CRD #103802, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to accept or decline ACT transactions in eligible securities within 20 minutes after execution for which the firm had no obligation. NASD found that the firm’s supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules relating to ACT reporting obligations. (NASD Case #CMS040199)

**Transmittal Securities Corporation (CRD #3602, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm’s confirmations for debt securities failed to reflect the yield-to-maturity, and the firm’s order tickets for debt securities failed to reflect a time of execution. (NASD Case #C10040128)

**Trend Trader, LLC (CRD #43635, Scottsdale, Arizona)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was fined \$10,000, jointly and severally. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm conducted a securities business while failing to maintain the required minimum net capital. The findings also stated that the firm, acting through a registered representative, engaged in a municipal securities business without registering with and paying the required fee to the Municipal Securities Rulemaking Board (MSRB), without having qualified the firm and a municipal securities principal as required by the MSRB’s rules, and without having a qualified municipal securities principal. In addition, NASD determined that the firm, acting through an individual, failed to adopt, maintain, and enforce written supervisory procedures reasonably designed to ensure that the firm’s conduct of a municipal securities business was in compliance with applicable provisions of law, regulations, and MSRB rules. (NASD Case #C3A050001)

**Wells Fargo Brokerage Services, L.L.C. (CRD #16100, Minneapolis, Minnesota)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$150,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it issued account statements to public customers regarding certificates of deposit (CDs) that were misleading in that the language was not adequate to fully disclose the potential price differential between the par value and market value. NASD also found that the firm published advertisements and provided sales literature to public customers related to brokered certificates of deposit that failed to provide a sound basis for evaluation of the service offered, omitted facts or qualifications that caused the communications to be misleading, and contained misleading statement of material fact. (NASD Case #C05040087)

## Individuals Barred or Suspended

**Gordon Mark Allen (CRD #1457468, Registered Principal, Saint Louis, Missouri)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, Allen consented to the described sanctions and to the entry of findings that he failed to disclose a material fact on his Form U4.

Allen's suspension began February 7, 2005, and will conclude at the close of business April 7, 2005. (NASD Case #C04040061)

**Richard Antonino (CRD #1126874, Registered Representative, Pittsburgh, Pennsylvania)** 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 three months. The fine must be paid before Antonino reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Antonino consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and failed to give prior written notice of such transactions to his member firms with which he was associated.

Antonino's suspension began February 7, 2005, and will conclude at the close of business May 6, 2005. (NASD Case #C9A040058)

**Dominic Antonucci (CRD #3215807, Registered Principal, Hilton, New York)** was fined \$5,000 and suspended from association with any NASD member in a supervisory capacity for 60 days. The fine is due and payable when and if Antonucci seeks to return to the securities industry. The sanctions were based on findings that Antonucci permitted an unregistered person to engage in securities transactions or function as a registered representative of his member firm.

Antonucci's suspension began January 18, 2005, and will conclude March 19, 2005. (NASD Case #C8A040014)

**Angelo Achilles Armenta (CRD #1537445, Registered Principal, Monrovia, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Armenta consented to the described sanctions and to the entry of findings that he failed to disclose in his member firm's quarterly compliance questionnaires that he had borrowed money from a client of the firm when he had, in fact, borrowed \$25,000 from a client.

Armenta's suspension began February 7, 2005, and will conclude at the close of business March 8, 2005. (NASD Case #C02040058)

**Larry Thomas Balentine (CRD #11239, Registered Representative, Salinas, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Balentine consented to the described sanction and to the entry of findings that he willfully failed to disclose a material fact on his Form U4. (NASD Case #C01040033)

**Roger Dean Ballard (CRD #2252282, Registered Representative, St. Joseph, Michigan)** 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, Ballard consented to the described sanction and to the entry of findings that he received \$2,137.95 from a public customer to be deposited in a money market account in an Individual Retirement Account (IRA), failed to follow the customer's instruction, cashed the check, and used the funds for some purpose other than the benefit of the customer. The findings stated that after the customer complained to Ballard's member firm, Ballard opened an IRA in the name of the customer and deposited \$2,137.95 in the account. NASD also found that Ballard failed to respond fully to NASD requests for information and documentation. (NASD Case #C8A040117)

**James Edward Bey (CRD #1933696, Registered Representative, Naperville, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for four months. Without admitting or denying the allegations, Bey consented to the described sanctions and to the entry of findings that he submitted a falsified request to reinstate a life insurance policy for a public customer and also forged the customer's signature on a non-medical questionnaire that was submitted with the reinstatement request and on the money order purchased to pay the premium.

Bey's suspension began February 7, 2005, and will conclude at the close of business June 6, 2005. (NASD Case #C8A050002)

**Anthony Ivory Blackmon (CRD #2413114, Registered Representative, Frisco, Texas)** submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before Blackmon reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Blackmon consented to the described sanctions and to the entry of findings that he

signed the names of public customers to insurance forms and an IRA application in contravention of his member firm's prohibition against the signing of customer names under any circumstances.

Blackmon's suspension will begin February 22, 2005, and will conclude at the close of business March 23, 2005. (NASD Case #C06040024)

**Kimberly Jean Boyce (CRD #4011401, Registered Representative, Kirkland, Washington)** 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, Boyce consented to the described sanction and to the entry of findings that, without the knowledge or consent of a public customer, she caused online payments totaling \$5,500 to be made from the customer's checking account to Boyce's credit card accounts in order to satisfy debts, withdrew \$21,000 in the form of checks payable to the customer and to a business controlled by Boyce, and deposited them into bank accounts under her control, thereby converting the funds to her own use and benefit. The findings also stated that Boyce, in order to obtain possession and control of funds belonging to the customer and without the customer's knowledge or consent, affixed, or caused to be affixed, the signature of the customer as an endorsement to the checks she caused to be issued. (NASD Case #C3B040030)

**John Joseph Buehner (CRD #1234329, Registered Representative, Philadelphia, 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, Buehner consented to the described sanction and to the entry of findings that he caused funds totaling \$4,783 to be electronically transferred from a proprietary account at his member firm to an account he owned at the firm without the firm's knowledge or authorization. The findings also stated that Buehner used the firm's funds from one to 13 days before transferring an equal amount from his personal account back to the proprietary account. NASD also found that Buehner caused \$500 to be transferred electronically from an IRA at his member firm that was owned by a registered representative to an account Buehner owned at the firm without the representative's knowledge or authorization and used the funds for two days before transferring \$500 from his personal account at the firm back to the representative's IRA. (NASD Case #C9A040059)

**Kelly Lee Chance (CRD #3169675, Registered Representative, Margate, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$100,000 and suspended from association with any NASD member in any capacity for two years. In light of the financial

status of Chance, the fine imposed has been reduced. The fine must be paid before Chance reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Chance consented to the described sanctions and to the entry of findings that he executed unauthorized trades in the accounts of public customers and made misrepresentations in connection with the solicitation and sale of securities. The findings also stated that Chance participated in private securities transactions without prior written notice to, and approval from, his member firm.

Chance's suspension began January 18, 2005, and will conclude at the close of business January 17, 2007. (NASD Case #C07040104)

**Michael Ray Claiborne (CRD #47211, Registered Principal, Dallas, Texas)** submitted an Offer of Settlement in which he was fined \$5,000 and barred from association with any NASD member in any principal capacity. Without admitting or denying the allegations, Claiborne consented to the described sanctions and to the entry of findings that a member firm, acting through Claiborne, violated the firm's membership agreement because it made markets in at least 20, and at times as many as 46, OTC Bulletin Board (OTCBB) securities although the firm's membership agreement limited the firm from making markets in no more than 10 OTCBB securities. The findings also stated that Claiborne failed to supervise a registered representative to ensure that the representative did not function as a general securities principal without the benefit of registration. (NASD Case #C06030035)

**Charles Phillip Clark, III (CRD #2379623, Registered Representative, Saint Louis, Missouri)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity and ordered to pay \$44,425.24, plus interest, in restitution to a public customer. Satisfactory proof of payment of restitution must be made before Clark reassociates with any NASD member firm. Without admitting or denying the allegations, Clark consented to the described sanctions and to the entry of findings that he received checks totaling \$44,425.24 from a public customer for investment purposes, deposited the funds into his personal bank account, and used the funds for his personal use and benefit without the customer's knowledge, consent, and authorization. The findings also stated that Clark failed to respond to NASD requests for information. (NASD Case #C04040034)

**Jeffrey Harold Collins (CRD #4372947, Registered Representative, Beaumont, Texas)** 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, Collins consented to the described sanction and to the entry of

findings that he misappropriated \$3,480 in insurance premium payments from public customers and deposited these funds into an account he controlled without the customers' knowledge, authorization, or consent. (NASD Case #C06040039)

**George Victor Colon (CRD #2582605, Registered Representative, New York, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Colon failed to respond to NASD requests for information. The findings also stated that Colon willfully failed to disclose material information on his Form U4. (NASD Case #C9A040023)

**Raymond Francis Connors (CRD #1982486, Registered Principal, Wantagh, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$20,000 and suspended from association with any NASD member in any principal or supervisory capacity for 45 days. Without admitting or denying the allegations, Connors consented to the described sanctions and to the entry of findings that a member firm, acting through Connors, failed to establish and maintain a system to supervise the activities of certain registered representatives and associated persons that was reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules. The findings stated that Connors, acting on behalf of his member firm, failed to develop an adequate supervisory system for the review of customer accounts to detect and prevent excessive trading with respect to certain registered representatives and associated persons.

Connors' suspension began February 7, 2005, and will conclude at the close of business March 23, 2005. (NASD Case #CLI040041)

**David Andrew Coombs (CRD #2260355, Registered Representative, Laconia, New Hampshire)** 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 pay \$14,451, plus interest, in disgorgement and partial restitution to public customers. The fine and restitution amounts must be paid before Coombs reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Coombs consented to the described sanctions and to the entry of findings that he recommended that public customers liquidate mutual funds in their accounts and invest the proceeds into individual stocks without having reasonable grounds for believing the recommendation was suitable based upon the clients' investment objectives, financial situation, and needs. The findings also stated that the customers incurred \$9,000 in losses and paid \$5,451 in commission to Coombs as a result of Coombs recommendations.

Coombs' suspension began January 18, 2005, and will conclude at the close of business May 17, 2005. (NASD Case #C11040044)

**Dennis Cotto (CRD #3047293, Registered Representative, Vienna, Virginia)** submitted an Offer of Settlement in which he was fined \$5,000, \$2,500 of which was jointly and severally, and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Cotto consented to the described sanctions and to the entry of findings that he functioned in a principal capacity with a member firm without being registered in that capacity. The findings also stated that Cotto failed to respond timely to NASD requests to appear and give testimony.

Cotto's suspension will begin February 22, 2005, and will conclude August 21, 2005. (NASD Case #C07040055)

**Harold Justin Crow (CRD #2783387, Registered Principal, San Francisco, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in a principal capacity for two months. Without admitting or denying the allegations, Crow consented to the described sanctions and to the entry of findings that, in connection with unsuitable recommendations made by a registered representative to a public customer, he failed to supervise the representative's activities in a manner reasonably designed to achieve compliance with MSRB Rules G-17 and G-19.

Crow's suspension began February 7, 2005, and will conclude at the close of business April 6, 2005. (NASD Case #C02040051)

**David Anthony DeBlasio (CRD #2304878, Registered Representative, Newark, Delaware)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, DeBlasio consented to the described sanction and to the entry of findings that he converted at least \$80,000 from bank customers through a variety of methods, including using "debt slips" to effect the withdrawal of funds from customers' bank accounts to make payments to other bank customers or to enrich himself. (NASD Case #C9A040062)

**Elizabeth Emi Dolores (CRD #4739064, Associated Person, Los Angeles, California)** 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, Dolores consented to the described sanction and to the entry of findings that she misappropriated \$443 that firm customers contributed to a charity fundraiser. (NASD Case #C02050002)

**Scott Kenneth Fischer (CRD #2486473, Registered Principal, Lake In The Hills, Illinois)** 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, Fischer consented to the described sanction and to the entry of findings that he recommended securities transactions to public customers without having a reasonable basis for believing the recommendations and resulting sales were suitable for the customers. The findings also stated that Fischer executed mutual fund switches in the accounts of public customers without written authorization. NASD also found that Fischer prepared and/or submitted falsified documents containing the purported signatures of public customers on forms required by his member firm that explained the financial impact of transactions in connection with mutual fund switches that occurred in their accounts. (NASD Case #C8A040125)

**John Thomas Ford (CRD #2206110, Registered Principal, Fillmore, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$3,000 and suspended from association with any NASD member as a general securities principal and municipal securities principal for one year. At the conclusion of the suspension, he shall be required to requalify as a general securities principal and municipal securities principal. Without admitting or denying the allegations, Ford consented to the described sanctions and to the entry of findings that he failed to establish, maintain, and enforce a supervisory system reasonably designed to detect and prevent violations of federal securities laws and NASD rules. The findings also stated that Ford failed to establish and implement a supervisory system reasonably designed to supervise municipal securities representative's sales practices while recommending the purchase of municipal securities to public customers, and failed to establish and maintain a supervisory system reasonably designed to respond to customer complaints of sales practices abuses. In addition, NASD determined that Ford failed to recognize the "red flags" that indicated that a municipal securities representative was executing unauthorized transactions in public customer accounts and making misrepresentations and material omissions while recommending the purchase of municipal securities to public investors.

Ford's suspension began February 7, 2005, and will conclude at the close of business February 6, 2006. (NASD Case #CMS040203)

**Lee Charles Franklin, (CRD #2729004, Registered Representative, Evergreen Colorado)** and **John Linton Avery (CRD #1101029, Registered Representative, Lakewood, Colorado)** submitted a Letter of Acceptance, Waiver, and Consent in which they were each fined \$7,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or

denying the allegations, Franklin and Avery consented to the described sanctions and the entry of findings that they exercised discretion in effecting transactions in the accounts of public customers without written authorization from the customers, and without having obtained written acceptance of the accounts as discretionary by their member firm.

Franklin's suspension will begin March 21, 2005, and will conclude at the close of business April 4, 2005. Avery's suspension will begin February 22, 2005, and will conclude at the close of business March 7, 2005. (NASD Case #C3A040046)

**Patrick Jesse Garcia (CRD #3211453, Registered Representative, Yukon, Oklahoma)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Garcia received \$8,179.18 in cashiers' checks from a public customer for the purchase of mutual funds, endorsed the cashiers' 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 findings also stated that Garcia failed to respond to NASD requests for information. (NASD Case #C05040038)

**Joseph Anthony Geraci, II (CRD #2138918, Registered Representative, Minneapolis, Minnesota)** 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 Geraci violated the antifraud provisions of federal securities laws and NASD rules by trading common stock based upon material, nonpublic information conveyed to him by fiduciaries of the stock issuer. (NASD Case #CMS020143)

**James Henry Graham, Jr. (CRD #2070675, Registered Representative, New York, 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 six months. The fine must be paid before Graham reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Graham consented to the described sanctions and to the entry of findings that he failed to respond timely to NASD requests for information.

Graham's suspension began February 7, 2005, and will conclude August 6, 2005. (NASD Case #C9A040057)

**Bruce Adam Gropper (CRD #1641226, Registered Representative, Armonk, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500, ordered to pay \$4,520.21, plus interest, in disgorgement of commissions as partial restitution to a public

customer, and suspended from association with any NASD member firm in any capacity for three months. The fine and restitution amounts must be paid before Gropper reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Gropper consented to the described sanctions and to the entry of findings that he caused to be executed securities transactions in the account of a public customer that were unsuitable based on the customer's financial situation, investment objectives, and needs.

Gropper's suspension began February 7, 2005, and will conclude at the close of business May 6, 2005. (NASD Case #C04040064)

**William Yeager Guthrie (CRD #2253333, Registered Principal, Fairfax, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Guthrie consented to the described sanction and to the entry of findings that he participated in private securities transactions without providing prior written notification to, and receiving approval from, his member firm. The findings also stated that Guthrie recommended to a public customer the purchase of shares of common stock in his IRA without having reasonable grounds for believing that the purchase was suitable for the customer based on the facts disclosed by the customer regarding his financial situation and needs. The findings also stated that Guthrie effected the purchase of common stock in the IRA of a public customer without the prior knowledge and consent of the customer. NASD found that, when asked to cancel the order, Guthrie informed him that it was too late to cancel when, in fact, the transaction was not settled until a later time. (NASD Case #C01040030)

**James Wesley Holstein (CRD #2466806, Registered Representative, Coral Springs, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before Holstein reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Holstein consented to the described sanctions and to the entry of findings that he engaged in business activities outside the scope of his relationship with his member firm for compensation and failed to provide his member firm with prompt written notice.

Holstein's suspension began February 7, 2005, and will conclude at the close of business March 8, 2005. (NASD Case #C07040105)

**Melissa Anne Houser (CRD #2652716, Registered Representative, New Albany, Ohio)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Houser entered into a settlement agreement with public customers without the knowledge or approval of her member firm. The findings also stated that Houser falsified promissory notes she tendered to public customers in connection with the settlement agreement by drafting the notes on the letterhead of a company where she was employed as a consultant and by falsely identifying herself on the notes as a company vice president, creating the false impression that the company issued the notes, without the company's knowledge or consent. (NASD Case #C8A040059)

**Daniel William Huebner (CRD #842546, Registered Representative, Grinnell, Iowa)** 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, Huebner consented to the described sanction and to the entry of findings that he engaged in outside business activities for compensation and failed to provide his member firm with prompt written notice of these transactions and his role therein. The findings also stated that Huebner failed to respond to NASD requests for documents and information. (NASD Case #C04040033)

**Michael Joseph Inghilterra (CRD #2645007, Registered Principal, Holbrook, Nebraska)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,210 and suspended from association with any NASD member in any capacity for 10 business days. The fine must be paid before Inghilterra reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Inghilterra consented to the described sanctions and to the entry of findings that he effected transactions in the account of a public customer without the customer's prior knowledge, authorization, or consent.

Inghilterra's suspension began February 7, 2005, and will conclude at the close of business February 18, 2005. (NASD Case #CLI040047)

**Edward Joseph Jakubik, Jr. (CRD #2682625, Registered Representative, New York, New York)** was barred from association with any NASD member in any capacity for unauthorized trading in the accounts of public customers. (NASD Case #C9B040043)

**Lawrence Gary Kirshbaum (CRD #270856, Registered Principal, New York, New York)** submitted an Offer of Settlement in which he was fined \$5,000, jointly and severally, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or

denying the allegations, Kirshbaum consented to the described sanctions and to the entry of findings that he failed to respond timely to NASD requests for information and to give testimony at an on-the-record interview. The findings also stated that Kirshbaum failed to notify NASD of the termination of his member firm's registered options principal and failed to ensure his firm had a registered options principal while conducting a retail options business and engaging in put and call options with the public.

Kirshbaum's suspension began January 18, 2005, and concluded at the close of business January 31, 2005. (NASD Case #C10040100)

**Todd William Kmiec (CRD #1726325, Registered Representative, Chicago, Illinois)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Kmiec recommended and effected unsuitable transactions in the accounts of public customers without reasonable grounds for believing that his recommendations and the transactions were suitable for the customers given their financial situations, investment objectives, and needs. The findings also stated that Kmiec failed to respond to NASD requests for information. (NASD Case #C8A040056)

**Lewis A. Lanza (CRD #4541865, Registered Representative, University Heights, Ohio)** 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 three months. The fine must be paid before Lanza reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Lanza consented to the described sanctions and to the entry of findings that he conducted outside business activities for which he received \$70,000 in compensation while employed with his member firm, and failed to provide his firm with prompt written notice of his activities.

Lanza's suspension began February 7, 2005, and will conclude at the close of business May 6, 2005. (NASD Case #C8A040118)

**Brian Clifford Larsen (CRD #3111872, Registered Representative, Dorr, Michigan)** 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, Larsen consented to the described sanction and to the entry of findings that he affixed the signatures of public customers on an account authorization document without the customers' knowledge or consent. The findings also stated that Larsen recommended and effected transactions for public customers without having reasonable grounds for believing that the

recommendations and resultant transactions were suitable for the customers based on their financial situation and needs. NASD also found that Larsen purchased securities in his personal accounts for which he did not make timely payments as required by Regulation X and sold each position before payment was due, using the proceeds of the sale to pay for the purchase. In addition, NASD found that Larsen caused his member firm to extend credit to him in violation of Regulation T by writing checks from one account, depositing that check in the other account, and then either transferring money back to the first account or depositing a check from the second account back to the first account before the initial check cleared. (NASD Case #C8A050003)

**Max Dong Ho Lee (CRD #4578087, Associated Person, Los Angeles, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lee consented to the described sanction and to the entry of findings that he willfully failed to disclose a material fact on his Form U4. (NASD Case #C02050001)

**Raymond William Lee, III (CRD #1579378, Registered Principal, Atlanta, Georgia)** 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 principal capacity for 30 days. Without admitting or denying the allegations, Lee consented to the described sanctions and to the entry of findings that as president, financial and operations principal, and compliance officer of a member firm, he failed to establish and maintain a supervisory system and written supervisory procedures for the firm that were reasonably designed to supervise the activities of each registered representative associated with the firm to achieve compliance with applicable securities laws, regulations, and NASD rules. The findings also stated that Lee failed to establish a system for his firm to review and monitor the financial risk associated with highly leveraged trading strategies recommended and implemented by at least one representative of the firm, including strategies involving the purchase and sale of collateralized mortgage obligation (CMO) inverse floaters financed with the use of margin and repurchase agreements.

Lee's suspension began January 18, 2005, and will conclude at the close of business February 16, 2005. (NASD Case #C07040103)

**Mark Allen Lefkowitz (CRD #2170619, Registered Representative, Staten Island, New York)** 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, Lefkowitz consented to the described sanction and to the entry of findings that he failed to execute

a written order from a public customer to sell shares of stock, rendering the value of the stock virtually worthless. The findings also stated that Lefkowitz failed to respond to NASD requests for information and documents. NASD also found that Lefkowitz failed to complete an NASD on-the-record interview and failed to return to complete the interview. (NASD Case #C10030048)

**Carol Anne Livolsi (CRD #1251401, Registered Representative, Brooklyn, New York)** 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, Livolsi consented to the described sanction and to the entry of findings that she forged, or caused to be forged, the signatures of public customers on numerous account documents in connection with, among other things, the customers' purchase of annuities, and without the customers' knowledge, authorization, or consent. The findings also stated that Livolsi provided false, deceptive, inaccurate, and/or incomplete information to NASD during an on-the-record interview. (NASD Case #C10040125)

**William John Maguire, Jr. (CRD #2040885, Registered Principal, Staten Island, New York)** 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 one year. Without admitting or denying the allegations, Maguire consented to the described sanctions and to the entry of findings that he failed to complete continuing education courses required by New York State Insurance Laws to sell certain types of insurance in New York. The findings also stated that Maguire furnished an employee of his member firm with documents for courses he purportedly completed and requested that the employee enter the data on the New York Insurance Department Web site, thereby attempting to cause the submission of false data to the Insurance Department.

Maguire's suspension began February 7, 2005, and will conclude at the close of business February 6, 2006. (NASD Case #C10040124)

**David Brian Manns (CRD #1927168, Registered Representative, Englewood, Florida)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Manns consented to the described sanction and to the entry of findings that he forged the signature of a public customer on a "Fixed and Variable Annuity Disclosure" form that sought to ensure that the customer understood the costs associated with a fixed annuity exchange, including surrender and other costs for both the original and new annuity. (NASD Case #C07040096)

**Scott Ian Martin, (CRD# 2562741, 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 six months. The fine must be paid before Martin reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Martin consented to the described sanctions and to the entry of findings that, in response to margin calls, he credited his securities account at his member firm with a deposit of \$3,000 using his member firm's computer system. The findings also stated that each time after Martin made these "electronic deposits," he intentionally or recklessly failed to deposit the actual funds into his securities account.

Martin's suspension began February 7, 2005, and will conclude August 6, 2005. (NASD Case #C9A040064)

**Brian Keith Martinsen (CRD #2815688, Registered Principal, Lake Ronkonkoma, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, including disgorgement of \$150 in commissions received, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Martinsen consented to the described sanctions and to the entry of findings that he effected transactions in the account of a public customer without the customer's prior knowledge, authorization, or consent.

Martinsen's suspension began February 7, 2005, and will conclude at the close of business February 18, 2005. (NASD Case #CLI040048)

**Timothy Jerel McBroom (CRD #3012620, Registered Representative, Helotes, Texas)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before McBroom reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, McBroom consented to the described sanctions and to the entry of findings that he forged the name of a public customer onto a policy transfer form in order to transfer the customer's homeowner's insurance policy from an unrelated insurance company to his member firm without the customer's knowledge, authorization, or consent. The findings also stated that McBroom submitted the form to his member firm and the customer's homeowner's insurance policy was subsequently transferred to his firm without the customer's knowledge, authorization, or consent.

McBroom's suspension will begin February 22, 2005, and will conclude August 21, 2005. (NASD Case #C06040040)

**Howard Jonathan Mofshin (CRD #2416504, Registered Principal, Boca Raton, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, ordered to pay \$60,958.58, plus interest, in disgorgement of ill-gotten gains in partial restitution to a public customer, and suspended from association with any NASD member firm in any capacity for 10 business days. Without admitting or denying the allegations, Mofshin consented to the described sanctions and to the entry of findings that he engaged in a pattern of excessive trading in connection with his recommendations of securities transactions for the account of a public customer.

Mofshin's suspension began February 7, 2005, and will conclude at the close of business February 18, 2005. (NASD Case #C04040063)

**Oscar Armando Montenegro (CRD #4222514, Registered Representative, Brooklyn, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Montenegro received \$19,975 from public customers for investment and converted the funds to his own use and benefit. The findings also stated that Montenegro provided false testimony during an NASD on-the-record interview. NASD also found that Montenegro created a Web site for his own direct-access trading firm and plagiarized copyrighted material from the Web site of his previous member firm. In addition, NASD found that Montenegro failed to obtain approval for the Web site from a registered principal with the member firm with which he was registered. (NASD Case #C10040019)

**Anthony Mario Nobrega (CRD #2025210, Registered Representative, Cumberland, Rhode Island)** 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, Nobrega consented to the described sanction and to the entry of findings that he engaged in an outside business activity without providing prompt written notice to his member firm. The findings also stated that Nobrega failed to appear for an NASD on-the-record interview. (NASD Case #C11050001)

**Robert Joseph Pagan (CRD #2877992, Registered Principal, Jamaica, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, ordered to disgorge \$11,017.05 in partial restitution to public customers, and suspended from association with any NASD member firm in any capacity for six months. The fine and restitution amounts must be paid before Pagan reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification.

Without admitting or denying the allegations, Pagan consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to or prior written approval from, his member firms.

Pagan's suspension began February 7, 2005, and will conclude August 6, 2005. (NASD Case #C9B040111)

**Joseph Frank Pappalardo, Jr. (CRD #4188704, Registered Representative, Staten Island, 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, Pappalardo consented to the described sanction and to the entry of findings that he effected private securities transactions and failed to provide prior written notification to his member firm. The findings also stated that Pappalardo failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #C10040188)

**Gordon Stratford Pett, Jr. (CRD #361862, Registered Representative, Deerfield, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Pett reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Pett consented to the described sanctions and to the entry of findings that he engaged in outside business activities for which he received in excess of \$75,780 in compensation and failed to provide his member firm with prompt written notice of his outside business activities.

Pett's suspension began February 7, 2005, and will conclude August 6, 2005. (NASD Case #C8A040119)

**Edwards Matthews Quigley, III (CRD #725263, Registered Representative, Fort Lauderdale, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Quigley consented to the described sanction and to the entry of findings that he misrepresented in written correspondence to a public customer that his initial investment in variable annuities was guaranteed against loss by Quigley's member firm and the variable annuity companies. The findings also stated that Quigley failed to follow a public customer's order to liquidate securities to avoid losses; effected unauthorized trades in the customer's account; and executed a personal note for the customer that settled losses already incurred in the account and guaranteed against future losses in the customer's account without providing notice to his member firm. (NASD Case #C07040102)

**Heather Anne Raymond (CRD #3135377, Registered Representative, Bethel, Connecticut)** 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, Raymond consented to the described sanction and to the entry of findings that she altered her copy of her test report for the Series 7 General Securities Representative exam to reflect a passing grade and provided a copy of the falsified test report to her member firm in an attempt to convince them she had qualified as a general securities representative. The findings also stated that Raymond provide false and misleading testimony during a NASD on-the-record interview. (NASD Case #C9B040107)

**John Francis Richard, Jr. (CRD #4701566, Registered Representative, Pembroke, 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, Richard consented to the described sanction and to the entry of findings that as director of recruiting for a branch office of his member firm, he created false firm recruiting profiles for individuals using firm customer social security numbers. (NASD Case #C11040045)

**Scott Bruce Seidman (CRD #1247353, Registered Representative, Dover, Massachusetts)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before Seidman reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Seidman consented to the described sanctions and to the entry of findings that he changed a limit order to a market order without the customer's permission.

Seidman's suspension began January 18, 2005, and will conclude at the close of business February 16, 2005. (NASD Case #C11040043)

**Rick James Settles (CRD #1559298, Registered Principal, Louisville, Kentucky)** submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for one year and required to requalify by exam as a general securities representative by taking and passing the Series 7 exam prior to acting in that capacity. In light of the financial status of Settles, no monetary sanction has been imposed. Without admitting or denying the allegations, Settles consented to the described sanctions and to the entry of findings 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 on the basis of their financial situations and needs. The findings also stated that Settles exercised discretionary authority in the accounts of public customers without prior written acceptance of the accounts as discretionary by his member firm and in disregard for the firm's prohibition against exercising discretion.

Settles' suspension began February 7, 2005, and will conclude February 6, 2006. (NASD Case #C05040062)

**Max J. Silberman (CRD #423803, Registered Representative, Orange Village, Ohio)** submitted an Offer of Settlement in which he was fined \$5,100 and suspended from association with NASD member in any capacity for five business days. Without admitting or denying the allegations, Silberman consented to the described sanctions and to the entry of findings that he exercised discretion in the account of a public customer by placing securities transactions after the customer had died without prior written authorization from the customer and prior written acceptance of the account as discretionary by his member firm. The findings also stated that, despite knowing that the customer had died, Silberman sold, or caused to be sold, option call contracts, which were set to expire. The sale was made without the knowledge or consent of the executor of the customer's estate and in the absence of written or oral authorization to Silberman to exercise discretion on such account.

Silberman's suspension began February 7, 2005, and concluded at the close of business February 11, 2005. (NASD Case #C8A040028)

**Jerald Dale Simonian (CRD #1767182, Registered Representative, Fresno, California)** 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 10 business days. Without admitting or denying the allegations, Simonian consented to the described sanctions and to the entry of findings that he failed to update his Form U4 to disclose a material fact.

Simonian's suspension began February 7, 2005, and will conclude at the close of business February 18, 2005. (NASD Case #C01040032)

**Robert Michael Smart (CRD #834888, Registered Representative, Grand Rapids, Michigan)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Smart failed to respond to NASD requests for information. (NASD Case #C8A040048)

**James Patrick Smith (CRD #4473267, Registered Principal, Decatur, Illinois)** 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, Smith consented to the described sanction and to the entry of

findings that he converted \$81,568.55 in funds intended for the purchase of traditional life insurance products or fixed annuities by public customers by depositing the funds in a checking account he controlled and using the funds for his own purposes. (NASD Case #C8A040086)

**Stephen Dennis Sprauer (CRD #1615477, Registered Representative, Wilton, Connecticut)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$30,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Sprauer reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Sprauer consented to the described sanctions and to the entry of findings that he made recommendations to a public customer without having reasonable grounds for believing the recommendations were suitable based on his client's investment objectives, financial situation, and needs. The findings also stated that Sprauer exercised discretion in the accounts of public customers without prior written authorization from the customers and prior written acceptance of the accounts as discretionary by his member firms.

Sprauer's suspension began February 7, 2005, and will conclude at the close of business February 6, 2006. (NASD Case #C11040047)

**Heung Won Suh (CRD #3236936, Registered Representative, Fresh Meadows, 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, Suh consented to the described sanction and to the entry of findings that he refused to comply with an NASD request to provide testimony. (NASD Case #CLI040049)

**Eva Yee May Sung (CRD #4567379, Registered Representative, Irvine, California)** 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, Sung consented to the described sanction and to the entry of findings that she forged the signatures of public customers and a branch manager on forms authorizing Sung to become the new representative of certain "orphaned" brokerage accounts. (NASD Case #C02040055)

**Brian Patrick Taggart (CRD #2394575, Registered Representative, St. James, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 45 days. Without admitting or denying the allegations, Taggart consented to the described

sanctions and to the entry of findings that he allowed an individual to sign roster sheets indicating that the individual had attended insurance continuing education sessions taught by Taggart when he had not. The findings also stated that Taggart provided the individual with Insurance Department Course Completion documents for courses the individual had not completed.

Taggart's suspension will begin February 22, 2005, and will conclude at the close of business April 7, 2005. (NASD Case #C10040129)

**Tony Lamont Thomas (CRD #4034942, Registered Representative, Parkville, 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, Thomas consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. The findings also stated that Thomas forged the signature of a public customer on a variable life insurance application without the customer's knowledge or consent. (NASD Case #C9A040056)

**Laverne Raymond Thompson, Jr. (CRD #2468678, Registered Principal, Paw Paw, Illinois)** 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, Thompson consented to the described sanction and to the entry of findings that he accepted a \$50,000 personal check from a public customer for investment in an account for the customer's daughter, failed to invest the funds as directed, and used the funds for other purposes and not for the benefit of the customer. (NASD Case #C8A040120)

**Edwin John Torres (CRD #2736704, Registered Principal, Moraga, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Torres consented to the described sanction and to the entry of findings that he received \$324,000 from a public customer for the purchase of municipal bonds and converted the proceeds to his own use and benefit. The findings also stated that Torres created and sent false invoices to a public customer, purportedly reflecting her investments in municipal bonds that Torres had purchased for her when, in fact, no such bonds had been purchased. NASD also found that Torres declined NASD's request for documents and information. (NASD Case #C01040034)

**Stephen Takeshi Toshiyuki (CRD #448364, Registered Representative, Los Angeles, California)** 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 45 days. Without admitting or denying the allegations, Toshiyuki consented to the described sanctions and to the entry of findings that he effected, or caused to be effected, transactions in accounts of a public customer without prior written authorization from the customer and prior acceptance of the account as discretionary from his member firm.

Toshiyuki's suspension will begin February 22, 2005, and will conclude at the close of business April 7, 2005. (NASD Case #C02040053)

**Christopher Udell (CRD #2740197, Registered Principal, Colorado Springs, Colorado)** 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 four months. The fine must be paid before Udell reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Udell consented to the described sanctions and to the entry of findings that he made misrepresentations in selling long-term callable certificates of deposit (CDs) to public customers in that he falsely represented that the customers could redeem a callable CD prior to maturity by paying a penalty of one percent of the principal or six months interest, falsely assured customers that the bank was likely to call the long-term CD within a year or two; falsely told customers that they could redeem the long-term CDs after one or two years; falsely told a customer that the market value of her long-term callable CD reported on her account statement was an error and would be corrected to reflect the full premium paid in the next month's statement; and falsely instructed a customer to ignore the true maturity date of the customer's long-term CD. The findings also stated that, in connection with the sale of long-term callable CDs and losses incurred due to operational errors, Udell entered into settlements of complaints with public customers without notifying and receiving approval from his member firm.

Udell's suspension began February 7, 2005, and will conclude at the close of business June 6, 2005. (NASD Case #C05040089)

**Carlos M. Urro (CRD #4117477, Registered Representative, Bound Brook, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member firm in any capacity. Without admitting or denying the allegations, Urro consented to the described sanction and to the entry of findings that he created fictitious reimbursement documents, forged the signature of a school official on the documents, and submitted the documents to his member firm in an improper attempt to obtain funds from the firm. (NASD Case #C9B040109)

**Christopher Frederic Veale (CRD #2536489, Registered Principal, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000, suspended from association with any NASD member firm in any capacity for 45 days, and required to pay \$36,696.48 in restitution to public customers. Without admitting or denying the allegations, Veale consented to the described sanctions and to the entry of findings that he engaged in a pattern of trading activity in the accounts of public customers that was excessive in light of the public customers' objectives, financial situations, and needs.

Veale's suspension will begin February 22, 2005, and will conclude at the close of business April 7, 2005. (NASD Case #CLI040043)

**Radek Vlach (CRD #4768538, Associated Person, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before Vlach associates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Vlach consented to the described sanctions and to the entry of findings that he failed to make a proper disclosure of material information on his Form U4.

Vlach's suspension began January 18, 2005, and will conclude at the close of business February 16, 2005. (NASD Case #C8A040115)

**Ding Ho Wang (CRD #1130318, Registered Representative, Lancaster, California)** 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. Without admitting or denying the allegations, Wang consented to the described sanctions and to the entry of findings that he placed advertisements in a Chinese language newspaper and distributed sales literature in the form of a booklet without prior approval from his member firm and in contravention of various NASD rules relating to communications with the public. The findings also stated that the advertisements and sales literature were variously misleading and contained exaggerated or unwarranted statements and claims. NASD also found that the advertisements discussed and promoted Wang's securities business but failed to identify his member firm as the broker-dealer that offered the securities. In addition, NASD found that the sales literature provided incomplete and oversimplified comparisons and contained investment company performance not in accordance with the requirements set forth in SEC Rule 482 with regard to the inclusion of standardized average annual total returns, specific disclosure language, and prospectus offer.

Wang's suspension will begin February 22, 2005, and will conclude at the close of business April 5, 2005. (NASD Case #C02050003)

**Paul Joseph Welch (CRD #2327685, Registered Representative, Stoneham, Massachusetts)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before Welch reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Welch consented to the described sanctions and to the entry of findings that he recommended to a public customer that she liquidate approximately \$148,000 of her no-load mutual fund shares and apply the proceeds toward the purchase of a fixed annuity without a reasonable basis for believing that these liquidating transactions were suitable for the customer in light of her financial situation and needs.

Welch's suspension began February 7, 2005, and will conclude at the close of business March 8, 2005. (NASD Case #C11040048)

**Tina Marie White (CRD #4610087, Registered Representative, Wildwood, Missouri)** submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before White reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, White consented to the described sanctions and to the entry of findings that she affixed the signature of a public customer to an ownership designation form without the customer's authorization, knowledge, or consent, causing the customer to become the owner and insured of an insurance policy that the customer did not wish to own.

White's suspension began February 7, 2005, and will conclude at the close of business February 6, 2006. (NASD Case #C04040065)

**Gary Lee Winn (CRD #2439971, Registered Principal, Elkhorn, Nebraska)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member as a FINOP for 30 days. In light of the financial status of Winn, no monetary sanction has been imposed. Without admitting or denying the allegations, Winn consented to the described sanction and to the entry of findings that, acting on behalf of his member firm, he kept inaccurate ledgers reflecting assets and liabilities, prepared inaccurate trial balances and net capital computations, and prepared inaccurate books and records.

Winn's suspension began January 18, 2005, and will conclude at the close of business February 16, 2005. (NASD Case #C04040060)

**Angela Christine Wynne (CRD #4245772, Registered Representative, Charlotte, North Carolina)** submitted an Offer of Settlement 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 Wynne reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Wynne consented to the described sanctions and to the entry of findings that she forged the signatures of public customers and customer suitability information on purchase authorization forms to effect the purchases of variable annuities by the customers. The findings also stated that Wynne falsified customers' suitability information on confidential client profile forms that were designed to assist the registered representative and the firm in evaluating suitability of recommendations.

Wynne's suspension began February 7, 2005, and will conclude August 6, 2005. (NASD Case #C05040081)

**Scott Martin Zimmerman (CRD #1851588, Registered Principal, Dunwoody, Georgia)** 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 three months, and ordered to disgorge \$15,576 in commissions to a public customer. Without admitting or denying the allegations, Zimmerman consented to the described sanctions and to the entry of findings that he recommended an aggressive equity trading strategy to a public customer—a start-up company—and pursuant to the strategy, engaged in active trading in the company's securities accounts. The findings also stated that Zimmerman's recommendations and transactions were not suitable for the company based on the company's financial situation and needs.

Zimmerman's suspension began February 7, 2005, and will conclude at the close of business May 6, 2005. (NASD Case #C9A040060)

## Complaints Filed

NASD issued the following complaints. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by NASD in which findings as to the allegations in the complaint have not been made, and does not represent a decision as to any of the allegations contained in the complaint. Because these complaints are unadjudicated, you

may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

**Michael Robert Brooks (CRD #2086694, Registered Representative, Bainbridge Island, Washington)** was named as a respondent in an NASD complaint alleging that he received a \$8,740 check from a public customer intended for investment purposes and deposited the funds in a bank account that he controlled, thereby converting the customer's funds for his own use and benefit without the customer's knowledge, authorization, or consent. The complaint further alleges that Brooks failed to respond to NASD requests for information. (NASD Case #C3B040035)

**Angelyne Tajuana Collins (CRD #3268778, Registered Representative, Duluth, Georgia)** was named as a respondent in an NASD complaint alleging that she caused a loan to be issued against the insurance policy of a public customer for \$2,800 without the knowledge or authorization of the customer and then deposited the loan proceeds into a bank account in her name over which she exercised control. The complaint also alleges that Collins failed to respond to NASD requests for information. (NASD Case #C07040106)

**Michael Henry D'Amico (CRD #2225883, Registered Representative, Westlake Village, California)** was named as a respondent in an NASD complaint alleging that he received \$13,937.82 from a public customer for investment purposes and deposited the check in an account he controlled, without the knowledge or consent of the customer, thereby misusing \$11,696.35 in customer funds and converting \$2,241.47 in customer funds to his own use and benefit without the customer's knowledge, authorization, or consent. In addition, the complaint alleges that D'Amico failed to appear at an NASD on-the-record interview or to respond in any fashion to NASD's request. (NASD Case #C02040054)

**Lara Debry (CRD #1720653, Registered Representative, Salt Lake City, Utah)** was named as a respondent in an NASD complaint alleging that she caused checks, totaling \$28,907, made payable to third parties, to be issued from a public customer's account and sent to her Web CRD address without the customer's knowledge or consent. (NASD Case #C3A040049)

**Robert Michael Graves, Jr. (CRD #2093814, Registered Representative, Heath, Texas)** was named as a respondent in an NASD complaint alleging that he participated in a private securities transaction and failed to provide written notice to his member firm describing the transaction, his role therein, and whether he might receive selling compensation. The complaint also alleges that Graves recommended and effected a transaction in the account of a public customer without having reasonable grounds for believing that his recommendation, and the resulting purchase by the customer,

was suitable based upon the customer's financial situation and needs. The complaint further alleges that Graves engaged in an outside business activity and failed to provide his member firm with written notice of his activity. In addition, the complaint alleges that Graves obtained a \$52,000 loan from a public customer in violation of firm policy prohibiting the receipt or solicitation of loans from public customers. (NASD Case #C06050002)

**William Edward Jasko (CRD #2103111, Registered Representative, Saddle River, New Jersey)** was named as a respondent in an NASD complaint alleging that he effected transactions in the accounts of public customers without the knowledge and consent of the customers and without having a reasonable basis for believing that the recommendations were suitable for the customers on the basis of the facts disclosed by the customers as to their other security holdings, financial situations, and needs. (NASD Case #C9B040112)

**Lawrence Michael LaBine (CRD #1279935, Registered Principal, Scottsdale, Arizona)** was named as a respondent in an NASD complaint alleging that he effected transactions in the accounts of public customers without the knowledge and consent of the customers and without having a reasonable basis for believing that the recommendations were suitable for the customers on the basis of the facts disclosed by the customers regarding their other security holdings, financial situations, needs, and investment objectives. (NASD Case #C3A040045)

**Tanveer Ahmad Paracha (CRD #4601108, Registered Representative, Chicago, Illinois)** was named as a respondent in an NASD complaint alleging that he effected transactions in the account of a public customer without the knowledge and consent of the customer and without having a reasonable basis for believing that the recommendations were suitable for the customer based on the nature of the customer's account, financial situation, and needs. The complaint also alleges that Paracha failed to appear for an NASD on-the-record interview. (NASD Case #C9B050001)

**Frank Anthony Passarella (CRD #2689136, Registered Representative, Mineola, New York)** was named as a respondent in an NASD complaint alleging that he effected, or caused to be effected, equities purchases in the accounts of public customers totaling \$3,252,087.47, resulting in \$140,527.93 received in commissions while customers' losses totaled \$133,266.09. The complaint also alleges that Passarella, directly or indirectly, by the use of the means or instrumentalities of interstate commerce or of the mails, knowingly or recklessly, used or employed, in connection with the purchase or sale of securities, manipulative or deceptive devices or contrivances; and knowingly or recklessly effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive, or other fraudulent

devices or contrivances. The complaint further alleges that Passarella recommended transactions in securities without having reasonable grounds for believing such transactions were suitable in light of the size and frequency of the transactions, the nature of the account, and the customers' financial situation and needs. In addition, the complaint alleges that Passarella effected transactions in the accounts of public customers without the prior knowledge, authorization, or consent of the customers. (NASD Case #C9B040106)

**Stephen Michael Rhoads, Sr. (CRD #3265781, Registered Representative, Wyckoff, New Jersey)** was named as a respondent in an NASD complaint alleging that he received checks totaling \$3,677.42 from a public customer for investment purposes, deposited the checks into his own personal account, and personally paid for the initial premium for the customer's disability policy by sending a cashier's check to new business drawn on his personal account. The complaint also alleges that Rhodes set up a pre-authorization check premium payment service (PAC) where automatic monthly withdrawals would be made to pay the remaining premiums for the customer's policy from his personal account without the customer's knowledge, authorization, or consent. The complaint further alleges that because the PAC had insufficient funds, the disability policy lapsed due to non-payment. In addition, the complaint alleges that Rhoads failed to respond to NASD requests to provide information and documents. (NASD Case #C10040116)

**Sonja Rudd (CRD #2683330, Registered Representative, Pembroke Pines, Florida)** was named as a respondent in an NASD complaint alleging that she circulated false and misleading investment opinions and research reports that included fraudulent and deceptive representations and omissions of material facts about speculative, low-priced securities she covered. The complaint also alleges that Rudd's investment opinions were not based on principles of fair dealing and good faith, were not fair and balanced, and did not provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service.

The complaint also alleges that Rudd omitted material facts or qualifications that, in light of the context of the material presented, caused the communications to be misleading; and published, circulated, or distributed public communications, or caused such public communications to be published, circulated, or distributed, that she knew, or had reason to know, contained untrue statements of material fact or were otherwise false or misleading. The complaint further alleges that Rudd's statements predicted or projected performance, implied that past performance would recur, or made exaggerated or unwarranted claims, opinions, or forecasts. In addition, the complaint alleges that Rudd's investment opinions or research reports contained only favorable research,

opinions, or news about the companies covered, and directly or indirectly offered the favorable research reports as consideration or inducement for the receipt of business or compensation by her. The complaint also alleges that Rudd failed to provide prompt written notice to her member firm, in the form required by the firm, that she was working for and being compensated by another company. (NASD Case #CMS040224)

**Hilary L. Shane (CRD #3210308, Registered Representative, New York, New York)** was named as a respondent in an NASD complaint alleging that she falsely represented that she and her member firm were buying shares of stock in a private placement and had no intention of distributing the shares, inducing the issuer to agree to sell shares to them. The complaint also alleges that Shane, directly or indirectly, by use of means or instrumentalities of interstate commerce, intentionally or recklessly employed a device, scheme, or artifice to defraud; made untrue statements of fact; and engaged in an act, practice, or course of business that operated, or would operate, as a fraud or deceit in connection with the purchase or sale of a security. The complaint further alleges that Shane engaged in unlawful insider trading by selling the stock while in possession of material non-public information about the company and the private placement. The complaint also alleges that Shane sold stock for her own account and the account of her member firm without borrowing shares and while intending to cover the sales with shares from the private placement. In addition, the complaint alleges that Shane caused her member firm to fail to make and annotate an affirmative determination that shares were available for delivery in each of the separate short sale transactions of the company. (NASD Case # CMS040208)

**David Joseph Shaw (CRD #1003961, Registered Representative, Indianapolis, Indiana)** was named as a respondent in an NASD complaint alleging that he converted \$977,547 in funds belonging to public customers by transferring funds from accounts held at his member firm to accounts he controlled and used the funds for his own use and benefit without the knowledge or consent of the customers. The complaint also alleges that Shaw, by use of the instrumentalities of interstate commerce or the mails, intentionally or recklessly employed devices to defraud public customers by making untrue statements of material facts or omitting to state material facts necessary to make the statements not misleading. In addition, the complaint alleges that Shaw affixed the signatures of public customers on "authority to transfer funds" forms and submitted the forms to his member firm, authorizing the transfer of funds from the accounts of public customers to an account that he controlled, without the knowledge or consent of the customers and used the funds for his own use or benefit, and not the benefit of

the customers. The complaint further alleges that Shaw failed to respond to NASD requests for information. (NASD Case #C8A040121)

**Kevin Levant Teasley (CRD #2670648, Registered Principal, Great Falls, Montana)** was named as a respondent in an NASD complaint alleging that he received \$250,000 from a public customer for investment purposes and failed to use the funds as intended, thereby misusing the customer's funds without the customer's knowledge, authorization, or consent. The complaint also alleges that, in order to return a portion of the funds to the customer, Teasley caused a \$100,000 cashier's check to be issued, payable to the customer. The complaint further alleges that Teasley failed to respond to NASD requests for information. (NASD Case #C3B040031)

**Kevin Mark Weaver (CRD #2845934, Registered Principal, Dallas, Texas)** was named as a respondent in an NASD complaint alleging that he recommended or caused the execution of transactions in the accounts of public customers without having a reasonable basis for believing the recommendations and resultant transactions were suitable for the customers in light of the customers' financial resources and needs. The complaint also alleges the recommendations were unsuitable because they resulted in an excessive number of trades and excessive account expense. In addition, the complaint alleges that Weaver executed, or caused the execution of, transactions in the accounts of public customers with intent to defraud, in that he knew, or was reckless in failing to recognize, that the trading in each of the accounts resulted in substantial commission income for him, but could not reasonably be expected to benefit the customers. (NASD Case #C3A040048)

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

The following firms were suspended from membership in NASD for failure to comply with formal written requests to submit financial information to NASD. The action was based on the provisions of NASD Rule 9552. 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.

**Beacon Global Advisors Inc.**  
North Bethesda, Maryland  
(January 5, 2005)

**LH Ross & Company, Inc.**  
Boca Raton, Florida  
(January 5, 2005)

The suspension was lifted January 10, 2005.

### **Individuals Suspended Pursuant to NASD Rule 9552 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.)

**Craig, Chris H.**  
Fenton, Michigan  
(January 4, 2005)

**Huynh Thi Lan, Phuong**  
San Diego, California  
(December 29, 2004)

### **Individuals Barred Pursuant to NASD Rule 9552 for Failure to Provide Information Requested under NASD Rule 8210**

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

**Diehl, Ronald E.**  
Germantown, Tennessee  
(December 29, 2004)

**Multhaup, Karen**  
Auburn Hills, Michigan  
(December 31, 2004)

**Wiggins, Norbert L.**  
Arlington Heights, Illinois  
(December 31, 2004)

### **NASD Bars Todd Eberhard, Former Park South Chairman and Once-Popular Television Personality**

**Violations Include Fraudulent Trading, Improper Settlements With Customers, Failure to Make Required Regulatory Disclosures, Providing False and Misleading Testimony**

NASD barred Todd M. Eberhard, the former chairman of New York's Park South Securities, LLC, from the securities industry for federal securities fraud and other, multiple violations of NASD rules. Eberhard was known to millions as a guest analyst and commentator who appeared frequently on financial television programs on CNN, CNNfn, CNBC, Fox News Channel, and on PBS' Nightly Business Report.

The bar stems from NASD charges announced in October 2002 that Eberhard had committed securities fraud in connection with scores of mutual fund transactions. Park South was liquidated in 2003. In 2004, Eberhard pleaded

guilty in federal court to mail and wire fraud, as well as conspiracy, investment adviser fraud, and obstruction of justice.

"This high-profile broker's misconduct cost his customers millions of dollars," said NASD Vice Chairman Mary L. Schapiro. "He compounded his fraudulent activities by trying to silence complaining customers and by hiding evidence of those complaints from regulators. That kind of conduct merits the most severe sanction that NASD can impose."

NASD found that during the period December 1998 through October 2001, Eberhard made, or caused to be made, scores of fraudulent and unsuitable mutual fund transactions in four customers' accounts. Eberhard intentionally or recklessly failed to disclose material information to those customers. He purchased on behalf of customers large volumes of Class B mutual fund shares that increased his commission revenue, but deprived his customers of volume "breakpoint" discounts available through Class A shares and/or the lower, shorter-term sales charges available through Class C shares. Eberhard defrauded and deceived customers by employing a pattern of short-term trading of mutual funds in order to maximize his commissions.

NASD also found that Eberhard effected numerous unauthorized transactions in customer accounts. For one customer, Eberhard created, or caused to be created, account statements that contained false valuations—the prices or net asset values of many securities were inflated to reflect a greater portfolio value than the true value of the accounts, to induce the customer to continue to maintain accounts with Eberhard.

Many customers eventually complained to Eberhard about the activity in their accounts. NASD found that between June 1997 and December 2001, Eberhard improperly settled 14 complaints made by 11 customers. Those settlements, which totaled more than \$3.6 million, were made without the knowledge and consent of the brokerage firms employing Eberhard at the time—Linsco/Private Ledger Corp., Royal Alliance Associates, and Clearing Services of America, Inc.

In resolving 10 customer complaints, Eberhard included improper confidentiality agreements that effectively prohibited the customers from cooperating with NASD investigations and from disclosing the underlying facts of their complaints and the settlement terms to NASD.

In many instances, Eberhard either failed to report, or failed to report on a timely basis, customer complaints and settlements to NASD and other regulators on the securities industry registration Form U-4, as required by the federal securities laws. NASD found that when Eberhard amended his Forms U-4, he willfully failed to disclose material information and/or

misrepresented material information, including the nature of customers' complaints. For example, on one Form U-4, Eberhard misrepresented the nature of a customer complaint by stating that the client was unhappy with the performance of her portfolio when, in fact, the customer had accused Eberhard of severely churning her account for commissions, repeatedly making investments that benefited Eberhard more than the customer.

Eberhard also willfully failed to disclose that he had been discharged by Royal Alliance Associates for violating investment-related statutes, regulations, rules, or industry standards of conduct. Additionally, he willfully failed to disclose that he had been named as a defendant in an investment-related, consumer-initiated civil lawsuit, which alleged that he was involved in sales practice violations.

Finally, NASD found that when Eberhard was questioned by NASD investigators, he provided false, misleading and evasive testimony.

In settling this matter, Eberhard neither admitted nor denied the charges, but consented to the entry of NASD's findings and to the sanction of a lifetime bar from the securities industry.

### **NASD Fines Scottrade, Inc. \$250,000 for Improperly Extending Credit to Cash Account Customers**

NASD fined Scottrade, Inc., of St. Louis, MO, \$250,000 for improperly extending credit to customers in violation of federal securities laws and banking regulations.

NASD determined that Scottrade permitted cash account customers to purchase and sell securities in a series of trades without requiring full cash payment for each purchase, in violation of Federal Reserve Regulation T. Regulation T requires that customers trading in cash accounts make full cash payment for each separate purchase without regard to unsettled proceeds of any securities sold.

"The sanctions in this case reflect NASD's continuing concerns about securities firms improperly extending credit to cash-account customers," said NASD Vice Chairman Mary L. Schapiro. "In addition to complying with federal securities laws and NASD rules, firms must adhere to banking requirements, including Regulation T."

NASD found that from January 1, 2001, to September 28, 2001, Scottrade allowed its cash account customers to purchase and sell securities with the proceeds due from unsettled trades. The firm permitted this trading to occur in over 27,500 transactions in more than 1,400 cash accounts. Regulation T, however, requires full cash payment for the purchase of any security in a cash account without relying

upon the anticipated proceeds of any unsettled trade in the account. The Federal Reserve Board staff issued guidance on this issue in January 2000, one year before Scottrade's misconduct commenced. Scottrade, nevertheless, permitted its customers to execute numerous purchase and sell transactions, on the same day, with unsettled funds well into September 2001.

In settling this matter, Scottrade neither admitted nor denied the charges, but consented to the entry of NASD's findings.

This case is the latest enforcement action brought by NASD in the area of cash account practices by firms that violate Regulation T. In March 2004, NASD brought a separate action against Ameritrade, Datek and iClearing for similar cash account practices that violated Regulation T. In that matter, NASD found that the firms permitted the trading in over 2 million transactions in over 30,000 customer cash accounts. NASD fined the firms \$10 million for the violations.

### **NASD Panel Expels Florida Brokerage LH Ross, Orders Nearly \$12 Million in Fines, Restitution; Issues First Permanent Cease and Desist Order**

**Violations Involve Fraudulent Activities Relating to Unregistered Self-Offerings, Obstructing NASD Investigation by Failing to Provide Financial Documents**

**Panel Cites "Widespread, Significant and Identifiable Customer Harm," Terms Future LH Ross Sales Solicitations "Extreme Threat to the Investing Public"**

An NASD Hearing Panel has expelled Boca Raton, FL-based brokerage LH Ross for fraud and other violations related to the sales of unregistered self-offerings that the panel called "little more than a scheme to defraud investors." The panel ordered the firm to pay a \$500,000 fine, more than \$11 million in restitution to investors, prejudgment interest of at least \$450,000, and hearing costs of more than \$18,000.

The panel also imposed NASD's first-ever permanent cease-and-desist order, which replaced the temporary cease-and-desist order (TCDO) that NASD imposed in August 2004 to stop LH Ross's ongoing fraudulent and illegal sales activities. This case represents the first time NASD has used its TCDO authority, which was approved by the SEC in June 2003.

The Hearing Panel found that LH Ross brokers, acting with the intent to "deceive, manipulate or defraud investors," made material misrepresentations and failed to provide important information to investors in connection with private sales of LH Ross stock in 2003 and 2004. At least 150 investors in 27 states purchased the preferred stock. The panel also found that LH Ross invested at least one customer's funds in the firm's stock without that customer's knowledge or consent.

"In essence, LH Ross operated a boiler room," the panel's decision said. "The firm engaged in a concerted, high-pressure telephone campaign to sell unregistered securities in the form of units of convertible preferred LH Ross stock, showing little concern for the customers' investment needs or objectives. The firm employed false and deceptive means to solicit customers, who had no independent way to verify representations made by the brokers about the firm... This case involves widespread, significant and identifiable customer harm, and the panel believes that LH Ross and (its president) have retained substantial ill-gotten gains."

According to the panel's decision, LH Ross's transgressions include a pattern of failing to send the private placement memorandum to customers or sending it well after the purchase; failing to reflect the acquisition of preferred stock on customers' monthly account statements; telling customers their investment had doubled without divulging that the firm had simply doubled the price of the preferred stock in another offering; making additional material misstatements to customers who posed questions about the offering; completely ignoring many customer complaints about the offerings; and dissipating or misappropriating a significant portion of the millions of dollars raised in the self-offerings, "which appear to be little more than a scheme to defraud investors."

The panel also noted that LH Ross and Franklyn Michelin—the firm's CEO, CFO, COO, President, and Chief Compliance Officer—had knowingly hired several brokers from firms with regulatory problems, including abusive sales practices. One of those individuals, who was hired as vice president for investment banking, was awaiting sentencing for his felony conviction for conspiracy to commit mail and wire fraud. The panel said Michelin knew from customer complaints he had received personally that his salesman were making false claims, but took no corrective action.

"Respondent's argument that it is not responsible for fraud committed by its registered representatives—particularly under these circumstances—is utterly specious," the panel said in its decision.

The Hearing Panel found that LH Ross failed to respond to repeated NASD requests for information and documents related to funds raised during the private placement offerings and how those funds were used. Among the information LH Ross failed to provide: the name of the escrow and/or bank account in which proceeds from the preferred stock sales were deposited; the financial institution at which the account is held; the account number; the person or persons with authority to withdraw funds from the account; the date and amount of withdrawals from the account; and to whom the withdrawals were payable.

In its decision, the panel said it “believes that Respondent’s lack of cooperation was an attempt to obstruct NASD’s investigation of this ongoing fraud.” Noting that to date, LH Ross has “offered no reasonable explanation for its complete failure to respond... the panel concludes that Respondent has refused to provide the requested information because it does not exist or contains information that is detrimental to the firm.”

In imposing the permanent cease-and-desist order prohibiting LH Ross from engaging in a wide range of activities, the panel said, “Any future attempt by LH Ross to solicit customers to invest in unregistered securities issued by the firm poses an extreme threat to the investing public.” In imposing an obligation on the firm to pay restitution of over \$11 million and prejudgment interest, the panel rejected, in the absence of complete and reliable documentation, Michelin’s assertion that all of the money raised had been spent on business related activities.

LH Ross has appealed the Hearing Panel’s decision to NASD’s National Adjudicatory Council.

### **NASD Fines Analyst \$75,000 for Circulating Rumor**

NASD has censured and fined Walter P. Piecyk, Jr., of Harrison, NY, \$75,000 for circulating a false and sensational rumor about RF Micro Devices, Inc., on Aug. 22, 2002.

Piecyk, a research analyst with Fulcrum Global Partners LLC in New York, circulated a negative rumor that RF Micro Devices’ largest client, Nokia Corporation, was delaying equipment orders to the company. Piecyk did not conduct a reasonable inquiry into whether there was a basis for the rumor. He circulated the rumor via instant messages and telephone calls to at least eight of Fulcrum’s institutional clients. As he circulated the rumor, Piecyk sold short a total of 3,000 shares of RF Micro Devices. Piecyk closed his short position in October 2002, earning a profit of \$7,815.

RF Micro Devices’ stock price declined during the morning of August 22, 2002, by about 10 percent, due at least in part to the rumor. The company had to publicly deny the rumor in the afternoon and the market price recovered before the end of the day. Trading volume in RF Micro Devices that day was over 23 million shares, more than double the average daily volume of over 10 million shares during the preceding six months.

RF Micro Devices, Inc., of Greensboro, North Carolina, designs, develops, and manufactures proprietary radio frequency integrated circuits, primarily for wireless communications products and applications. RF Micro Devices has been listed on the NASDAQ National Market since June 1997 and has been included in the NASDAQ-100 Index. Piecyk covers wireless

telecommunications companies, including Nokia, but not semiconductor manufacturers, such as RF Micro Devices, a supplier to telecommunications companies.

Piecyk’s failure to conduct a reasonable inquiry into the rumor and his circulating the rumor to his firm’s clients constituted a violation of NASD Conduct Rule 2110, which obligates members to observe high standards of commercial honor and just and equitable principles of trade. In settling this matter, Piecyk neither admitted nor denied the charges.

### **NASD Hearing Panel Expels Yankee Financial for Fraud, Orders Payment of More Than \$3.8 Million in Restitution**

#### **Yankee President Richard Kresge Barred From Acting as Principal or Supervisor**

An NASD Hearing Panel expelled Yankee Financial Group, Inc. of Melville, NY—and barred Yankee President Richard Kresge (CRD No. 729077) from associating with any NASD-registered firm as a principal or in any supervisory capacity—for engaging in fraudulent, high-pressure, boiler-room operations. The panel ordered the firm and Kresge to pay 10 customers more than \$3.8 million in restitution, plus interest and costs.

The case against Kresge and Yankee was the product of NASD’s investigation into a high-pressure, boiler-room type operation of a Yankee branch office in Brooklyn, NY in the fall of 2001 and spring of 2002. The investigation resulted in permanent bars for related fraudulent conduct against 12 registered individuals employed by Yankee and two other firms involved in the fraudulent scheme.

Brokers in Yankee’s Brooklyn branch office used high-pressure sales tactics, fraudulent misrepresentations, baseless price predictions, and omissions of material facts to persuade investors to purchase shares of three highly speculative OTCBB securities: Silver Star Foods, Inc., Western Media Group Corp., and Golden Chief Resources, Inc. Yankee brokers in many instances targeted sales of these stocks to elderly persons for whom they were patently unsuitable.

The Hearing Panel held that, “Yankee and Kresge are liable for ... [the] violations by the brokers in the Brooklyn office” because they were the brokers’ employers and ultimate supervisors, with the duty to establish guidelines for brokers’ conduct and to monitor brokers’ adherence to those guidelines. The Hearing Panel concluded that Kresge’s performance of due diligence in reviewing the backgrounds of brokers hired to staff the Brooklyn branch office was “grossly insufficient.” The panel noted that his “indifference to every aspect of its operation except its financial success was reckless and failed to prevent injury to the investing public.”

NASD's surveillance of the OTCBB and investigation of market activity in the three securities identified a number of individuals who participated in the fraud who were affiliated with Yankee and two other firms, Sierra Brokerage Services of Columbus, OH and Argus Securities of Hallandale, FL. As a consequence, 12 individuals have been barred, including:

- Kenneth Gliwa (CRD No. 1087236), Yankee's former Vice President, who settled charges that he failed to supervise the Brooklyn branch office, allowed two unregistered persons to hire brokers and operate the branch office, failed to conduct any meaningful review of the three securities to evaluate their suitability for the firm's customers, and allowed the firm to operate without any written supervisory procedures;
- Gary Giordano (CRD No. 2722480), former Yankee branch office manager, who settled charges of employing fraudulent sales practices, making unsuitable recommendations and failing to supervise brokers in the Brooklyn branch office;
- Jeffrey Richardson (CRD No. 736249), Sierra's President and head trader, who settled charges that he participated in an unlawful distribution of unregistered shares, generating millions of dollars for offshore entities controlled by the two individuals who owned and operated the Yankee Brooklyn branch office;
- Lawrence Dugo (CRD No. 2555823), a Yankee broker, and Samuel Barmapov (CRD No. 4245309), an Argus broker, who settled charges they used fraudulent sales practices in recommending shares to investors;
- Joseph Ferragamo (CRD No. 2868601), one of the owners of the Yankee Brooklyn branch office; Yankee brokers Vasily Kouznetsov (a.k.a. David Anderson) (CRD No. 4163388), Eric Cename (CRD No. 2207772) and Adam Klein (CRD No. 2686322); John Cook (CRD No. 1900910), Argus' former President; John Klukewycz (CRD No. 2477332), a former Argus branch manager; and Ilian Shteinberg (CRD No. 3208021), a former Argus broker, were all barred for failing to appear and testify in connection with NASD's investigation.

Yankee Financial Group, Inc., and Richard Kresge have appealed the Hearing Panel's decision to NASD's National Adjudicatory Council.

## **Banc One Securities Corporation Fined \$400,000 for Supervisory Failures Relating to Late Trading**

### **NASD Also Cites Banc One for Inaccurate Recording of Order Entry Times**

NASD censured and fined Banc One Securities Corporation \$400,000 for failing to implement adequate supervisory systems and written procedures designed to detect and prevent "late trading" of mutual funds, and for inaccurately recording the entry time for customer orders.

This is the largest fine imposed to date by NASD or any other regulator against a firm for supervisory failures relating to potential late trading.

"Late trading is illegal and to prevent it, firms must implement systems to guarantee that all mutual fund orders processed after the close of the market were received during normal trading hours," said NASD Vice Chairman Mary L. Schapiro. "NASD will be vigilant about sanctioning firms that fail to put adequate systems and procedures in place—regardless of whether late trading in fact occurs."

Late trading is the unlawful practice of placing mutual fund orders after the fund has calculated its daily net asset value (NAV)—typically at 4 p.m. EST—but receiving the price based upon that earlier, 4 p.m. calculation. Firms accepting mutual fund orders after the 4 p.m. NAV calculation are supposed to execute them at the following day's NAV.

Firms that permit late trades can provide select customers with an information advantage, allowing them to trade based on news that breaks after the markets close that could affect the value of the mutual fund's holdings, but which is not reflected in the NAV for that day. SEC and NASD rules prohibit late trading to ensure that all purchasers of mutual fund shares are on equal footing as to price and information on any given day. Firms executing mutual fund orders must establish and maintain supervisory systems and procedures reasonably designed to detect and prevent the occurrence of late trading.

NASD found that because of Banc One's deficient supervisory systems and procedures, from Nov. 1, 2002, through Nov. 11, 2003, customers were able to place mutual fund orders after the close of the market and still receive the current day's NAV. The firm failed to prevent its brokers from entering orders after 4 p.m. and failed to detect and prevent certain trades that were entered after 4 p.m. that received the current day's NAV. As a result, Banc One processed approximately 5,400 mutual fund orders during the relevant period after market

close at the current day's NAV. For some of those orders, available evidence was inconclusive as to whether the order was received before or after 4 p.m. For others, the evidence provided indicated that the order was received after the close of the market. Those 5,400 mutual fund orders represent 1.75 percent of the approximately 306,000 non-systematic mutual fund orders handled by Banc One during the period under investigation.

Banc One also violated SEC and NASD Rules by failing to accurately record the time it received orders from customers. Often, the recorded receipt time actually reflected the time the broker entered the order or, if the broker sent the order to a trader, the time the trader entered the order. This deficiency made it impossible for NASD investigators to determine whether the recorded receipt times for thousands of mutual fund orders received by Banc One between May 2, 2003, and November 11, 2003, were accurate.

In settling with NASD, Banc One neither admitted nor denied the allegations, but consented to the entry of NASD's findings.

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