

JANUARY 2006

Notice to Members

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Notice to Members

JANUARY 2006

SUGGESTED ROUTING

Corporate Finance
Legal and Compliance
Operations
Senior Management
Technology
Trading and Market Making
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KEY TOPICS

Debt Securities
Dissemination of Transaction
Information
Operations
Rule 6200 Series
TRACE Rules
Transaction Reporting

GUIDANCE

Corporate Debt Securities

SEC Approves Immediate Dissemination of Information on TRACE Transactions; **Effective Date: January 9, 2006**

Executive Summary

On December 28, 2005, the Securities and Exchange Commission (SEC or Commission) approved amendments to Rule 6250 of the Rule 6200 Series, also known as the Trade Reporting and Compliance Engine (TRACE) rules.¹ The amendments to Rule 6250 provide that information on *all* transactions in TRACE-eligible securities be disseminated immediately upon receipt, except those transactions in TRACE-eligible securities that are purchased or sold pursuant to Rule 144A under the Securities Act of 1933 (Securities Act) (Rule 144A transactions). Rule 6250, as amended, is set forth in Attachment A.

The amendments become effective on January 9, 2006.

Questions/Further Information

Questions concerning this *Notice* should be directed to tracefeedback@nasd.com; Elliot Levine, Chief Counsel, Transparency Services, Markets, Services and Information, at (202) 728-8405; or Sharon K. Zackula, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8985.

Discussion

Currently, NASD disseminates transaction information for secondary market transactions in all TRACE-eligible securities immediately upon receipt of the transaction information, except as detailed below.

- ▶ Information is disseminated on a delayed basis for the following TRACE-eligible securities transactions:
 - **Newly Issued Securities Rated BBB or Lower.** Transactions in newly issued BBB-rated TRACE-eligible securities that are executed during the first two business days after pricing are subject to a two-business day delay. See Rule 6250(a)(1). Those in newly issued TRACE-eligible securities rated BB or lower are subject to a 10-business day delay. See Rule 6250(a)(2).
 - **Non-Investment Grade Transactions Greater than \$1 Million.** Transactions that are greater than one million dollars (par value) in BB-rated TRACE-eligible securities that trade on average less than one time per day are disseminated two business days from the time of execution. See Rule 6250(b)(2)(A). Transactions that are greater than one million (par value) rated B or lower that trade on average less than one time per day are disseminated four business days from the time of execution. See Rule 6250(b)(2)(B).
- ▶ Information is reported to TRACE but NOT disseminated on Rule 144A transactions in TRACE-eligible securities.

NASD has amended Rule 6250 to eliminate all provisions for delayed dissemination and provide that information on all transactions in TRACE-eligible securities, except transactions executed pursuant to Rule 144A, be disseminated immediately.

- ▶ NASD will implement the amendments to Rule 6250 as follows:
 - For members that **execute** and **report** transactions in TRACE-eligible securities that are subject to dissemination delays under current subparagraphs (a)(1) and (2) and (b)(2)(A) and (B) of Rule 6250 prior to the effective date of the amendments, NASD will look to the date that the trade was **executed** and **reported** to determine the applicable dissemination protocol. Information about these transactions will not be disseminated until the period of delay has run (see Examples 1 and 2 below).
 - For members that **execute** transactions in TRACE-eligible securities that are subject to dissemination delays under Rule 6250 as referenced above prior to the effective date of the amendments, but **report** such transactions on or after the effective date, NASD will look to the date that the transactions were reported to determine the applicable dissemination protocol, with the result that the information will be disseminated immediately upon receipt (see Example 3 below).

The following are examples of how the implementation procedures will affect dissemination. **Note:** NASD will make the proposed rule change effective at **12:00:01 a.m. E.T.** on Monday, January 9, 2006.

- Example 1: On January 5, 2006, a member executes and reports a transaction subject to a four-business day delay. Under the implementation procedures, the transaction would be disseminated on Wednesday, January 11, 2006 with a "D" as/of indicator (showing that the trade took place at a prior date and time) and with a time stamp (indicating the exact date and time that the trade took place).
- Example 2: On January 5, 2006, a member executes and reports a transaction in a newly issued TRACE-eligible security subject to a 10-business day delay. Under the implementation procedures, the transaction would be disseminated on Friday, January 20, 2006 with a "D" as/of indicator (showing that the trade took place at a prior date and time) and with a time stamp (indicating the exact date and time that the trade took place).
- Example 3: On January 6, 2006, a member executes a transaction in a TRACE-eligible security subject to a four-business day delay. The member reports the transaction on January 9, 2006. Under the implementation procedures, the transaction would be disseminated immediately on January 9, 2006 with a "Y" as/of indicator (showing that the trade took place at a prior date and time) and with a time stamp (indicating the exact date and time that the trade took place).

See Attachment A for the full text of the amendments to Rule 6250.

Effective Date

The effective date of the amendments to Rule 6250 is January 9, 2006.

Endnote

- 1 See Securities Exchange Act Release No. 53031 (December 28, 2005), 71 Fed. Reg. 634 (January 5, 2006) (File No. SR-NASD-2005-120).

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ATTACHMENT A

The text of Rule 6250 is replaced in its entirety by the underlined rule text set forth below.

6250. Dissemination of Transaction Information

(a) Dissemination

NASD will disseminate information on all transactions in TRACE-eligible securities immediately upon receipt of the transaction report, except as provided below.

(b) Rule 144A Securities

NASD will not disseminate information on a transaction in a TRACE-eligible security that is effected pursuant to Rule 144A under the Securities Act of 1933.

Notice to Members

JANUARY 2006

SUGGESTED ROUTING

Executive Representatives
Legal & Compliance
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Registered Representative
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KEY TOPICS

IARDSM
Maintenance Fees
Registration
Renewals
Web CRD[®]

ACTION REQUIRED

2006 Final Renewal Statements and Reports

Broker-Dealer, Investment Adviser Firm, Agent and Investment Adviser Representative Renewals for 2006

Executive Summary

The 2006 NASD Broker-Dealer and Investment Adviser Renewal Registration Program is in its final phase this month. NASD is issuing this *Notice* to help firms review, reconcile and respond to their Final Renewal Statements and reports that are currently available on Web CRD/IARD.

Questions/Further Information

Questions regarding this *Notice* may be directed to the Gateway Call Center at (301) 869-6699.

Final Renewal Statements and Reports

On January 3, 2006, Final Renewal Statements and reports became available for viewing and printing. The 2006 Final Renewal Statement reflects the final status of agent, investment adviser representative, branch and firm registrations and/or Notice filings as of December 31, 2005. Any adjustments in fees owed as a result of registration terminations, approvals, firm IA registrations or Notice filings subsequent to the Preliminary Renewal Statement have been made in this final reconciled statement.

If a firm had more agents, investment adviser representatives, branch offices, or additional registrations or Notice filings on Web CRD/IARD at year's end than it did on November 19, 2005 when its Preliminary Renewal Statement was generated, additional fees were assessed. If a firm had fewer agents, investment adviser representatives or branch offices, registrations and/or Notice filings at year's end than it did when its Preliminary Renewal Statement was generated, a credit was applied to the firm's CRD/IARD daily (registration) account.

The 2006 Final Renewal Statement reflects the year-end 2005 total fees (as applicable) for:

- ◆ Web CRD/IARD system processing fees
- ◆ NASD and jurisdiction branch office fees
- ◆ American Stock Exchange (AMEX), Chicago Board Options Exchange (CBOE), International Securities Exchange (ISE), New York Stock Exchange (NYSE), Pacific Exchange (PCX) and Philadelphia Stock Exchange (PHLX) maintenance fees
- ◆ Jurisdiction agent renewal fees
- ◆ Jurisdiction broker-dealer renewal fees
- ◆ Jurisdiction investment adviser representative renewal fees
- ◆ Jurisdiction investment adviser firm renewal fees

Renewal Payment

A Final Renewal Statement that reflects a zero balance requires no further action by the firm. On January 3, 2006, all renewal overpayments were systematically transferred to firms' daily (registration) accounts. If you believe your firm is due a renewal refund, please check your firm's daily account to verify that funds are available. To request a refund check, have an appropriate signatory send a request on firm letterhead to:

NASD
Registration Management—CRD Accounting
9509 Key West Avenue
Rockville, MD 20850
(301) 869-6699

If the Final Renewal Statement reflects an **amount due**, NASD must receive payment no later than **February 3, 2006**. Firms have four (4) payment options:

Electronic Payment via Web CRD/IARD E-Pay:

Firms can access Web CRD/IARD E-Pay at <https://tradelinks2.mellon.com/cgi-bin/itsmenu.pl/nasd>. There is also a hyperlink to Web CRD/IARD E-Pay on the online Final Renewal Statement.

Check:

Make checks payable to NASD and be sure to indicate your firm's CRD number and the word "Renewals" on the memo line of the check. Print your Final Renewal Statement and mail the first page with your firm's check to:

U.S. Mail:

NASD, CRD-IARD
P.O. Box 7777-W8705
Philadelphia, PA 19175-8705

(The P.O. Box will **not** accept courier or overnight deliveries.)

Express Delivery:

NASD, CRD-IARD
W-8705
701 Market Street 199-3490
Philadelphia, PA 19106
Phone number: (301) 869-6699

Please note that the renewal payment addresses noted above are different than the payment addresses for the firm's daily (registration) account.

Wire Transfer:

Firms may wire full payment of the Final Renewal Statement by requesting their bank to initiate the wire transfer to: **"Mellon Financial, Philadelphia, PA."**

Firms should provide their bank with the following information:

Transfer funds to:	Mellon Financial, Philadelphia, PA
ABA Number:	031 000 037
Beneficiary:	NASD
Account Number:	8-234-353
Reference Number:	Firm CRD number and the word "Renewals"

To ensure prompt processing of your renewal payment by wire transfer:

- ◆ Remember to inform your bank that the funds are to be credited to NASD's bank account.
- ◆ Provide your firm's CRD number and the word "Renewals" as reference only.
- ◆ Record the confirmation number of the wire transfer given by your bank.

Transfer available funds from daily account to renewal account:

Firms may also call the NASD Gateway Call Center at (301) 869-6699 or send an email to webcrd@nasd.com and request a transfer of the full renewal balance from their daily account to their renewal account.

NOTE: The firm must have the available funds in order for the transfer to be processed.

Reviewing Final Renewal Reports

Renewal reports include all individual registrations renewed for 2006. Registrations that were "pending approval" or were "deficient" at year-end 2005 were not assessed renewal fees; therefore, they will not be reported on the Firm (Agent) Renewal Report. Firms should examine their reports carefully to ensure that all registration approvals and terminations are properly listed. It is also suggested that these reports be made a permanent part of firms' records.

Firm Renewal Report: applicable to broker-dealer and investment adviser firms. This report lists all renewed personnel with NASD, AMEX, CBOE, ISE, NYSE, PCX, PHLX and/or each jurisdiction. Individuals whose registrations are "approved" with any of these regulators during November and December will be included in this report, while registrations that are still pending approval or are deficient at year's end will not be included in the 2006 Renewal Program nor will they be listed on the report. Firms should use this report to reconcile their records for renewal purposes.

Branches Renewal Report: applicable to broker-dealer and investment adviser firms. This report lists each branch registered with NASD and other regulators who renew branches registered with them through Web CRD/IARD for which the firm was assessed a fee. Firms should use this report to reconcile their records for renewal purposes.

Discrepancies (NASD, AMEX/CBOE/ISE/NYSE/PCX/PHLX/Jurisdictions)

If a firm finds any discrepancies between its records and those maintained on Web CRD/IARD, the discrepancy must be reported to NASD at the same address used for refund requests. All discrepancies should be reported by February 3, 2006. Copies of appropriate documentation, such as a Web CRD-generated notice of termination, notification of deficient condition, or notice of approval from the firm's Web CRD/IARD queues should be readily available.

The 2006 Renewal Program Bulletin contains detailed instructions to help firms complete the renewal process. This publication can be found at www.nasd.com/renewals.

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Notice to Members

JANUARY 2006

SUGGESTED ROUTING

Internal Audit
Legal & Compliance
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KEY TOPICS

IM-2110-2
Manning Rule
Market Orders
Rule 2111

GUIDANCE

Market Order Protection

NASD Provides Guidance Regarding New Rule 2111 Prohibiting Members from Trading Ahead of Customer Market Orders Under Certain Circumstances;
Effective Date: January 9, 2006

Executive Summary

In October 2005, NASD issued *Notice to Members (NTM) 05-69* informing members of Securities and Exchange Commission (SEC) approval of new Rule 2111, Trading Ahead of Customer Market Orders. Among other things, new Rule 2111 prohibits a firm that accepts and holds a customer market order from trading for its own account at prices that would satisfy the customer market order, unless the firm immediately thereafter executes the customer market order. Rule 2111 becomes effective on January 9, 2006. In this *Notice*, NASD staff is providing questions and answers regarding the application of the new rule to assist member firms in their implementation. NASD filed this *Notice* with the SEC as a proposed rule change on January 6, 2006.¹ The proposed rule change became effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Securities Exchange Act and Rule 19b-4(f)(1) thereunder, in that the proposed rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing NASD rule. The compliance date of the proposed rule change will be January 9, 2006, which coincides with the compliance date for Rule 2111.

Questions/Further Information

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

Background

As further described in *NTM 05-69*, the SEC approved new Rule 2111, which prohibits a firm that accepts and holds a customer market order from trading for its own account on the same side of the market as the customer market order at prices that would satisfy the customer's market order, unless the firm immediately thereafter executes the customer market order up to the size and at the same price or better at which the firm traded for its own account.²

In addition, if a member is holding a customer market order that has not been immediately executed, Rule 2111 requires that the member make every effort to match the pending market order against any market orders, marketable limit orders or non-marketable limit orders priced better than the best bid or offer, received by the member on the other side of the market. Such orders must be executed at a price that is no less than the best bid, no greater than the best offer at the time the subsequent order is received by the member, and consistent with the terms of the pending market order. In the event that a member is holding multiple orders on both sides of the market that have not been executed, the member must make every effort to cross or otherwise execute such orders in a manner that is reasonable and is consistent with the objectives of the rule and with the terms of the orders. Members must have a written methodology in place governing the execution priority of all such pending orders, whether the member is holding one order or multiple orders on both sides of the market, and must ensure that such methodology is consistently applied. The new rule becomes effective on January 9, 2006.

Questions and Answers Relating to Market Order Protection

To help members implement Rule 2111, NASD is publishing the following questions and answers relating to the application of new Rule 2111.

Q1 To which securities does Rule 2111 apply?

A Rule 2111 applies to all NASDAQ and exchange-listed securities.

Q2 Does Rule 2111 apply to non-market makers?

A Yes. Rule 2111 applies to all firms that accept and hold customer market orders, irrespective of whether the firm is a market maker in the security.

Q3 Does Rule 2111 apply to orders accepted by a firm on a “not held” basis?

A An order for which a customer has granted the firm discretion with respect to time or price would not be considered a “market” order for the purposes of Rule 2111 and therefore would not be subject to the requirements of Rule 2111. However, this in no way changes a firm’s best execution obligations with respect to the order under Rule 2320.

Q4 Do the requirements under paragraphs (b) and (c) of Rule 2111 apply to odd-lot orders?

A No. In other words, odd-lot orders are not subject to the requirements under Rule 2111 (b) and (c); nor does the receipt of such orders on the other side of the market of a protected market order trigger the firm’s requirement to cross orders under Rule 2111(c). However, Rule 2111 does apply to mixed-lot orders (e.g., 150 shares) in both cases. In addition, firms are required to make every effort to execute odd-lot orders fully and promptly as required by Rule 2111(a) and must comply with Rule 2320(a) with respect to those orders.

Q5 Does Rule 2111 apply to customer market orders received from other broker-dealers?

A Yes. Similar to IM-2110-2, protected customer market orders include orders received from the firm’s own customers as well as customer orders of another broker-dealer.

Q6 For purposes of Rule 2111, what does “accepts and holds” a customer market order mean?

A A firm that has accepted a customer market order and does not immediately execute the order or immediately route the order to a market center for which the firm has a reasonable expectation that the order will be executed consistent with Rule 2320 will be deemed to have “accepted and held” the order for purposes of Rule 2111.

Q7 Once my firm has immediately routed a market order to another market center, does it still have any obligations under Rule 2111?

A Yes. Although a firm will not be deemed to have “accepted and held” a market order if the firm immediately routes the order to a market center for which the firm has a reasonable expectation that the order will be executed consistent with Rule 2320, the firm has a continuing obligation under Rule 2111 to monitor whether the order is, in fact, executed in accordance with Rule 2320 and the specific terms of the order. In this regard, it may be necessary for the firm to retract its order from the recipient market center to comply with Rule 2111 if it appears that the market center will not provide the order best execution.

Under these circumstances, once the firm has retracted the order, the firm is obligated to comply with the provisions of Rule 2111 with respect to the order if the firm accepts and holds the order at that time. However, in all cases, if the firm traded for its own account on the same side of the market as the routed customer order while the customer order was pending at another market center, the firm must immediately fill the customer order at the best price(s) and up to the size it traded for its own account while the order was pending.

Q8 Does Rule 2111 apply to institutional-sized market orders or market orders placed by large institutions?

A Yes. However, as orders for institutions and institutional-sized orders generally involve best-effort commitments and substantial capital commitments by the firm, firms handling such orders can negotiate specific terms and conditions to permit the firm to trade along side of, or ahead of, the institution or an institutional-sized order without violating Rule 2111. Such terms and conditions are permissible only if the market order is placed on behalf of an institutional account, as defined in Rule 3110(c)(4), or is greater than 10,000 shares (and the value of that order is \$100,000 or greater), and the customer agrees to the terms and conditions.

Q9 How should the firm disclose such terms and conditions, as described in Question 8, to customers?

A As noted above, Rule 2111 allows firms to negotiate specific terms and conditions that would permit the firm to trade along side of, or ahead of, the market order only with respect to institutional accounts or market orders that are 10,000 shares or more and the value of that order is \$100,000 or more. The firm imposing the terms and conditions on the market order must ensure that those terms and conditions are clearly disclosed and explained to the customer. The appropriate method of disclosure will depend on the customer's level of sophistication and understanding. For example, generalized, arms-length disclosure and acceptance procedures may be sufficient where the customer is sophisticated and clearly understands the disclosures being provided. A firm relying on this exclusion to Rule 2111 must document such disclosures and be able to demonstrate that it has met the conditions of the exclusion.

Q10 Does Rule 2111 mandate any particular methodology for market order handling priority procedures?

A NASD has not mandated any particular order handling procedures and execution priorities among market orders. Thus, a firm may choose any reasonable methodology for the way in which it executes multiple orders that it receives, but the firm must ensure that such methodology is applied consistently and complies with applicable rules and regulations. Such methodology must address the order handling and execution priority of all of the firm's orders, including, but not limited to, market orders, marketable limit orders and limit orders, as well as order handling procedures and execution priorities for orders that have been retracted as described in Question 7.

For example, a firm could use a first in first out (FIFO) methodology or some other objective methodology or formula. It would be inappropriate, however, for a firm's methodology to give priority, for example, to orders of certain "preferred accounts" or to give preference to institutional orders over retail orders.

To the extent a firm elects a specific methodology, the firm must document that methodology and have written supervisory procedures and systems in place to ensure that the methodology it has chosen is consistent with, among other things, the duty of best execution. Further, simply because a firm employs a methodology for order execution and that methodology is followed in a particular circumstance does not automatically mean that any or all customer orders executed pursuant to such a methodology have received best execution under Rule 2320.

Q11 Does Rule 2111 apply to orders for accounts where the firm is bound by another regulation limiting or prohibiting principal transactions with customer orders?

A Consistent with prior interpretations concerning the application of IM-2110-2,³ the obligation to execute a protected customer market order following a proprietary transaction on the same side of the market would not apply where the order is for an account for which the firm is limited or prohibited from executing a principal transaction with the customer order and the order subject to these restrictions has been sent to another broker-dealer for execution.

Q12 Assume the inside market for security ABCD is 10 to 10.05 and Firm A accepts and holds a market order to buy 1,000 shares of ABCD from Customer C1. If Firm A buys 1,000 shares of ABCD at 10 from Firm B (or from any other source), what obligations would Firm A have under Rule 2111?

A Firm A would be required to fill C1's order at 10 or better. Similarly, if Firm A bought shares for its own account below the best bid of 10, it would be required to fill C1's order at that same price below the bid or better.

Q13 Assume that the inside market for security ABCD is 10 to 10.05 and Firm A accepts and holds a market order to buy 1,000 shares of ABCD from Customer C1 and immediately thereafter, receives a market order to buy 500 shares of ABCD from Customer C2. If Firm A purchases 1,000 shares at 10 to fill C1's order on a riskless principal basis and otherwise meets the requirements of the riskless principal exception to Rule 2111, what are Firm A's obligation to C2?

A Firm A's riskless principal trade would not trigger an obligation by Firm A to execute C2's order under Rule 2111. Similarly, if Firm A were to execute C2's order for 500 shares on a riskless principal basis prior to executing C1's order, the riskless principal trade would not trigger an obligation by Firm A to execute (or partially execute) C1's order.

Q14 Assume the inside market for security ABCD is 10 to 10.05 and Firm A accepts and holds a market order to buy 1,000 shares of ABCD from Customer C1. Subsequent to the receipt of this order, Firm A receives a not held order from an institutional Customer C2 to sell 1,000 shares of ABCD on a net basis for a negotiated fee of .02 per share. If Firm A sells 1,000 shares of ABCD to the street at 10.02 and then buys and reports 1,000 shares of ABCD from Customer C2 at the net price of 10, at what price must the firm sell to Customer C1 to fill C1's pending market order to buy and still be in compliance with Rule 2111?

A Rule 2111 requires that Firm A execute Customer C1's order at a price of 10, the same price at which it traded for its own account, or better.

Q15 May a trading desk other than the market-making desk of the firm trade ahead of or along side a market order held by the market-making desk?

A As described in *NTM 95-43* (June 1995) and *NTM 03-74* (November 2003) relating to the application of IM-2110-2, if the firm implements and utilizes an effective system of internal controls, such as appropriate information barriers, that operate to prevent non-market-making desks engaged exclusively in proprietary trading from obtaining any knowledge of customer orders held at the market-making desk, those other proprietary non-market-making desks may continue to trade in a principal capacity at prices that would satisfy the customer market orders held at the market-making desk. As specifically noted in *NTM 03-74*, NASD will continue to examine and review firms' information barriers for compliance with this and other applicable information barrier standards to, among other things, ensure that there are proper information barriers in place to ensure that other desks are not able to access or benefit in any way from the information regarding trading by customer accounts at other desks.

Q16 If a firm accepts and holds a customer market order, but has not bought or sold securities for its own account on the same side of the market as the customer order and has not received a market order or marketable limit order on the other side of the market, what obligations does the firm have under Rule 2111?

A Rule 2111 and Rule 2320 require the firm to execute that customer market order fully and promptly. Under these facts and circumstances, Rule 2111 would not impose any additional specific obligations on the firm beyond the firm's current obligations to market orders. However, it is important to note that, to the extent a firm does not execute a market order fully and promptly, compliance with Rule 2111 would not safeguard the firm from potential liability due to non-compliance with its best execution responsibilities.

Q17 Assume that the inside market for security ABCD is 10 to 10.05 and Firm A accepts and holds a market order to buy 1,000 shares of ABCD from Customer C1 and immediately thereafter receives a market order to sell 1,000 shares of ABCD from Customer C2. Can Firm A price improve the execution of Customer C2's market order and not be required to execute C1's order?

A No. Rule 2111 requires that Firm A make every effort to cross C1's order at a price that is no less than the best bid (10) and no greater than the best offer (10.05) at the time that C2's market order to sell is received by Firm A. Unlike IM-2110-2, there is no ability to price improve an incoming order to avoid a Rule 2111 obligation to an unexecuted market order.

Q18 Once a firm trades through a customer market order, how quickly must it execute the market order to comply with Rule 2111?

A If a firm trades through a customer market order that it has accepted, the Rule provides that it must immediately execute such market order. To meet this obligation, a firm must execute the market order as quickly as possible. For further guidance, see *NTM 95-67* (Question and Answer No. 5) (August 1995) and *NTM 98-78* (September 1998).

Q19 Does the guidance provided by NASD in *NTM 98-78* (September 1998) concerning the application of IM-2110-2 during unusual market conditions apply to Rule 2111?

A Yes. As described in more detail in *NTM 98-78*, under appropriate circumstances, orders need not be filled within one minute if activated during unusual market conditions and if all reasonable steps are taken to execute the transaction as soon as possible following activation.⁴

Endnotes

1 See File No. SR-NASD-2006-003. See also 15 U.S.C. 78s(b)(3)(A)(i) and 17 CFR 240.19b-4(f)(1).

2 See Securities Exchange Act Release No. 52226 (August 9, 2005), 70 FR 48219 (August 16, 2005) (File No. SR-NASD-2004-045).

3 See Letters from The Nasdaq Stock Market, Inc., dated July 3, 1997, re: Exemption from Limit Order Protection Rule for Registered Investment Advisers Maintaining a Wrap Fee Account Programs, and dated April 16, 1997, re: Exemption from Limit Order Protection involving ERISA.

4 See NASD *NTM 98-78* (September 1998).

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Notice to Members

JANUARY 2006

SUGGESTED ROUTING

Legal & Compliance
Operations
Registered Representatives
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Trading

KEY TOPICS

Rule 3012 (Supervisory Control Systems)

GUIDANCE

Supervisory Controls

SEC Approves Amendments to NASD Rule 3012 to Require Members Relying on Rule 3012's "Limited Size and Resources" Exception to Notify NASD of their Reliance; **Effective Date: February 14, 2006**

Executive Summary

On November 18, 2005, the Securities and Exchange Commission (SEC) approved amendments to NASD Rule 3012 to require members relying on the "limited size and resources" exception to Rule 3012's general supervisory requirement for conducting producing managers' supervisory reviews to report electronically to NASD their reliance on the exception.

NASD is issuing this *Notice to Members (NTM)* to advise members of the rule change and to introduce the electronic reporting system that members will need to use to notify NASD of their reliance on Rule 3012's "limited size and resources" exception. Questions and answers relating to the rule change and the reporting system are included. The new rule text is in Attachment A and is effective on February 14, 2006. A sample screen shot of the electronic notification system Web page is in Attachment B.

Questions/Further Information

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

Background

Rule 3012 (Supervisory Control System) requires members to have a system of supervisory control policies and procedures that tests and verifies that a member's supervisory procedures are reasonably designed with respect to the activities of the member and its registered representatives and associated persons to achieve compliance with applicable securities laws and regulations and NASD rules and to amend those supervisory procedures when the testing and verification demonstrate a need to do so. Rule 3012 also requires that a member's supervisory control policies and procedures include, among other things, procedures that are reasonably designed to review and supervise the customer account activity conducted by a member's producing managers.

Generally, only a person senior to or "otherwise independent"¹ of a producing manager may conduct the producing manager's day-to-day supervisory reviews. However, Rule 3012 provides an exception for any member firm that is so limited in size and resources (the "limited size and resources" exception) that the member does not have sufficient senior or "otherwise independent" persons who can conduct the required supervisory reviews. In such situations, a principal who is sufficiently knowledgeable of the member's supervisory control procedures may conduct the required supervisory reviews.²

In its order approving Rule 3012, the SEC specified that NASD must notify the SEC of those members that elect to rely on Rule 3012's "limited size and resources" exception.³ In *NTM 04-71* (October 2004), the *Notice* announcing the SEC's approval of Rule 3012, NASD advised its members that it intended to file a rule change that would enable NASD to identify those firms relying on the exception. On June 23, 2005, NASD filed such a proposed rule change, which the SEC approved on November 18, 2005.⁴

Discussion

Pursuant to the approved amendments to Rule 3012, which become effective on February 14, 2006, any member that elects to rely on the "limited size and resources" exception to Rule 3012 to conduct any of its producing managers' supervisory reviews must notify NASD electronically (or through any other process prescribed by NASD) within thirty (30) days of the date on which the member first relies on the exception. If the member has been relying on the "limited size and resource" exception prior to February 14, 2006, the member must notify NASD of such reliance by March 16, 2006 (*i.e.*, within 30 days of February 14, 2006).

Once a member has provided its initial notification of reliance on Rule 3012's "limited size and resources" exception, the member will need to notify NASD of its continued reliance on the exception on an annual basis.⁵ Each ensuing annual notification by the member must be effected no later than on the anniversary date of the previous year's notification.⁶ If a member determines that it no longer needs to rely on the "limited size and resources" exception to Rule 3012 to conduct any of its producing managers' supervisory reviews, the member must notify NASD electronically (or through any other process prescribed by NASD) within thirty (30) days of ceasing to rely on the exception.⁷

Rule 3012 Exception Notification System

To facilitate members' compliance with these notification requirements, NASD has created the Rule 3012 Exception Notification System. The system can be accessed directly at www.nasd.com/RegNotes 3012. In addition, members can access the form by going to NASD's Web site home page (www.nasd.com), selecting the tab at the top of the page entitled "Regulatory Systems" and the following links: Regulation Filing Applications > Regulatory Notifications > NASD Rule 3012 Exception.

Members will use the user ID and password they have received from the NASD Entitlement Program (www.nasd.com/entitlement)⁸ to log onto the Rule 3012 Exception Notification System. Once logged into the system, a Web page with the notification form will appear (see Attachment B). Members should then complete the appropriate fields and select the notification option that is most appropriate for the members' individual notification requirements. Members should be aware that some information fields will pre-populate automatically based on previously provided information in NASD records. For example, if a firm is using the Rule 3012 Exception Notification System to provide the required annual notification of its continued reliance on the exception, the system will pre-populate the information field entitled "Prior Notification Date" with the date of the firm's previous notification.

After completing the notification form, members should click on the word "review." A page will then be displayed permitting members to review the notification form. After completing the review, members should click on the word "submit" displayed on that page. After the form has been submitted, the notification system will display a confirmation page that members should print for their records.

Questions and Answers Regarding the New Requirement for Members to Notify NASD of their Reliance on Rule 3012's "Limited Size and Resources" Exception

To help members relying on Rule 3012's "limited size and resources" exception, NASD is publishing the following questions and answers relating to the notification requirement and the Rule 3012 Exception Notification System.

Q1: When can my firm start using the Rule 3012 Exception Notification System to notify NASD of the firm's reliance on Rule 3012's "limited size and resources" exception?

A: The Rule 3012 Exception Notification System will be online February 14, 2006, the rule amendments' effective date.

Q2: My firm started relying on Rule 3012's "limited size and resources" exception before the February 14, 2006 effective date of the notification requirement and is continuing to rely on the exception. When does the firm have to notify NASD of its reliance on the exception? How will my firm use the Rule 3012 Exception Notification System to make that notification?

A: The firm will need to notify NASD of the firm's reliance on the exception no later than March 16, 2006 (*i.e.*, within 30 days of February 14, 2006). The firm would choose the notification option that states that the firm has determined to rely on the exception and provide the date the firm began relying on the exception.

Q3: My firm started relying on Rule 3012's "limited size and resources" exception in March 2005 but determined in December 2005 that it no longer needed to rely on the exception. What are the firm's notification obligations under those circumstances?

A: Prior to the recent amendments to Rule 3012 discussed in this *NTM*, which become effective on February 14, 2006, members were not required to notify NASD of their reliance on Rule 3012's "limited size and resource" exception or any subsequent cessation of reliance on the exception. Accordingly, a firm that relied on the exception prior to February 14, 2006, but also ceased relying on the exception prior to that date, does not have any notification obligation. However, if the firm determines on or after February 14, 2006 to rely on the exception, the firm must comply with Rule 3012's notification provisions.

Q4: What are my firm's notification obligations if the firm decides after February 14, 2006 to cease relying on Rule 3012's "limited size and resources" exception and notifies NASD through the Rule 3012 Exception Notification System but then subsequently determines that it needs to rely on the exception once again?

A: If a firm that has previously used the Rule 3012 Exception Notification System to notify NASD that it has ceased relying on the exception subsequently determines that it needs to rely on the exception once again, the firm will have to notify NASD of its renewed reliance on the exception. The firm will notify NASD by using the notification option that states that the firm has determined to rely on the exception and providing the date the firm began relying on the exception. The firm will have to provide this notification within 30 days of its renewed reliance on the exception.

Q5: I understand that Rule 3010 (Supervision) also has a "limited size and resources" exception. Is this exception the same as Rule 3012's "limited size and resources" exception? Also, should my firm use the NASD Exception Reporting System to notify NASD if the firm is relying on Rule 3010's exception?

A: Rule 3010's "limited size and resources" exception is different from Rule 3012's "limited size and resources" exception. As noted earlier, Rule 3012's exception addresses who may conduct a producing manager's supervisory reviews if the firm cannot meet the general supervisory requirement that someone who is either senior to or "otherwise independent" of the producing manager conduct the producing manager's day-to-day supervisory reviews. Rule 3010's "limited size and resources" exception addresses who may conduct an office inspection if a firm cannot meet the general inspection requirement that someone other than a branch office manager, any person within that office who has supervisory responsibilities, or any individual who is directly or indirectly supervised by such persons conduct the office inspection.

Rule 3012's notification requirement only applies when a firm is relying on Rule 3012's "limited size and resources" exception. There is no similar notification requirement with respect to a firm's reliance on Rule 3010's "limited size and resources" exception. However, Rule 3010 does require that a firm relying on the "limited size and resources" exception document in its office inspection reports the factors it has used to determine that the firm has no other alternative than to comply in this manner.

Endnotes

- 1 For purposes of Rule 3012, "an 'otherwise independent' person: may not report either directly or indirectly to the producing manager under review; must be situated in an office other than the office of the producing manager; must not otherwise have supervisory responsibility over the activity being reviewed (including not being directly compensated based in whole or in part on the revenues accruing for those activities); and must alternate such review responsibility with another qualified person every two years or less." Rule 3012(a)(2)(A)(i).
- 2 Rule 3012(a)(2)(A)(ii).
- 3 See Exchange Act Release No. 50477 (Sept. 30, 2004), 69 FR 59972 (Oct. 6, 2004) (SR-NASD-2004-116).
- 4 See Exchange Act Release No. 52799 (Nov. 18, 2005), 70 FR 71573 (Nov. 29, 2005) (SR-NASD-2005-084).
- 5 See Rule 3012(a)(2)(A)(iii) and n.2.
- 6 See Rule 3012(a)(2)(A)(iii), n.2.
- 7 See Rule 3012(a)(2)(A)(iii).
- 8 The NASD Entitlement Program is an initiative that replaced the security component of participating, Web-based systems with a shared entitlement service. This service provides authorized users the ability to access these systems with a single NASD user ID and password. Currently, there are nearly 20 NASD applications available via this shared entitlement platform, and more applications will be added in the future. If a member does not have an NASD entitlement account, account set-up instructions can be found at www.nasd.com/web/idcplg?IdcService=SS_GET_PAGE&nodeId=1166. Questions regarding the Entitlement forms or process should be directed to the NASD Gateway Call Center at (301) 869-6699 (broker-dealer firms) or (240) 386-4848 (investment adviser firms).

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ATTACHMENT A

Text of approved rule changes

New text is underlined; deleted text is bracketed.

Rule 3012 Supervisory Control System

(a) No Change.

(1) No Change.

(2) The establishment, maintenance, and enforcement of written supervisory control policies and procedures pursuant to paragraph (a) shall include:

(A) procedures that are reasonably designed to review and supervise the customer account activity conducted by the member's branch office managers, sales managers, regional or district sales managers, or any person performing a similar supervisory function.

(i) General Supervisory Requirement. A person who is either senior to, or otherwise independent of, the producing manager must perform such supervisory reviews. For purposes of this Rule, an "otherwise independent" person: may not report either directly or indirectly to the producing manager under review; must be situated in an office other than the office of the producing manager; must not otherwise have supervisory responsibility over the activity being reviewed (including not being directly compensated based in whole or in part on the revenues accruing for those activities); and must alternate such review responsibility with another qualified person every two years or less.

(ii) "Limited Size and Resources" Exception. If a member is so limited in size and resources that there is no qualified person senior to, or otherwise independent of, the producing manager to conduct the reviews pursuant to (i) above (e.g., a member has only one office or an insufficient number of qualified personnel who can conduct reviews on a two-year rotation), the reviews may be conducted by a principal who is sufficiently knowledgeable of the member's supervisory control procedures, provided that the reviews are in compliance with (i) to the extent practicable.

(iii) Notification Requirement. If a member determines that it must rely on the “limited size and resources” exception set forth in (ii) above to conduct any of its producing managers’ supervisory reviews, the member must notify NASD through an electronic process (or any other process prescribed by NASD) within 30 days of the date on which the member first relies on the exception,¹ and annually thereafter.² If a member subsequently determines that it no longer needs to rely on the exception to conduct any of its producing managers’ supervisory reviews, the member must, within 30 days of ceasing to rely on the exception, notify NASD by using the electronic process or any other process prescribed by NASD.

[iii](iv) Documentation Requirement. A member relying on (ii) above must document in its supervisory control procedures the factors used to determine that complete compliance with all of the provisions of (i) is not possible and that the required supervisory systems and procedures in place with respect to any producing manager comply with the provisions of (i) above to the extent practicable.

* * * * *

1. The “limited size and resources” exception became effective on January 31, 2005, prior to the effective date of the notification requirement set forth in this subparagraph (iii). In the event a member is already relying on the “limited size and resources” exception (or determines to rely on the exception prior to the effective date of the notification requirement), the member must notify NASD of such reliance within 30 days of the effective date of the notification requirement.
2. Members must ensure that each ensuing annual notification is effected no later than on the anniversary date of the previous year’s notification.

Attachment B:

Sample screen shot of the Rule 3012 Exception Notification System

Investor protection. Market integrity. **NASD**
ack NASD

HomeRegulationInvestor EducationDispute ResolutionProfessional Development

Firm Notification to Rely on the Limited Size and Resources Exception in NASD Rule 3012

Firm Information

Name	CRD#	
<input type="text"/>	<input type="text"/>	
City	State/Province	Phone
<input type="text"/>	<input type="text"/>	<input type="text"/>
Chief Compliance Officer	Executive Representative	
<input type="text"/>	<input type="text"/>	

NASD Information for Member

NASD District Office	NASD District Phone #
<input type="text"/>	<input type="text"/>
NASD District Examiner	NASD District Supervisor
<input type="text"/>	<input type="text"/>

Notice Information

Name of Person Filing Notice	CRD #	Today's Date mm/dd/yyyy
<input type="text"/>	<input type="text"/>	<input type="text"/>
E-Mail Address	Phone Number	
<input type="text"/>	<input type="text"/>	

Pursuant to Rule 3012(a)(2)(iii) members electing to rely on the "limited size and resources" exception to conduct any of its producing managers' supervisory reviews must fulfill certain notifications requirements. Specifically, members must notify NASD electronically (or through any other process prescribed by NASD) within 30 days of the date on which the member relies on the exception. If, however, the member has been relying on the exception prior to February 14, 2006, the effective date of this notification requirement, the member must notify NASD by March 16, 2006. Afterwards, the member will need to notify NASD of its continued reliance on the exception on an annual basis. If the member determines that it no longer needs to rely on the exception, the member must provide a one-time notification to NASD within 30 days of ceasing to rely on the exception. Please be aware that NASD is required to notify the SEC of this information.

Please select the section that best fulfills your firm's notification obligations and provide the requested dates. Please note that you may choose only one section.

If your firm has determined to rely on Rule 3012's "limited size and resources" exception, please provide the date on which the firm began to rely on the exception.

Date of Firm's Reliance

If your firm has previously notified NASD of its reliance on Rule 3012's "limited size and resources" exception and intends to continue to rely upon the exception, please provide an annual notification of continued reliance. Please note that each ensuing annual notification must be effected no later than on the one-year anniversary date of the previous year's notification.

Annual Notification Date Prior Notification Date

If your firm has determined that it no longer needs to rely on Rule 3012's "limited size and resources" exception, please provide the date on which the firm ceased relying on the exception. Please note that your firm must provide this information within 30 days of ceasing to rely on the exception. This is a one-time notification requirement. Firms are not required to provide this information on an annual basis.

Date Firm Ceased its Reliance

Notice to Members

JANUARY 2006

SUGGESTED ROUTING

Advertising/Investment Companies
Executive Representatives
Legal and Compliance
Mutual Fund
Registered Representatives
Senior Management

KEY TOPICS

Bond Mutual Fund Volatility Ratings
IM-2210-5
Rule 2210

GUIDANCE

Bond Mutual Fund Volatility Ratings

SEC Approves Permanent Rules Concerning Bond Mutual Fund Volatility Ratings; **Effective Date: December 27, 2005**

Executive Summary

On December 27, 2005, the Securities and Exchange Commission (SEC) approved a proposed rule change to make permanent Rule 2210(c)(3) and Interpretive Material 2210-5 (collectively, the "Rule") concerning bond mutual fund volatility ratings.¹ The Rule previously had operated as a pilot program. Interpretive Material 2210-5 permits members and associated persons to include bond mutual fund volatility ratings in supplemental sales literature, subject to certain conditions. Rule 2210(c)(3) requires supplemental sales literature containing bond mutual fund volatility ratings to be filed with the Advertising Regulation Department (the Department) for review and approval at least 10 days prior to use.

The Rule became immediately effective on the date of SEC approval. Included with this *Notice* is Attachment A (text of rule as amended).

Questions/Further Information

Questions or comments concerning this *Notice* may be directed to Joseph P. Savage, Associate Vice President, Investment Companies Regulation, Regulatory Policy and Oversight (RPO), at (240) 386-4534; or Philip A. Shaikun, Associate General Counsel, RPO, at (202) 728-8451.

Discussion

On February 29, 2000, the SEC approved the adoption of NASD Interpretive Material 2210-5, which permits members and their associated persons to include bond fund volatility ratings in supplemental sales literature (mutual fund sales material that is accompanied or preceded by a fund prospectus). The SEC also approved at that time new NASD Rule 2210(c)(3), which sets forth the filing requirements and review procedures applicable to sales literature containing bond mutual fund volatility ratings.² Previously, NASD staff interpreted NASD rules to prohibit the use of bond fund volatility ratings in sales material.

IM-2210-5 permits the use of bond fund volatility ratings only in supplemental sales literature and only if certain conditions are met:

- ◆ The word “risk” may not be used to describe the rating.
- ◆ The rating must be the most recent available and be current to the most recent calendar quarter ended prior to use.
- ◆ The rating must be based exclusively on objective, quantifiable factors.
- ◆ The entity issuing the rating must provide detailed disclosure on its rating methodology to investors through a toll-free telephone number, Web site, or both.
- ◆ A disclosure statement containing all of the information required by the Rule must accompany the rating. The statement must include such information as the name of the entity issuing the rating, the most current rating and the date it was issued, and a description of the rating in narrative form containing certain specified disclosures.

Rule 2210(c)(3) requires members to file bond mutual fund sales literature that includes or incorporates volatility ratings with the Department at least 10 days prior to use for Department approval. If the Department requests changes to the material, the material must be withheld from publication or circulation until the requested changes have been made or the material has been re-filed and approved. For a more complete description of IM-2210-5 and Rule 2210(c)(3), please see *Notice to Members 00-23* (April 2000).

The SEC originally approved the Rule on an 18-month pilot basis, until August 31, 2001, to provide NASD an opportunity to assess whether the Rule had facilitated the dissemination of useful, understandable information to investors, and whether it had prevented the dissemination of inappropriate and misleading information. NASD also sought to consider whether additional guidance concerning the use of certain terminology was necessary, whether the Rule should apply to in-house ratings, whether the Rule should apply to all investment companies, and whether additional standards or guidance was needed to prevent investor confusion or minimize excessive variability among ratings of similar portfolios.

Due to the small number of bond fund volatility ratings filings received during the Rule's initial 18-month pilot, NASD extended the pilot to accumulate more data with which to evaluate the program. Ultimately, during the entire period from February 2000, when the Rule was first approved, until the present, NASD has received a total of 47 submissions from seven NASD members. In general, the filings of sales material that contained bond fund volatility ratings have met the Rule's requirements.

Based on its findings during this period, NASD concluded that the Rule's provisions are appropriate and should be made permanent without further amendment. NASD believes that the Rule has facilitated the dissemination of useful and understandable information to investors and has prevented the dissemination of inappropriate or misleading information.

NASD also considered whether the timeliness requirements of IM-2210-5 (which requires sales literature to reflect information that, at a minimum, is current to the most recently completed calendar quarter end) continue to be appropriate. In this regard, since the Rule's adoption, SEC Rule 482 has been amended generally to require advertised mutual fund performance to be current as of the most recent month-end, or alternatively, to disclose where the reader may obtain the most recent month-end performance.³ NASD determined that it is unnecessary to modify the timeliness requirements of IM-2210-5(b)(2) to mirror those of amended Rule 482, since NASD understands that it is quite rare for ratings agencies to revise a volatility rating on a month-to-month basis. Nevertheless, a member may not distribute supplemental sales literature containing a bond fund volatility rating if the member knows or has reason to know that the rating is false or misleading, even if the rating was current as of the most recent calendar quarter end.⁴

See Attachment A for the full text of IM 2210-5 as amended.

Effective Date

The Rule became permanently effective on December 27, 2005, the date the SEC approved the proposed rule change.

Endnotes

- 1 See Securities Exchange Act Release No. 53027 (Dec. 27, 2005); 71 FR 375 (Jan. 4, 2006) (SR-NASD-2005-117).
- 2 See Securities Exchange Act Release No. 42476 (Feb. 29, 2000); 65 FR 12305 (March 8, 2000) (SR-NASD-97-89).
- 3 See SEC Rule 482(g) under the Securities Act of 1933, 17 C.F.R. 230.482(g) .
- 4 See NASD Rule 2210(d)(1)(B).

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ATTACHMENT A – RULE TEXT

IM-2210-5. Requirements for the Use of Bond Mutual Fund Volatility Ratings

(a) Definition of Bond Mutual Fund Volatility Ratings

For purposes of this Rule and any interpretation thereof, the term "bond mutual fund volatility rating" is a description issued by an independent third party relating to the sensitivity of the net asset value of a portfolio of an open-end management investment company that invests in debt securities to changes in market conditions and the general economy, and is based on an evaluation of objective factors, including the credit quality of the fund's individual portfolio holdings, the market price volatility of the portfolio, the fund's performance, and specific risks, such as interest rate risk, prepayment risk, and currency risk.

(b) Prohibitions on Use

Members and persons associated with a member may use a bond mutual fund volatility rating only in supplemental sales literature and only when the following requirements are satisfied:

- (1) The rating does not identify or describe volatility as a "risk" rating.
- (2) The supplemental sales literature incorporates the most recently available rating and reflects information that, at a minimum, is current to the most recently completed calendar quarter ended prior to use.
- (3) The criteria and methodology used to determine the rating must be based exclusively on objective, quantifiable factors. The rating and the Disclosure Statement that accompanies the rating must be clear, concise, and understandable.
- (4) The supplemental sales literature conforms to the disclosure requirements described in paragraph (c).
- (5) The entity that issued the rating provides detailed disclosure on its rating methodology to investors through a toll-free telephone number, a web site, or both.

(c) Disclosure Requirements

(1) Supplemental sales literature containing a bond mutual fund volatility rating shall include a Disclosure Statement containing all the information required by this Rule. The Disclosure Statement may also contain any additional information that is relevant to an investor's understanding of the rating.

(2) Supplemental sales literature containing a bond mutual fund volatility rating shall contain all current bond mutual fund volatility ratings that have been issued with respect to the fund. Information concerning multiple ratings may be combined in the Disclosure Statement, provided that the applicability of the information to each rating is clear.

(3) All bond mutual fund volatility ratings shall be contained within the text of the Disclosure Statement. The following disclosures shall be provided with respect to each such rating:

(A) the name of the entity that issued the rating;

(B) the most current rating and date of the current rating, with an explanation of the reason for any change in the current rating from the most recent prior rating;

(C) a description of the rating in narrative form, containing the following disclosures:

(i) a statement that there is no standard method for assigning ratings;

(ii) a description of the criteria and methodologies used to determine the rating;

(iii) a statement that not all bond funds have volatility ratings;

(iv) whether consideration was paid in connection with obtaining the issuance of the rating;

(v) a description of the types of risks the rating measures (e.g., short-term volatility);

(vi) a statement that the portfolio may have changed since the date of the rating; and

(vii) a statement that there is no guarantee that the fund will continue to have the same rating or perform in the future as rated.

Notice to Members

JANUARY 2006

SUGGESTED ROUTING

Internal Audit
Institutional
Legal and Compliance
Retail
Senior Management
Training

KEY TOPICS

Business Entertainment
Commercial Bribery
Gifts and Gratuities
Rule 3060

REQUEST FOR COMMENT

Gifts and Business Entertainment

NASD Requests Comment on Proposed Interpretive Material IM-3060 Addressing Gifts and Business Entertainment; **Comment Period Expires February 23, 2006**

Executive Summary

NASD is proposing interpretive material (IM) to Rule 3060 (Influencing or Rewarding Employees of Others) to more explicitly outline the policies and procedures a member must adopt in connection with its business entertainment practices with employees of a customer. The proposed IM would expand on and supersede prior staff guidance in this area.

Action Requested

NASD encourages all interested parties to comment on this proposal. Comments must be received by **February, 23, 2006**. Members and interested persons can submit their comments using the following methods:

- ▶ Mail comments in hard copy to the address on the address below; or
- ▶ Email written comments to pubcom@nasd.com.

To help NASD process and review comments more efficiently, persons commenting on this proposal should use only one method. Comments sent by hard copy should be mailed to:

Barbara Z. Sweeney
Office of the Corporate Secretary
NASD
1735 K Street, NW
Washington, D.C. 20006-1506

06-06

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

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

Questions/Further Information

As noted above, hard copy comments should be mailed to Barbara Z. Sweeney. Questions regarding this *Notice* may be directed to Gary L. Goldsholle, Associate Vice President and Associate General Counsel, Office of General Counsel, NASD Regulatory Policy and Oversight, at (202) 728-8104.

Background and Discussion

Rule 3060 prohibits any member or person associated with a member, directly or indirectly, from giving anything of value in excess of \$100 per year to any person where such payment is in relation to the business of the recipient's employer. The rule protects against improprieties that may arise when members or their associated persons give gifts or gratuities to employees of a customer.

In response to an interpretive request, the staff in 1999 issued a letter stating that Rule 3060 does not prohibit "ordinary and usual business entertainment" (such as an occasional meal, sporting event, theater production or comparable entertainment event) provided that such entertainment is "neither so frequent nor so extensive as to raise any question of propriety."³ This interpretive position was based in part upon NASD's rules governing non-cash compensation in connection with the offer and sale of investment company shares and variable annuities.⁴

In light of recent events, NASD has proposed an IM to Rule 3060 to more explicitly outline the policies and procedures that a member must adopt in connection with its business entertainment practices. The proposed IM (set forth in Attachment A) would supersede any prior guidance, including the 1999 Letter.

The Proposed IM

The proposed IM defines the terms “customer” and “business entertainment.” For purposes of IM-3060, a “customer” is a “person that maintains or whose employee receives business entertainment for the purpose of having such person prospectively maintain, an account with a member or is otherwise a customer of the member for the purpose of investment banking or securities business, and has an employee, agent or representative act on behalf of the account in some capacity in respect of such account or customer relationship with the member.” This definition recognizes the proposed distinction between business entertainment provided directly to natural person customers (which is not covered by Rule 3060) and business entertainment provided to employees, agents or representatives of a customer (which is covered by Rule 3060).⁵

The proposed IM also defines the term “business entertainment” as entertainment “in the form of any social event, hospitality event, charitable event, sporting event, entertainment event, meal, leisure activity or event of like nature or purpose, as well as any transportation and/or lodging accompanying or related to such activity or event, including such business entertainment offered in connection with an educational event or business conference, in which a person associated with a member accompanies and participates with such employee irrespective of whether any business is conducted during, or is considered attendant to, such event.” This definition codifies NASD’s longstanding position that a member must accompany or participate in an event for it to be deemed business entertainment. Thus, for example, if a member gives tickets to a sporting event but does not accompany the recipient to the event, the tickets are deemed to be a gift rather than business entertainment. In addition, the definition of “business entertainment” expressly includes transportation and lodging expenses provided by a member.

The overriding principle of the proposed IM is that a member or its associated persons should not do or give anything of value to an employee of a customer that is intended or designed to cause, or otherwise would be reasonably judged to have the likely effect of causing, such employee to act in a manner that is inconsistent with the best interests of the customer. The proposed IM provides guidance concerning the written policies and procedures that members must adopt surrounding their business entertainment practices. First, the member must determine and define the forms of business entertainment that are appropriate and inappropriate, including appropriate venues, nature, frequency, types and class of accommodation and transportation, and either firm dollar limits or thresholds requiring advance written approval. Notably, the proposed IM does not impose hard limits, nor does it require that all members adopt the same limits or even treat all recipients equally. At the same time, however, a member’s policies and procedures must not be so unbounded or vague that no reasonable determination of propriety can be discerned. In addition, the proposed IM expressly would allow members to set different standards for business entertainment in connection with events that are educational, charitable or philanthropic in nature.

Second, the member's written policies and procedures must promote conduct consistent with Rule 2110 and should not undermine the performance of an employee's duty to a customer. A member's policies and procedures should preclude providing business entertainment that is so lavish or extensive in nature that an employee would likely feel compelled to act in a manner inconsistent with the interests of his or her employer (such as directing order flow without due regard to best execution or other transaction pricing considerations).

Third, the written policies and procedures must provide for effective supervision and compliance with a member's business entertainment policies. Members are free to define the approach and method of their written policies and procedures provided they are reasonably designed to comport with the principles stated in the proposed IM. Irrespective of the manner in which a member crafts its procedures, however, it must be clear from the supervisory policies and procedures those factors that determine appropriate levels of business entertainment and how those determinations are executed, monitored and enforced. Moreover, the supervisory procedures should provide a method for evidencing both the breadth of supervisory activities as well as the information upon which such supervision is conducted.

Fourth, members must maintain detailed records of business entertainment expenses and make such information available to the customer in respect of its employees upon written request. This would allow a customer to verify and review the types of business entertainment received by its employees, which may serve as additional protection against awarding business entertainment that causes, or has the likely effect of causing the recipient to act in a manner that is inconsistent with the best interests of his or her employer.

Fifth, the member must establish standards to ensure that persons designated to supervise, approve and document business entertainment expenses are sufficiently qualified and that periodic monitoring for compliance with the written policies and procedures is conducted. While the proposed IM does not require an independent review in all cases, as a general matter, firms should, where practicable, establish procedures to have periodic monitoring of business entertainment by an independent reviewer. And sixth, members should oversee the training and education of all personnel concerning the firm's business entertainment policies and procedures.

Finally, the proposed IM expressly states that firms may not offer anything of value, including, but not limited to, business entertainment, which comprises conduct that is illegal under any applicable law or would expose the member, customer or recipient to any civil liability to any governmental authority or agency.

Endnotes

- 1 See *Notice to Members 03-73* (November 2003) (NASD Announces Online Availability of Comments). Personal identifying information, such as names or email addresses, will not be edited from submissions. Submit only information that you wish to make publicly available.
- 2 Section 19 of the Securities Exchange Act of 1934 (Exchange Act) permits certain limited types of proposed rule changes to take effect upon filing with the SEC. The SEC has the authority to summarily abrogate these types of rule changes within 60 days of filing. See Exchange Act Section 19 and rules thereunder.
- 3 Letter to Henry H. Hopkins and Sarah McCafferty, T. Rowe Price Investment Services, Inc., from R. Clark Hooper, NASD, dated June 10, 1999 (1999 Letter).
- 4 See Rules 2820(g)(4)(B) and 2830(l)(5)(B).
- 5 Members cannot circumvent this proposed interpretive material by providing business entertainment to a natural person customer who also is an employee, agent or representative of a customer by claiming that such business entertainment applies only to the “natural person” relationship.

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ATTACHMENT A

Proposed IM Text

IM-3060. Entertainment of the Employees of Persons who are Customers of a Member

The NASD Board of Governors is issuing this interpretation concerning the obligations of a member in connection with any entertainment of the employees of a person who is a customer of the member. This interpretation supersedes any prior interpretive letters or statements of NASD staff on this matter.

For the purpose of this interpretation the following terms are defined:

The term "customer" means a person that maintains, or whose employee receives business entertainment for the purpose of having such person prospectively maintain, an account with a member or is otherwise a customer of the member for the purposes of investment banking or securities business, and has an employee, agent or representative act on behalf of the account in some capacity in respect of such account or customer relationship with the member. The term "employee(s)" means all persons who are employees, officers, directors, agents or representatives of a customer.

The term "business entertainment" means providing entertainment to an employee in the form of any social event, hospitality event, charitable event, sporting event, entertainment event, meal, leisure activity or event of like nature or purpose, as well as any transportation and/or lodging accompanying or related to such activity or event, including such business entertainment offered in connection with an educational event or business conference, in which a person associated with a member accompanies and participates with such employee irrespective of whether any business is conducted during, or is considered attendant to, such event. Any thing of value given to an employee that is not defined as entertainment is a gift under Rule 3060.

The observance of the "high standards of commercial honor and just and equitable principles of trade" required of a member in the conduct of its business under Rule 2110 includes the obligation of a member not to act in a manner contrary to the best interests of a customer in the conduct of business with or for such customer. Consequently, when a member interacts with an employee of a customer, the member should not do or give anything of value to the employee that is intended or designed to cause, or otherwise would be reasonably judged to have the likely effect of causing, such employee to act in a manner that is inconsistent with the best interests of the customer.

Rule 2110 precludes the offering of any thing of value, including but not limited to business entertainment, which comprises conduct, that to any degree, is either illegal under any applicable law or would expose the member, customer or recipient of the member's entertainment to any civil liability to any governmental authority or agency. For example, any business entertainment that violates the Foreign Corrupt Practices Act, or any commercial bribery statutes and laws, or would subject the member or employee (or customer by reason of respondeat superior) to any civil penalties to any governmental authority or agency because of the entertainment, in turn violates Rule 2110 and this interpretation.

Written Policies and Procedures

Members must have written policies and procedures that:

- (1) determine and define forms of business entertainment that are appropriate and inappropriate, including the appropriate venues, nature, frequency, types and class of accommodation and transportation in connection with business entertainment, and either the dollar amounts of business entertainment or specified dollar thresholds requiring advance written supervisory approval;
- (2) are designed to promote conduct of the member and its associated persons that is consistent with their obligations under Rule 2110 and does not undermine the performance of an employee's duty to a customer;
- (3) are designed to effectively supervise compliance with a member's written compliance policies and procedures concerning business entertainment;
- (4) maintain detailed records of the nature and expense of business entertainment and make such information available upon written request to a customer in respect of its employees;
- (5) establish standards to ensure that persons designated to supervise, approve and document business entertainment expenses are sufficiently qualified and that periodic monitoring for compliance with the written policies and procedures is conducted (by an independent reviewer, when practicable); and
- (6) require appropriate training and education to all applicable personnel.

Members may distinguish, and set specifically tailored standards for, business entertainment in connection with events that are educational, charitable or philanthropic in nature. If such differentiation is made, it must be explicitly addressed in the written policies and procedures with specifically tailored standards. Finally, a member must be able to demonstrate that it trains its associated persons who supervise and are subject to such written business entertainment policies and procedures in all applicable requirements.

Acceptable Forms of Business Entertainment

A member may determine that certain activities, though legal, are nevertheless inappropriate for business entertainment. Similarly, members may determine that certain modes of private transport, luxurious accommodations, or destinations are not appropriate either as a matter of course or unless certain circumstances are present and senior management has approved the business entertainment.

The Board of Governors believes that the standards of entertainment adopted by members must meet the requirement under Rule 2110 that members and employees adhere to high standards of commercial honor. Consequently, a member would violate this interpretation and the rule, not only if it failed to adopt such procedures, but also if the procedures set standards that are so unbounded or vague that no reasonable determination of propriety can be discerned.

A member's written policies and procedures must also be reasonably designed to achieve compliance with the obligation of the member and its associated persons to act in the best interests of its customer in connection with the conduct of business with or for such customer, including the avoidance of any business entertainment of an employee that is intended or designed to cause, or otherwise would be reasonably judged to have the likely effect of causing, such employee to act in a manner that is inconsistent with the best interests of the customer. As an example, members should develop written policies and procedures reasonably designed to preclude providing business entertainment that is so lavish or extensive in nature that an employee would likely feel compelled to place order flow on behalf of the customer without due regard to best execution or other transaction pricing considerations. In sum, the Board of Governors believes that the guiding principle in navigating the concern of placing an employee in conflict with his duty to a customer is that members should compete for business on the basis of providing the best professional services. While it is not inappropriate for business entertainment to foster an environment for the member to promote or educate with respect to such professional services, it is inconsistent with the terms of this interpretation to use business entertainment to provide incentives to employees to conduct customer business with and/or through the member without due consideration as to whether the nature and terms of such professional services meet the objectives and are in the best interests of the account.

Supervision

As is the case with every NASD rule, supervision is a critical component of entertainment policies and procedures. Members are free to define the approach and method of their written policies and procedures provided they are reasonably designed to comport with the principles stated in this interpretation. Irrespective of the manner in which the members craft their procedures, it must be clear from the supervisory policies and procedures what factors determine appropriate levels of business entertainment and how those determinations are executed, monitored, and enforced. In addition, such supervisory procedures should provide a method for evidencing both the breadth of supervisory activities as well as the information upon which such supervision is conducted. For example, a member's policies and procedures must evidence the basis upon which a supervisor will determine that business entertainment does not violate a member's standards as to the nature, frequency and dollar amounts of entertainment. Finally, the member must review periodically the policies and procedures it establishes to determine if they are practicable and fulfill their purpose.

Disciplinary and Other NASD Actions

REPORTED FOR JANUARY

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 December 2005.

Firms Expelled, Individuals Sanctioned

Delta Asset Management Company, LLC (CRD #39923, Mineola, New York) and Adam Robert Goldstein (CRD #2647994, Registered Principal, Lake Mary, Florida) submitted a Letter of Acceptance, Waiver and Consent in which the firm was expelled from NASD membership, and Goldstein was fined \$10,000 and suspended in all principal and supervisory capacities for two years. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Goldstein, failed to establish, maintain, and enforce an adequate supervisory system that included written procedures reasonably designed to achieve compliance with industry rules and regulations related to sales practices. The findings stated that the firm failed to ensure that disclosable events, such as customer complaints and securities related civil lawsuits and arbitration claims, were reported, or reported timely, through the Uniform Application of Securities Industry Registration (Form U4), the Uniform Termination Notices for Securities Industry Registration (Form U5) and amendments as appropriate. The findings also stated that the firm failed to report summary and statistical information for customer complaints, and reported some customer complaints late. NASD also found that the firm failed to develop and implement a written anti-money laundering program (AML) reasonably designed to achieve compliance with the requirements of the Bank Secrecy Act and the implementing regulations promulgated thereunder.

Goldstein's suspension began December 19, 2005, and will conclude at the close of business on December 18, 2007. (Case #E072003005104)

Ryan & Company, LP (CRD #21669, West Conshohocken, Pennsylvania) and Scott William Ryan (CRD #408305, Registered Principal, Bryn Mawr, Pennsylvania) submitted an Offer of Settlement in which Ryan was barred from association with any NASD member firm in any capacity, and the firm was expelled from NASD membership. Without admitting or denying the allegations, they consented to the described sanctions and to the entry of findings that they engaged in a scheme to create and maintain short positions in Over-the-Counter (OTC) equity securities on behalf of the firm's client hedge funds, in that they willfully and intentionally effected short sale transactions. The findings stated that the firm failed to report option positions to NASD, and failed to report transactions and reported incorrect information to the Automated Confirmation Transaction ServiceSM (ACTSM). In addition, NASD found that the firm reported non-bona fide wash sale transactions to ACT, and failed to provide for supervision reasonably designed to detect and prevent NASD rule violations. (NASD Case #CLG050062/20041000024)

Firms Fined, Individuals Sanctioned

Leonard & Company (CRD #36527, Troy, Michigan) and James Sylvester Currier (CRD #2070654, Registered Principal, Bloomfield Hills, Michigan) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$40,000. Currier was fined \$5,000, suspended for 10 business days in a principal capacity, and required to re-qualify as a principal by taking and passing the Series 24 examination before undertaking activities in that capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Currier, received customer complaint notices, arbitration claims and settlements that were subject to NASD reporting requirements, but failed to report these events to NASD. The findings stated that the firm, acting through Currier, failed to timely file amendments to the Forms U4 and U5. The findings further stated that the firm, acting through Currier, failed to enforce its written supervisory procedures to ensure compliance with NASD rules.

Currier's suspension began January 3, 2006, and will conclude at the close of business on January 17, 2006. (NASD Case #E8A2003049501)

Royal Alliance Associates, Inc. (CRD #23131, New York, New York) and Jeffrey Scott Drejza (CRD #1249668, Registered Principal, Birmingham, Michigan) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$100,000, and Drejza was fined \$5,000 and suspended from association with any NASD member in a supervisory capacity for two weeks. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Drejza, failed to establish, maintain and enforce a supervisory system reasonably designed to achieve compliance with the plan of supervisory procedures and operating restrictions, and failed to properly supervise the statutorily disqualified registered representative to ensure compliance with the heightened supervision that was specifically ordered in a notice.

Drejza's suspension began on January 3, 2006, and concluded on January 16, 2006. (NASD Case #E8A20010343)

Firms and Individuals Fined

Thieme Securities, Inc. (CRD #38286, New York, New York) and Heiko Helmut Thieme (CRD #828825, Registered Principal, Stamford, Connecticut) submitted a Letter of Acceptance, Waiver and Consent in which the firm and Thieme were censured and fined \$15,000 jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to

the entry of findings that the firm, acting through Thieme, operated without a registered Financial and Operations Principal (FINOP) from February 2002 to September 2004. NASD found that the firm, acting through Thieme, failed to develop an annual written training plan for Firm Element Continuing Education requirement from 2000 to 2004. NASD also found that the firm, acting through Thieme, failed to maintain monthly bank reconciliations. (NASD Case #E102004040401)

Firms Fined

B.C. Ziegler and Company (CRD #61, Milwaukee, Wisconsin) 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 the correct trade execution time for transactions to the Trade Reporting and Compliance Engine (TRACE), and reported transactions in TRACE-eligible securities that it was not required to report. NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and NASD rules concerning TRACE reporting. (NASD Case #20050001882-01)

Bergen Capital, Inc. (CRD #46348, Hasbrouck Heights, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$115,000, and required to file all sales literature and advertisements with NASD at least 15 days prior to their first use for six months, or during the time period before the firm's form BDW becomes effective (whichever is longer). Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it disseminated pieces of advertising and sales material relating to municipal, corporate and government bonds to the investing public that failed to comply with NASD's content standards for sales and advertising material. (NASD Case #EAF0401260002)

Cabrera Capital Markets, Inc. (CRD #10081, Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$22,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to timely report municipal securities transactions, or inaccurately reported their execution times, to the MSRB. The findings stated that the firm failed to prepare adequate written supervisory procedures addressing the reporting requirements under MSRB G-14, and failed to implement an adequate supervisory system reasonably designed to monitor accurate reporting. In addition, NASD found that the firm failed to adopt and implement written

supervisory procedures reasonably designed to ensure its research activities were conducted in compliance with NASD rules. The findings also stated that the research reports the firm disseminated failed to include the required analyst certification from its research analyst. (NASD Case #E8A20040071-01)

Chardan Capital Markets, LLC (CRD #120128, 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 report the correct symbol indicating whether the transaction was a "sell short" or "sell short exempt" to the NASDAQ Market Center for transactions in eligible securities. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and NASD rules concerning short sales, trade reporting and record keeping. (NASD Case #20050002689-02)

Credit Lyonnais Securities (USA), Inc. aka Calyon Securities (USA), Inc. (CRD #190, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$15,000, and required to revise the firm's supervisory procedures with respect to the Order Audit Trail SystemSM (OATSSM). Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it submitted reports to OATS that were not in the electronic form prescribed by NASD and did not correct or replace them. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and NASD rules concerning OATS. (NASD Case #20050000028-01)

Fiserv Securities, Inc. aka NF Clearing, Inc. (CRD #14285, Philadelphia, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$25,000 and required to revise the firm's supervisory procedures with respect to TRACE trade reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it misreported transactions in TRACE-eligible securities through TRACE that it was not required to report. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and NASD rules concerning TRACE trade reporting. NASD found that the firm failed to accept or decline transactions in eligible securities in ACT within twenty minutes after execution. (NASD Case #20042000103-01)

Goldman Sachs Execution & Clearing, L.P. (CRD #3466, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$100,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report the yield on municipal securities transactions reported to the MSRB involving customer trades. The findings stated that the firm failed to timely report municipal securities transactions to the MSRB, and failed to adequately monitor its trade reporting to ensure compliance with MSRB Rule G-14. (NASD Case #E9B2004036701)

Good Morning Shinhan Securities (USA) Inc. (CRD #31977, 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 permitted an individual to actively engage in the management of the firm's securities business without being properly registered in that capacity. NASD found that the firm operated a securities business without having at least two registered principals or without obtaining a waiver of the two-principal requirement, as NASD requires. The findings also stated that the firm failed to implement policies, procedures and internal controls reasonably designed to achieve and monitor its compliance with the requirements of the Bank Secrecy Act and the implementing regulations promulgated thereunder. (NASD Case #E102004017701)

Howe Barnes Investment, Inc. (CRD# 2240, Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$58,077, which includes a \$48,077 disgorgement of financial benefits received. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to make a bona fide public offering of 20,000 shares at the announced public offering price of \$15. The findings stated that the firm later sold the shares and realized a profit of \$48,077. The findings also stated that the firm failed to disclose, in four separate research reports, that it had received compensation for investment banking services from two subject companies in the past 12 months. (NASD Case #E8A2004017001)

Instinet Clearing Services, Inc. (CRD #7897, 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 timely report reportable order events (ROEs) to OATS. (NASD Case #20042000114-01)

Intercoastal Financial Services Corp. (CRD #45557, Jupiter, Florida) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$48,000 and required to revise its written supervisory procedures concerning 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 last sale reports of transactions in OTC equity securities through NASDAQ, and failed to designate such last sale reports as late. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and NASD rules concerning trade reporting. NASD found that the firm failed to report the correct symbol indicating whether the transaction was a "buy," "sell," "sell short," "sell short exempt" or "cross," and failed to report the correct symbol indicating whether the transaction was executed in a principal or agency capacity.

The findings also stated that the firm incorrectly reported the second leg of riskless principal transactions in securities to the media. In addition, NASD found that the firm failed to contemporaneously or partially execute a customer limit order in a NASDAQ security and OTC equity securities after it traded the subject security for its own market-making account at a price that would have satisfied the customer's limit order. The findings also stated that the firm failed to indicate whether the sale of a security was long or short on the brokerage orders memorandum, and failed to show the correct execution time and entry on the brokerage orders memorandum. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws, regulations and NASD rules. **(NASD Case #20042000090-01)**

Investment Placement Group (CRD #14458, La Jolla, California) 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 the execution time of transactions in Eastern Standard Time to TRACE. The findings stated that the firm failed to report transactions in TRACE-eligible securities executed on a business day during TRACE system hours to TRACE within 45 minutes of the execution time. In addition, NASD found that the firm failed to report the correct trade execution time for transactions in TRACE-eligible securities to TRACE, and the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations, and NASD rules concerning TRACE. **(NASD Case #20050001875-01)**

Joseph Gunnar & Co. L.L.C. (CRD #24795, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, in connection with a contingency private placement offering of securities, it violated the escrow agreement in that the offerings were amended, but the amendments were not done properly pursuant to Rule 10b-9. The findings stated that when the minimum offering was reached pursuant to the amended offering documents, the funds were released from the escrow account to the issuer, consistent with the terms of the amended offering. However, the original escrow agreement had never been amended to be consistent with the offering documents, so, pursuant to the escrow agreement in place, the funds were released early. NASD found that the firm amended the terms and conditions of a second offering to reduce the maximum from \$2.3 million to \$1.2 million (the minimum was \$1 million), and the termination date was extended from June 30 to July 19, 2002, but the escrow agreement was not amended, so when the funds were disbursed to the issuer on July 23, 2002, in accordance with the terms of the amended offering, it was inconsistent with the terms of the escrow agreement, under which the funds should have been returned to the customers when the minimum had not been met by June 30. The findings also stated that the firm failed to timely file or ensure the timely filing of amendments Forms U4 and U5 to report complaints received by the firm. In addition, NASD determined that while conducting a securities business, the firm failed to maintain the required minimum net capital required by SEC Rule 15c3-1. **(NASD Case #E102002034201)**

J.P. Turner & Company, LLC (CRD #43177, Atlanta, Georgia) 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 use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that its customer's resultant price was as favorable as possible under prevailing market conditions. The findings stated that the firm failed to fully and promptly execute orders. **(NASD Case #20050000700-01)**

Keating Securities, LLC (CRD #36402, Greenwood Village, Colorado) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it did not enforce its Customer Identification Program (CIP) in that the firm did not follow its CIP procedures, the CIP was not implemented with respect to customers who purchased interests in a private placement

and a customer who participated in an income fund offering through the firm, and did not provide these customers prior to the establishment of their accounts, with the required written notice that the firm is requesting information in order to verify identity. The findings stated that the firm's written AML program was not reasonably designed to report suspicious activity because the procedures referred to prospective reporting rules, and had not been updated to reflect that such rules had become effective. The findings also stated that the firm's written AML program was not reasonably designed to cause the firm to comply with its obligation to review and respond to requests for information from the Financial Crimes Enforcement Network (FinCEN). NASD also found that the firm's customer account records did not include all of the information required by NASD and SEC books and records rules. (NASD Case #E3A20040024-01)

Linsco / Private Ledger Corp. (CRD #6413, Boston, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$75,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to establish, maintain and enforce a reasonable system or written procedures to supervise the activities of registered persons in connection with their use of wire transfers. (NASD Case #E012002060302)

MBSC, LLC (CRD #42430, 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 submit required information to OATS. The findings stated that the firm failed to reasonably enforce its written supervisory procedures with respect to OATS compliance. (NASD Case #20042000083-01)

McDonald Investments, Inc. (CRD #566, Cleveland, Ohio) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$17,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report the correct symbol indicating whether the transaction was a "buy," "sell," "sell short," "sell short exempt" or "cross" for transactions in eligible securities to NASDAQ, and failed to report the contra side executing broker in one transaction in eligible securities to NASDAQ. The findings stated that the firm failed to submit 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" for the offsetting, "riskless" portion of "riskless" principal transactions in securities. The findings also stated that the firm made a report on covered orders in national market system securities available that included incorrect information as to average realized spreads,

the number of canceled shares and the total shares executed. (NASD Case #20050003048-01)

Merrill Lynch, Pierce, Fenner & Smith Incorporated (CRD #7691, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$40,000 and restitution in the amount of \$2,697.32, plus interest. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy and sell in such market so that the resultant price to its customer was as favorable as possible under prevailing market conditions. (NASD Case #20042000043-01)

O'Keefe Shaw & Co., Inc. (CRD #40820, Amherst, 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 establish, implement and enforce written policies, procedures and internal controls that were reasonably designed to achieve compliance with the requirements of the Bank Secrecy Act and the regulations promulgated thereunder. (NASD Case #E9B2004011101)

Pacific Growth Equities, LLC (CRD #24835, San Francisco, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$35,500 and required to revise its written supervisory procedures. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to, within 90 seconds after execution, transmit through last sale reports of transactions in securities to NASDAQ, and failed to designate them through last sale reports as late. The findings stated that the firm incorrectly designated last sale reports of transactions in securities reported to NASDAQ as ".SLD" within 90 seconds of execution. The findings also stated that the firm effected transactions in the firm's proprietary account and failed to make an affirmative determination that the firm could borrow or receive the securities, or otherwise provide for their delivery by the settlement date on a public customer's behalf. NASD also found that the firm failed to report transactions to NASDAQ with a short sale modifier, and failed to report the correct symbol indicating whether the transaction was a "buy," "sell," "sell short," "sell short exempt" or "cross." In addition, NASD found that the firm failed to show the correct entry and execution times on the brokerage orders memoranda. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and NASD rules concerning order handling and execution, trade reporting, affirmative determinations and short sales. (NASD Case #20042000220-01)

Raymond James & Associates, Inc. (CRD #705, St. Petersburg, Florida) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$37,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to provide written notification informing its customers that a transaction was executed at an average price. The findings stated that the firm made a report on covered orders in national market system securities that it received for execution from a customer available that included incorrect information as to shares being reported as having been executed away when the shares were, in fact, executed at the market center and as to the actual average realized Spread, including the markup. In addition, NASD found that the firm failed to report the correct symbol indicating whether the transaction was a "buy," "sell," "sell short," "sell short exempt" or "cross" for transactions in eligible securities to NASDAQ, and incorrectly designated last sale reports of transactions in Nasdaq National Market securities (NNM) as ".W" and ".PRP" in ACT. The findings also stated that the firm incorrectly reported the second leg of "riskless" principal transactions in NNM securities to ACT, incorrectly designated the capacity of such transactions as principal, and incorrectly media-reported such transactions. NASD also found that the firm transmitted reports to OATS that contained a routed order ID number that failed to match a NASDAQ Market Center trade report. In addition, the findings stated that the firm failed to immediately display customer limit orders in NASDAQ securities in its public quotation, when each such order was at a price that would have improved the firm's bid or offer in each security, or when the order was priced equal to the firm's bid or offer and the national best bid or offer of each 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 or offer in each such security. In addition, the findings stated that the firm failed to report the correct route time on OATS-reportable orders and the correct times of cancellation on OATS-reportable orders, as well as failed to transmit execution reports for OATS-reportable orders and a route for a routed order to OATS. **(NASD Case #20042000138-01)**

Scott & Stringfellow, Inc. (CRD #6255, Richmond, Virginia) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$37,500 and required to revise its written supervisory procedures concerning limit order displays. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to immediately display customer limit orders in securities in its public quotation, when each such order was at a price that would have improved the firm's bid or offer in each such security, or when the order was priced equal to the firm's bid or offer and the national best bid or offer 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 or offer in each such security. The findings stated that the firm transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data. NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and NASD rules concerning limit order display. The findings also stated that the firm incorrectly distributed or published reports of a purchase or sale of municipal bonds that did not require distribution. **(NASD Case #20042000064-01)**

Symetra Investment Services, Inc. (CRD #19061, Bellevue, Washington) 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 comply with the terms of its membership agreement by holding customer funds, failed to make deposits, and did not promptly transmit customer funds in an account established for the purpose of complying with requirements of SEC Rule 15c3-3(k)(2)(i). **(NASD Case #E3B20030059)**

UBS Financial Services, Inc. (CRD #8174, Weehawken, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$42,500 and required to revise its written supervisory procedures concerning 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 twenty minutes after execution. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities and regulations, and NASD rules concerning trade reporting. **(NASD Case #20050000995-01)**

Individuals Barred or Suspended

Taal Alexander Aviad (CRD #4192196, Registered Representative, Huntingdon Valley, 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, Aviad consented to the described sanction and to the entry of finding that he created fictitious customer retirement accounts and submitted these accounts to his member firm, therefore improperly obtaining approximately \$9,000 in commissions. (NASD Case #20050018218601)

Joseph John Azzata (CRD #2446677, Registered Principal, Boca Raton, 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, Azzata consented to the described sanction and to the entry of findings that he engaged in the unregistered offer and sale of common stock to public customers. The findings stated that Azzata failed to appear to give sworn testimony that NASD requested. (NASD Case #E072003004202)

Lawrence Bruce Bailey (CRD #2186901, Registered Representative, Belleville, Michigan) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 20 business days. The fine must be paid before Bailey reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Bailey consented to the described sanctions and to the entry of findings that he borrowed \$3,000 from a public customer in violation of his member firm's written procedures prohibiting registered persons from borrowing money from customers.

Bailey's suspension began January 3, 2006, and will conclude at the close of business on January 31, 2006. (NASD Case #2005002220501)

Robert Anthony Bellia, Jr. (CRD #2387955, Registered Principal, North Babylon, New York) and James Robert Brown (CRD #2515229, Registered Principal, Medford, New York) submitted a Letter of Acceptance, Waiver and Consent in which Brown was fined \$5,000 and suspended from association with any NASD member in any capacity for 20 business days, and Bellia was fined \$5,000 and suspended from association with any NASD member in a principal capacity for 30 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Brown charged excessive mark-ups and mark-downs in connection with transactions in a public customers' account. NASD found

that Bellia failed to adequately supervise Brown in that he knew or should have known that Brown had charged excessive mark-ups and mark-downs in connection with the aforementioned transactions.

Brown's suspension began December 5, 2005, and concluded at the close of business on January 3, 2006. Bellia's suspension began January 4, 2006, and will conclude at the close of business on February 15, 2006. (NASD Case #ELI2002010504)

Thomas Hart Benton (CRD #3085925, Registered Representative, Carlsbad, 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 45 days. Without admitting or denying the allegations, Benton consented to the described sanctions and to the entry of findings that he failed to disclose material information on his Form U4.

Benton's suspension began December 19, 2005, and will conclude at the close of business on February 1, 2006. (NASD Case #2005001598701)

Kenneth Anton Carlson (CRD #4038575, Registered Representative, Kalamazoo, Michigan) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. The fine must be paid before Carlson reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Carlson consented to the described sanctions and to the entry of findings that he affixed a public customer's signature to money orders purchased with Carlson's personal funds without the customer's consent or authorization.

Carlson's suspension began January 3, 2006, and will conclude at the close of business on March 3, 2006. (NASD Case #E8A2004085301)

Jay Frederick Cheesman (CRD #2800519, Registered Representative, Orem, Utah) 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, Cheesman consented to the described sanction and to the entry of findings that he sought and accepted reimbursement from his member firm for inaccurate business expense claims. (NASD Case #2005000999801)

Angel Chi (CRD #2053866, Associated Person, Denver, Colorado) 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, Chi consented to the described sanction and to the entry of findings that she participated in private

securities transactions for compensation, and failed to provide written notification or receive express written authority from her member firm to participate in these transactions. The findings stated that Chi failed to maintain documentation adequately evidencing how she invested \$550,000 received from public customers for investment purposes, and transferred portions of these funds into a bank account under her control, thereby co-mingling customer funds with her own. The findings also stated that Chi established brokerage accounts at two other broker-dealers, placed orders in a public customer's discretionary account at another broker-dealer, and failed to notify these broker-dealers in writing that she was associated with her member firm. The findings further stated that she did not notify her member firm in writing of the existence of these accounts. (NASD Case #E3A2003052301)

William Leroy Clifton (CRD #48758, Registered Representative, Sayville, 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, Clifton consented to the described sanction and to the entry of findings that, in order to facilitate an unauthorized variable annuity purchase, Clifton signed a public customer's signature on a check and multiple documents without the customer's knowledge, authorization or consent. (NASD Case #2005001361901)

Stephen James Congdon (CRD #711753, Registered Representative, Sandusky, Ohio) 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, Congdon consented to the described sanctions and to the entry of findings that, while employed with a member firm, he engaged in outside business activities, in that he received a check from a public customer for "financial counsel services" without giving his firm prompt written notice of these outside business activities.

Congdon's suspension began December 19, 2005, and concluded at the close of business on January 3, 2006. (NASD Case #E8A2004075001)

Ronald Charles Crockett, Jr. (CRD #1682593, Registered Representative, West Chester, Pennsylvania) was barred from association with any NASD member in any capacity. The sanction was based on findings that he engaged in unauthorized transactions in public customers' IRA accounts and affixed, or caused to be affixed, a customer's purported signature to a brokerage account agreement without the customer's authorization or consent. The findings also stated that Crockett failed to respond to NASD requests for information. (NASD Case # C9A050034)

Mark Ray Davis (CRD #1744957, Registered Supervisor, Highland, Utah) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$3,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Davis consented to the described sanctions and to the entry of findings that he failed to amend his Form U4 with material information.

Davis' suspension began January 3, 2006, and concludes at the close of business on January 17, 2006. (NASD Case #E3A20040340-01)

Roger Martin Faulring (CRD #727976, Registered Supervisor, Lewiston, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000, suspended from association with any NASD member in a principal or supervisory capacity for six months, and must requalify by examination as a principal or supervisor. Without admitting or denying the allegations, Faulring consented to the described sanctions and to the entry of findings that he failed to take appropriate action to supervise a registered representative that was reasonably designed to prevent his violations and achieve compliance with applicable securities rules, regulations and NASD rules.

Faulring's suspension began December 19, 2005, and will conclude June 18, 2006. (NASD Case #E9B2004025801)

William John Fitzgerald (CRD #2542748, Registered Principal, Bethpage, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any member of NASD in any capacity. Without admitting or denying the allegations, Fitzgerald consented to the described sanction and to the entry of findings that he failed to provide NASD requested testimony. (NASD Case #20050019388-01)

Christina Wood Goodridge (CRD #1220305, Registered Representative, El Dorado Hills, California) 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 15 business days. Without admitting or denying the allegations, Goodridge consented to the described sanctions and to the entry of findings that she began making deposits of her own money into a public customer's bank account on a quarterly basis, without the customer and her member firm's knowledge, when the investment she recommended became insolvent and stopped making quarterly dividends. The findings stated that Goodridge's actions prevented the customer from discovering that the preferred stock was worthless and potentially complaining to her firm. It also precluded a timely analysis of whether her initial recommendation was suitable for the customer.

Goodridge's suspension will begin January 17, 2006, and will conclude at the close of business on February 6, 2006. (NASD Case#E012004033902)

Thomas Joseph Gorter (CRD #1008601, Registered Representative, Brandenburg, Kentucky) submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for two months. Without admitting or denying the allegations, Gorter consented to the described sanctions and to the entry of findings that he participated in private securities transactions in which he neglected to give written notice to his employing NASD member firm, and failed to receive written approval from his firm prior to engaging in such activity.

Gorter's suspension began December 19, 2005, and will conclude at the close of business on February 18, 2006. (NASD Case #C8A040114/E8A2002095903)

Joseph Paul Guasconi (CRD #1779965, Registered Representative, Westfield, New Jersey) submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for seven months. The fine must be paid before Guasconi reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Guasconi consented to the described sanction and to the entry of findings that he provided false information concerning a customer's brokerage account to another financial institution.

Guasconi's suspension began December 5, 2005, and will conclude on July 4, 2006. (NASD Case #E9B2004037702)

Glen Niel Harding (CRD #4221841, Registered Principal, Lehigh, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, Harding consented to the described sanctions and to the entry of findings that he engaged in outside business activities for compensation without providing prompt written notice to his member firm.

Harding's suspension began December 19, 2005, and will conclude on March 18, 2006. (NASD Case #E9A2004042901)

Sherri Lynn Herrera (CRD #4491409, Registered Representative, Pueblo, Colorado) was barred from association with any NASD member in any capacity. The sanction was based on findings that Herrera received \$718.44 from public customers for insurance premium payments, but deposited \$564.44 of the funds in a bank account under her control and used them to pay for her personal expenses.

The findings stated that Herrera failed to respond to NASD requests for information. (NASD Case #C3A050029/E3A20040324)

Thomas Charles Hock (CRD #708167, Registered Principal, Schnecksville, Pennsylvania) 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 one month. Without admitting or denying the allegations, Hock consented to the described sanctions and to the entry of findings that he altered a variable life insurance application by changing a public customer's listed address from her actual residence to her parents' address, then submitted the altered application to the insurance company.

Hock's suspension began December 19, 2005, and will conclude at the close of business on January 18, 2006. (NASD Case #2005000537201)

Wenge Hu (CRD #4575949, Registered Representative, San Jose, 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, Hu consented to the described sanction and to the entry of findings that she signed public customers' names to life insurance replacement forms and to a comparison form without their knowledge or consent, and submitted the forms to her member firm for processing. The findings stated that Hu failed to respond to NASD requests for documents and information. (NASD Case #E0120040272-02)

Anil Parbhubhai Kumar (CRD #2169544, Registered Representative, Oakland, 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, Kumar consented to the described sanction and to the entry of findings that he received \$30,000 in gifts and gratuities for his efforts in facilitating the conversion of funds held by his member firm in its related suspense accounts to be improperly diverted to outside parties. The findings stated that Kumar failed to respond to NASD requests for documents and information. (NASD Case #2005001269401)

Lawrence Michael LaBine (CRD #1279935, Registered Principal, Scottsdale, Arizona) submitted an Offer of Settlement in which he was fined \$25,000, suspended from association with any NASD member in any capacity for 15 business days, and must requalify as a general securities representative by examination. Without admitting or denying the allegations, LaBine consented to the described sanctions and to the entry of findings that he recommended and effected securities transactions in public customers' accounts without having a reasonable basis for believing that the

transactions were suitable, based on the customers' investment objectives, financial situation and needs.

LaBine's suspension began December 19, 2005, and concluded at the close of business on January 6, 2006. (NASD Case #C3A20040045/E0220020513)

Marc Alan Levy (CRD #2369929, Registered Principal, Boynton Beach, Florida) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$19,100, which includes disgorgement of \$14,100, and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, the respondent consented to the described sanctions and to the entry of findings that he participated in the sale of promissory notes to public customers, but failed to provide his member firm with written notice of his intent to participate in the transactions, and had not received written approval from the firm.

Levy's suspension began December 19, 2005, and will conclude March 18, 2006. (NASD Case #E072004089201)

William Sherman Lewis, III (CRD #4514016, Registered Representative, North Bergen, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$25,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Lewis reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Lewis consented to the described sanctions and to the entry of findings that he signed a public customer's name on a variable universal life insurance policy illustration without the customer's permission or knowledge.

Lewis' suspension began January 3, 2006, and will conclude at the close of business on January 2, 2007. (NASD Case #E9B2004032101)

Kevin Allan Linton (CRD #711683, Registered Representative, Shamong, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Linton consented to the described sanction and to the entry of findings that he recommended and sold variable universal life insurance to public customers without having reasonable grounds to believe that the policies were suitable for them. The findings also stated that he failed to respond to NASD requests for information. (NASD Case #E9B2004019801)

David Ernest Locklear (CRD #1881572, Registered Representative, Canton, Michigan) submitted a Letter of Acceptance, Waiver and Consent in which Locklear was fined

\$10,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Locklear reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Locklear consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notification to, and receiving prior written approval from, his member firm.

Locklear's suspension began December 19, 2005 and will conclude at the close of business on June 18, 2006. (NASD Case #8A2004040901)

Douglas Edward Loner (CRD #1648730, Registered Representative, Rockford, 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 10 business days. The fine must be paid before Loner reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Loner consented to the described sanctions and to the entry of findings that he effected transactions in a public customer's securities account without the customer's knowledge or consent, and in the absence of written or oral authorization to exercise discretion in the account.

Loner's suspension began January 3, 2006, and will conclude at the close of business on January 17, 2006. (NASD Case #E8A2004078501)

Mason David Newman (CRD #2174722, Registered Representative, Los Angeles, 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 one year. The fine must be paid before Newman reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Newman consented to the described sanctions and to the entry of findings that he directly or indirectly, in connection with the offer or sale of securities, by the use of means or instrumentalities of interstate commerce or the mails, employed devices, schemes, or artifices to defraud; made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices or business courses of which operated or would operate as a fraud or deceit upon purchasers or prospective purchasers.

Newman's suspension began December 19, 2005, and will conclude at the close of business on December 18, 2006. (NASD Case #EAF0400220005)

Philip John Nociforo (CRD #1482682, Registered Representative, Sound Beach, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that, in an attempt to deceive his member firm and evade state law, Nociforo falsified public customers' variable life insurance applications to indicate that they did not have other life insurance coverage, and completed the Definition of Replacement form to reflect that the new policies were not replacing existing life insurance coverage. NASD found that Nociforo received checks totaling \$16,050.46 from public customers to fund their variable life insurance policies, but deposited these checks into his personal bank account, made initial premium payments totaling \$6,020.75 and never forwarded the remaining funds to his member firm as the customers intended, nor did he return the money to the customers, thereby converting the remaining \$10,029.71 for his own personal use and benefit without the customers' authorization, knowledge or consent. (NASD Case C1020050027/E1020022662)

Harrichand Persaud (CRD #1312629, Registered Representative, Mahwah, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which he was censured, fined \$50,000, which includes a \$1,600 disgorgement of commissions received, and suspended from association with any NASD member firm in any capacity for two months. Without admitting or denying the allegations, Persaud consented to the described sanctions and to the entry of findings that he coordinated trading prices for a commission. The findings stated that Persaud received simultaneous buy and sell instructions from companies that instructed him to sell a total of two million shares for one company and purchase two million shares at \$0.05 a share above the initial transaction price for the other. NASD found that Persaud was also instructed not to cross the trades between the two accounts. Persaud offered an individual at another company an opportunity to purchase shares with the understanding that the individual would be able to sell those shares almost immediately at \$0.05 a share above his purchase price. Persaud subsequently sold two million shares for one of the companies, which were purchased by the individual and in turn re-sold to one of the companies at \$0.05 a share higher than the initial transaction price. The individual realized a profit of approximately \$100,000 from the trading activity in the shares (two million shares at \$0.05 a share).

Persaud's suspension began December 19, 2005, and will conclude on February 18, 2006. (NASD Case #20050000350-01)

Daniel Morris Porter (CRD #2032112, Registered Representative, Copiague, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that he willfully failed to disclose material information on his Form U4. (NASD Case #C1020050041)

James David Reisinger (CRD #1275258, Registered Principal, Dexter Michigan) and Scott Emil Wiard (CRD #1509365, Associated Person, Ypsilanti, Michigan) were barred from associated with any NASD member in any capacity. The National Adjudicatory Council, following an appeal of an Office of Hearing Officers decision, imposed the sanctions. The sanctions were based on findings that Wiard and Reisinger engaged in unauthorized trading by failing to follow their clients' instructions. The findings also stated that the respondents recommended transactions to public customers that were unsuitable. NASD also found that Wiard exercised discretion over public customers' investment decisions even though his continued association with his member firm required that he not maintain discretionary accounts. In addition, NASD found that Wiard failed to update his Form U4 in a timely manner. (NASD Case #C8A030078)

Loyde K. Robinson (CRD #4953417, Associated Person, Las Vegas, Nevada) 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, Robinson consented to the described sanction and to the entry of findings that he willfully failed to disclose material information on his Form U4. (NASD Case #2005002504101)

Jared Bryce Roskelley (CRD #3139812, Registered Representative, Mesa, Arizona) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$22,713, which includes a \$17,713 disgorgement of commissions received, and suspended from association with any NASD member in any capacity for eight months. The fine must be paid before Roskelley reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Roskelley consented to the described sanctions and to the entry of findings that he participated in a private securities transaction without providing prior written notice to his member firm describing, in detail, the proposed transaction and his proposed role therein, and without stating whether he had received, or might receive, selling compensation in connection with the transaction.

Roskelley's suspension began January 3, 2006, and will conclude on September 2, 2006. (NASD Case #E3A2004033701)

Brian Jason Ross (CRD #3234817, Registered Representative, Tulsa, Oklahoma) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$20,000, suspended from association with any NASD member in any capacity for 10 months and required to pay public customers \$79,429.90 in restitution. The fine must be paid, and satisfactory proof of the restitution payment must be made, before Ross reassociates with any NASD member following the suspension or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Ross consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to provide prior written notice to, and approval from, his member firm.

Ross' suspension began at the opening of business on December 19, 2005, and will conclude October 18, 2006. (NASD Case #2005000132001)

Ravi Saini (CRD #2167064, Registered Representative, Jersey City, 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 one year. The fine must be paid before Saini reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Saini consented to the described sanctions and to the entry of findings that he signed a public customer's signature on a Designated Security Suitability Form used in connection with the purchase of a low-priced security without the customer's knowledge or consent.

Saini's suspension began December 19, 2005, and will conclude at the close of business on December 18, 2006. (NASD Case #E9B2004058701)

Matthew Traver Stromgren (CRD #4545753, Registered Representative, New York, 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, Stromgren consented to the described sanction and to the entry of findings that he received \$31,000 from public customers for investment purposes, but used the funds for his own personal use and benefit without the customers' prior knowledge, authorization or consent. The findings also stated that Stromgren failed to respond to NASD requests for information. (NASD Case #E1020041081-02)

Joseph T. Tancredi (CRD #4906986, Associated Person, Brooklyn, 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 weeks. Without admitting or denying the

allegations, Tancredi consented to the described sanctions and to the entry of findings that he took the NASD Series 7 examination and received a failing grade, then altered the proctor's report to reflect that he had received a higher score than the one he had actually received. The findings further stated that Tancredi then presented the altered report to his member firm.

Tancredi's suspension began December 19, 2005, and will conclude on January 29, 2006. (NASD Case #2005002203801)

William Lee Thompson (CRD# 1710409, Registered Representative, Charlotte, North Carolina) 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, Thompson consented to the described sanctions and to the entry of findings that he affixed individuals' names to 401k enrollment forms and submitted them to his employer.

Thompson's suspension began December 1, 2005, and concluded at the close of business on December 30, 2005. (NASD Case #E072004091901)

Peter Alfred Torino (CRD #1160360, 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, Torino consented to the described sanction and to the entry of findings that he knowingly prepared and submitted a falsified life insurance application and a false death claim to his member firm. The findings also stated that Torino failed to respond to an NASD request for information. (NASD Case #E1020040842-01)

Isaac Vidomlanski (CRD #1450598, Registered Principal, Far Rockaway, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from acting in the capacity of a FINOP with any NASD member for 10 business days. Without admitting or denying the allegations, Vidomlanski consented to the described sanctions and to the entry of findings that he, acting on behalf of his member firm, conducted a securities business while failing to maintain required minimum net capital.

Vidomlanski's suspension began January 3, 2006, and will conclude at the close of business on January 17, 2006. (NASD Case #E102002299902)

Michael Wang (CRD #4937485, Associated Person, San Jose, 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 one year. The fine must be paid before Wang reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Wang consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on his Form U4.

Wang's suspension began December 19, 2005, and will conclude at the close of business on December 18, 2006. (NASD Case #20050019334-02)

Steven Victor Wershay (CRD #1285048, Registered Representative, Suxxex, Wisconsin) 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, Wershay consented to the described sanction and to the entry of findings that he solicited and accepted customer funds totaling in excess of \$800,000 and used them for his personal expenses without the customers' knowledge or consent. The findings stated that he failed to respond to NASD requests for information. (NASD Case #E8A20040683-01)

Doyle Mark White (CRD #2212634, Registered Representative, Irving, Texas) was barred from association with any NASD member in any capacity. The sanction was based on the findings that White attempted to mislead NASD staff. White was also found to have violated Rule 2110 for failing to register as a general securities principal. In light of the bar, no other sanctions were imposed. (NASD Case #C0620030035)

Individual Sanctioned

Roy Clifton Zentz (CRD #476313, Registered Principal, Cashiers, North Carolina) submitted a Letter of Acceptance, Waiver and Consent in which he was censured, fined \$10,000, and required to cooperate with NASD in any further investigation and hearing relating to his former member firm and/or any current or former registered or associated persons of the firm, including but not limited to, meeting with and being interviewed by NASD, without the need of NASD to resort to Rule 8210, and testifying at any hearing. The fine must be paid before Zentz reassociates with any NASD member, prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier. Without admitting or denying the allegations, Zentz consented to the described sanctions and to the entry of findings that he exercised

discretionary power in a public customer's account without customers' prior written authorization, or without written acceptance approval from his member firm. The findings also stated that he failed to reasonably supervise registered representatives with respect to discretionary trading. (NASD Case #EAF0300770002)

Decisions Issued

The following decision has been issued by the Office of Hearing Officers and has been appealed to or called for review by the NAC as of November 29, 2005. The findings and sanctions imposed in the decisions may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notice to Members*.

Scott Michael Epstein (CRD #4268699, Registered Representative, Marlboro, New Jersey) was barred from association with any NASD member in any capacity. The decision was based on findings that Epstein engaged in a pattern of unsuitable mutual fund switching in public customers' accounts without having reasonable grounds for believing that the transactions were suitable for them in view of the nature of the recommended transactions, and in light of their financial situations, investment objectives, circumstances and needs. NASD found that in addition to the switch transaction, Epstein recommended that customers invest in funds utilizing proceeds for other funds that were nearly identical, thereby incurring higher annual expenses and lower returns. The findings stated that Epstein also recommended that a customer invest in bond funds utilizing proceeds from an IRA account. The findings also included that, in connection with the mutual fund recommendations to customers, Epstein, by use of the instrumentalities of interstate commerce or the mails, intentionally or recklessly employed devices to defraud customers by making untrue statements of material facts or omitting material facts necessary to make the statements, in light of the circumstances in which they were made, not misleading.

This decision has been appealed to the NAC, and the sanction is not in effect pending consideration of the appeal. (NASD Case #C9B040098)

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.

Richard Phillip Ashton, Jr. (CRD #2070630, Registered Principal, Oldwick, New Jersey) was named as a respondent in an NASD complaint alleging that he recommended and effected securities transactions in public customers' accounts without having reasonable grounds for believing that the transactions were suitable based on the customers' financial situations, investment objectives, circumstances and needs. The complaint also alleges that Ashton willfully failed to amend his Form U4 to disclose material information. (NASD Case #E9B2002055601)

Carmine Depalma (CRD #1838261, Registered Principal, Mt. Kisco, New York) was named as a respondent in an NASD complaint alleging that he recommended and effected transactions in a public customer's account that were unsuitable based on the customer's financial situation, investment objectives and needs. The complaint alleges that Depalma engaged in private securities transactions and failed to provide written notice to, or receive written approval from, his member firm prior to engaging in such transactions. The complaint also alleges that Depalma participated in outside business activities for compensation without giving written notice to his member firm. The complaint further alleges that Depalma provided a customer with confirmations that purported to reflect the relevant terms of the customer's investments and that bore the corporate insignia of a company when, in fact, the company had no connection to these transactions, thereby creating a false record. (NASD Case #ELI20040233-01)

Taihua Terry Ho (CRD #843618, Registered Representative, Fresh Meadows, New York) was named as a respondent in an NASD complaint alleging that he, in connection with the purchase or sale of securities, and then by the use of means or instrumentalities of interstate commerce or by the mail, directly or indirectly, knowingly or recklessly: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material facts or omissions to state material facts that were necessary to make the statement made, in light of circumstances under which they were made, not misleading; or (c) engaged in acts, practices, or business courses which operate or would operate as a fraud or deceit upon any person. The complaint alleges that Ho substantially assisted this illegal conduct by setting in motion the critical initial stages of the fraudulent scheme or course of business. The complaint also alleges that by participating in, and failing to prevent, the illegal manipulative conduct related to the trading, Ho failed to maintain the high standards of commercial honor and just and equitable principles of trade that all associated persons and registered securities professionals are required to observe. In addition, Ho provided

false, misleading and incomplete sworn testimony before the NASD staff. Ho also failed to provide to his employer prompt written notice of his outside business activities and his compensation resulting from those activities. (NASD Case #20042000053-01)

Robert Wade Johnson (CRD #2966137, Registered Representative, Fort Collins, Colorado) was named as a respondent in an NASD complaint alleging that he received checks totaling \$157,000 from a public customer to be invested, but the money was not deposited into or reflected in the customer's securities account. The complaint alleges that Johnson was unable to provide any evidence or documentation showing that any of the customer's money was invested, and did not return any of the money to the customer. The complaint alleges that Johnson failed to respond to NASD requests for information and to questions posed to him during an on-the-record interview. (NASD Case #E3A2004027901)

William Joseph Julian (CRD #2797249, Registered Representative, Huntington, New York) was named as a respondent in an NASD complaint alleging that he prepared a falsified account statement for a public customer that misrepresented the account's net worth and securities position, then presented this falsified account statement to the customer's representative as if it was an actual account statement for the purpose of misleading the customer as to the actual value of customer's investments. (NASD Case #ELI20030464-01)

Suk Ku Lim (CRD #2407363, Registered Representative, Arlington, Virginia) was named as a respondent in an NASD complaint alleging that he paid \$35,000 to a public customer to reimburse for losses sustained in the customer's securities brokerage account with his member firm. The complaint alleges that Lim entered into settlement agreements with customers concerning complaints, and did not provide prior notification to his member firm of such settlements until a later date. (NASD Case #E072003075201)

Timothy Merrill Martin (CRD #2250279, Registered Representative, Dayton, Ohio) was named as a respondent in an NASD complaint alleging that he obtained funds from a public customer for his own use and benefit. The complaint alleges that he failed to adhere to the terms of a renegotiated promissory note. (NASD Case #E8A20040454-01)

Keith Howard Medeck (CRD #3011429, Registered Representative, Bayport, New York) was named as a respondent in an NASD complaint alleging that, in connection with the purchase or sale of securities, he directly or indirectly, by the use of the means or instrumentalities of interstate commerce or of the mails, or of any facility of any national securities exchange, knowingly or recklessly; employed devices, schemes or artifices to defraud; made untrue

statements of material facts or omitted to state material facts necessary in the order to make the statements made, in the light of the circumstances under which they were made, not misleading; engaged in acts, practices, or business courses which operated or would operate as a fraud or deceit upon any person; or effected transactions in, or induced the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance. The complaint also alleges that he recommended transactions to a public customer without having reasonable grounds for believing that such transactions were suitable for the customer in view of the size and frequency of the transactions, the nature of the account and the customer's financial situation, objectives and needs. (NASD Case #E9B2003033701)

John Bailey Partain (CRD #4610449, Registered Representative, Philadelphia, Pennsylvania) was named as a respondent in an NASD complaint alleging that he effected electronic transfers totaling \$6,000 from public customers' bank accounts to his personal bank account without the customers' authorization or consent, then converted the funds for his own personal use. The complaint also alleges that Partain failed to respond to NASD requests for information. (NASD Case #2005000961201)

Maryann Gehringer Roeglin (CRD #2126129, Registered Representative, Rochester Hills, Michigan) was named as a respondent in an NASD complaint alleging that she improperly used a public customer's funds without the customer's knowledge or consent. The complaint alleges that she failed to appear for an on-the-record interview. (NASD Case #E8A20040613-01)

Epko Anthony Steele (CRD #2611651, Registered Representative, Laurelton, New York) was named as a respondent in an NASD complaint alleging that he participated in a scheme to defraud mortgage lenders in that he assisted in obtaining a fraudulent mortgage by transporting and accompanying an imposter to a real estate closing, knowing that the purpose of the closing was for the imposter to forge the mortgage documents and obtain a mortgage under false pretenses. (NASD Case #ELI20040286-02)

Kai Richardson Walker (CRD #4094767, Registered Representative, Winter Park, Florida) was named as a respondent in an NASD complaint alleging that he changed the address on a public customer's account, then issued a debit card and checks to this new address. The complaint alleged that he made several purchases and drafted a check to himself forging the customer's signature for his personal benefit. The complaint also alleged that he deposited checks made payable to his member firm into his own personal account, and failed to respond to NASD requests for information. (NASD Case #2005000688601)

Firm Suspended for Failure to Supply Financial Information

The following firm was suspended from membership with 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.

HSC Securities Corporation
Dallas, Texas
(December 2, 2005)

Individual Whose Registration was Revoked for Failing to Pay Fines and/or Costs in Accordance with NASD Rule 8320

Roger Parker May
Golden, Colorado
(December 8, 2005)

Individuals Barred Pursuant to NASD Rule 9552(h)

Keith Merle Getty
Mechanicsburg, Pennsylvania
(November 22, 2005)

Robin C. Hunter
Mesa, Arizona
(December 1, 2005)

Allyne Riese Kendall, III
San Diego, California
(November 16, 2005)

Richard Kevin Motarjeme
Denver, Colorado
(November 30, 2005)

Jacques Tizabi
Los Angeles, California
(October 31, 2005)

Kenneth Scott Vesely
North Woodmere, New York
(November 25, 2005)

Individuals Suspended Pursuant to NASD Rule 9552(d)

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

John Delgado

Staten Island, New York
(November 7, 2005)

Ronni Fine-Abramowitz

Roselle, Illinois
(November 7, 2005)

Ernest James Waslkowski

Carfield Heights, Ohio
(November 21, 2005)

Individuals Suspended Pursuant to NASD Rule Series 9554 for Failure to Comply with an Arbitration Award or a Settlement Agreement

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

Jessica Allison Berry

San Francisco, California
(December 19, 2005)

David Bradley Brooks

Greensboro, North Carolina
(December 20, 2005)

Carlos Alberto Calatayud

Miami, Florida
(December 7, 2005)

Charles Thomas Campbell, III

Washington, D.C.
(December 6, 2005)

John Sheldon Cotton

Louisville, Kentucky
(December 19, 2005)

Charles Dwain Davis, Jr.

Dallas, Texas
(December 21, 2005)

Carmine DePalma

Mt. Kisco, New York
(December 7, 2005)

Jorge Guillermo Fernandez

Mayfield Heights, Ohio
(December 7, 2005)

Mark Allen Futrell, Sr.

Sugar Land, Texas
(December 1, 2005)

Steven Andrew Gilman

San Francisco, California
(December 15, 2005)

Thurston Gene Gilman

Newton, Massachusetts
(December 15, 2005)

Emily Jean Halsband

Waukee, Iowa
(December 6, 2005)

Adam Chamroeurn Heng

Brooklyn, New York
(December 7, 2005)

Lawrence Sherman Jay

Camarillo, California
(December 21, 2005)

Robert Alan Lesser

Portchester, New York
(December 8, 2005)

Adam Martin Makowka

Lincolnwood, Illinois
(December 19, 2005)

Dimitry Alex Metelkin

Brooklyn, New York
(December 8, 2005)

Franklyn Ross Michelin

Boca Raton, Florida
(December 7, 2005, NASD Arbitration Case #04-03742)
(December 8, 2005, NASD Arbitration Case #04-06286)

Jonathan Anhminh Nguyen

North Hollywood, California
(December 8, 2005)

James Luke Patterson

Houston, Texas
(December 1, 2005)

Jason Kenneth Pearce

Martinez, California
(December 1, 2005)

Edmund Burke Pearson

Dayton, Ohio
(December 8, 2005)

Theodore Angelo Pena

Orandell, New Jersey
(December 1, 2005 to December 13, 2005)

Joseph Charles Quattrocchi

Staten Island, New York
(December 6, 2005, NASD Arbitration Case #04-04029)
(December 8, 2005, NASD Arbitration Case #01-00303)

Jimmie Duane Ross

Sevierville, Tennessee
(December 6, 2005)

David William Svete

Dayton, Ohio
(December 8, 2005)

Oron Joseph Unger

Brooklyn, New York
(December 6, 2005)

Gary Charles Wayne, II

Byron, New York
(December 19, 2005)

Craig Frank Wisbiski

Williamston, Michigan
(December 6, 2005)

NASD Fines State Street Global Markets Record \$1.4 Million For Corporate and Municipal Bond Trade Reporting Violations

Fine is Largest to Date for Fixed Income Trade Reporting Violations

NASD has fined State Street Global Markets, LLC of Boston, MA, \$1.4 million for violations relating to the reporting of corporate and municipal bond trades. State Street Global, which is a subsidiary of Boston-based State Street Corporation, was cited for failing to report thousands of corporate bond trades to NASD's Trade Reporting and Compliance Engine (TRACE) and hundreds of municipal bond trades to the Municipal Securities Rulemaking Board (MSRB) over a 17-month period. NASD also cited State Street Global for supervisory deficiencies relating to corporate and municipal bond trade reporting.

The \$1.4 million sanction represents the largest fine imposed to date by NASD against a single firm for fixed income trade reporting violations.

"Investors and dealers in municipal and corporate bonds rely upon TRACE and MSRB trade reporting to provide much-needed price transparency in these markets," said NASD Vice Chairman Mary L. Schapiro. "State Street Global's reporting failures deprived the markets, investors and regulators of critical information, and impaired the integrity of bond trading data that market participants rely upon to make informed investment decisions."

Since July 2002, brokerage firms have been required to report price and volume data on all corporate bond transactions to TRACE, initially within 75 minutes, and today within 15 minutes. NASD publicly disseminates that transaction data immediately on virtually 100 percent of over-the-counter corporate bond activity—approximately 22,000 transactions and \$18 billion in volume every day. That transaction data is available free of charge at www.nasdbondinfo.com.

Before Jan. 31, 2005, MSRB rules required all dealers to report municipal trades to the MSRB by midnight of the day of the trade, for public dissemination the following day. As of January 31, MSRB rules require that those transactions be reported within 15 minutes of trade execution. The MSRB now disseminates trade data about all reported municipal securities transactions almost immediately at www.investinginbonds.com. NASD is responsible for enforcing MSRB rules.

NASD found that from July 2003 through December 2004, State Street Global failed to report 14,073, or 89 percent, of its self-cleared corporate bond transactions to TRACE. The firm failed to report 380, or 79 percent, of its self-cleared municipal bond transactions to the MSRB during the same period. The total dollar amount of the unreported corporate and municipal bond transactions exceeded \$5 billion.

The trade reporting violations resulted from the failure of State Street Global personnel, when establishing new accounts, to take steps to ensure that all TRACE-eligible transactions would be automatically and electronically reported to the third party agency retained by the firm to report the transactions to TRACE. The trade reporting failures were also due in part to the departure from the firm of several key operations and fixed income trading employees. Thereafter, State Street Global lacked adequate institutional knowledge and internal controls to ensure proper trade reporting. Moreover, State Street Global failed to provide sufficient training for its remaining staff to ensure that the firm's TRACE and MSRB reporting requirements were met.

NASD also found that State Street Global lacked adequate written procedures to ensure proper TRACE and MSRB trade reporting. The firm failed to provide for effective follow-up and review or otherwise monitor its trade reporting to ensure compliance. Additionally, the firm's internal inspections, which are required under NASD rules to be comprehensive and conducted annually, were found to be deficient. State Street Global's parent bank personnel, who were generally not registered as securities professionals, conducted the inspections. The internal inspections were also not comprehensive in that they did not cover all the businesses that State Street Global engaged in, as required by NASD rules.

In connection with these settlements, State Street Global neither admitted nor denied the charges, but consented to the entry of NASD's findings.

NASD Charges Kirlin Securities, Two Individuals in Fraudulent Scheme To Avoid NASDAQ Delisting of Parent Company by Manipulating Stock Price

Co-CEO Also Charged with Forgery to Facilitate Manipulation; Firm, Other Officers Charged with Best Execution Violations

NASD announced charges against Kirlin Securities of Syosset, NY, (a wholly owned subsidiary of Kirlin Holding Corporation) and two Kirlin officials—Anthony Kirincic, the firms' co-CEO and Kirlin Holding's largest shareholder, and Andrew Israel, Kirlin's head trader—for their roles in a fraudulent scheme to artificially inflate the price of Kirlin Holding stock.

The purpose of the scheme was to increase the stock price to \$1.00 a share or higher for 10 consecutive trading days, thereby avoiding a threatened delisting of the stock from the NASDAQ National Market. NASD also charged that Kirincic forged his parents' signatures on stock certificates and other documents to generate funds to carry out the manipulation scheme. Additionally, NASD charged Kirlin Securities, Israel and David Lindner, then the co-CEO of Kirlin Holding and Kirlin Securities, with failing to obtain best execution on a customer order of Kirlin Holding stock during the same period.

According to NASD's Complaint, the NASDAQ National Market notified Kirlin Holding in February 2002 that the stock price of Kirlin Holding had dipped below \$1.00 a share for 30 days and that Kirlin Holding would be delisted unless, within 90 days, its stock price increased to, and remained above, \$1.00 per share for 10 consecutive trading days. Kirincic was the account executive for accounts held by his parents and his sister at Kirlin Securities. Soon after NASDAQ issued its delisting warning, Kirincic forged his parents' signatures on Kirlin Holding stock certificates and caused Kirlin Holding to repurchase those shares from his parents' account. He also forged his parents' signatures on letters of authorization to transfer funds generated from these repurchases to his sister's account.

NASD's Complaint charges that beginning on March 18, 2002, Kirincic and Israel began manipulating the stock price of Kirlin Holding by entering large and frequent purchase orders through Kirincic's sister's account at prices in excess of the inside bid. After placing orders, Kirincic often cancelled those that had been only partially filled and replaced them with other orders at higher prices in an effort to bid up the price

of the security. The size of these transactions often dwarfed the historic average daily volume for Kirlin Holding. In addition, Kirincic's trading through his sister's account constituted a significant majority of the trading volume and number of transactions in the stock, thereby dominating the market for Kirlin Holding stock throughout the manipulation.

Kirlin, Kirincic, and Israel successfully created an illusion that the demand for Kirlin Holding's common stock was increasing based on genuine customer demand. Their scheme succeeded in raising the price of Kirlin Holding's common stock from \$.64 per share on March 18, 2002, to more than \$1.00 per share on April 2, 2002, despite an absence of any news or other apparent reason for the company's stock price to increase.

After April 2, 2002, Kirlin, Kirincic and Israel successfully maintained Kirlin Holding's stock price at or over \$1.00 per share for at least 10 trading days, using the same manipulative methods. On April 18, 2002 NASDAQ informed Kirlin Holding that it had satisfied the market's listing requirements by having its stock price exceed \$1.00 for 10 consecutive trading days and therefore the stock would not be delisted.

NASD's Complaint charges Kirlin Securities, Kirincic, and Israel with fraud under the federal securities laws and NASD rules.

NASD's Complaint also charges that on April 22, 2002, while Kirlin Holding's stock was still trading at more than \$1.00 per share, Kirlin Securities, through Lindner and Israel, executed a sale of a customer's shares in Kirlin Holding at \$.80 per share in a transaction with Kirlin Holding. At the time of this trade, the inside bid for the stock was \$1.04 per share, and two of Kirincic's own relatives had sold their Kirlin Holding's stock for \$1.05 per share. This violates the obligation under NASD rules for the firm, Lindner, and Israel to achieve best execution for their customer's order.

In January of 2005, Kirlin Holding voluntarily ceased having its stock listed on NASDAQ Stock Market and ceased filing periodic reports under the federal securities laws. Its stock is currently quoted in the Pink Sheets (Other OTC:KILN.PK).

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

NASD Fines Merrill Lynch, Wells Fargo and Linsco \$19.4 Million For Improper Sales of Class B and C Mutual Fund Shares

Firms to Offer Remediation for Nearly 140,000 Transactions

NASD has fined Merrill Lynch, Pierce, Fenner & Smith, Wells Fargo Investments and Linsco/Private Ledger Corporation a total of \$19.4 million for suitability and supervisory violations relating primarily to sales of Class B mutual fund shares as well as some Class C mutual fund shares. These cases are part of NASD's continuing investigation into mutual funds sales practices.

Merrill Lynch was fined \$14 million, while Wells Fargo was fined \$3 million and Linsco was fined \$2.4 million. The amount of the fines approximate the additional commissions the firms received by selling Class B shares rather than Class A mutual fund shares. In addition, each firm is implementing a remediation plan to compensate affected customers—collectively involving more than 29,000 households and nearly 140,000 transactions.

NASD's investigation examined transactions during an 18-month period between January 2002 and July 2003. Investigators focused on 23,000 households at Merrill Lynch with 105,000 Class B and C share transactions; 4,500 households at Wells Fargo with 12,000 Class B and C share trades; and approximately 2,000 households with 22,400 Class B and C share trades at Linsco.

During this period, the three firms recommended and sold Class B and/or Class C share mutual funds to their customers without considering or adequately disclosing on a consistent basis that an equal investment in Class A shares would generally have been more advantageous to those customers in view of all relevant considerations. Before recommending a share class, brokers must consider the customer's anticipated holding period and all costs associated with each share class including front-end sales charges, annual expenses and contingent deferred sales charges. The firms also had inadequate supervisory and compliance procedures relating to the manner in which the firms' sales personnel recommended and sold Class B and Class C shares.

"In recommending mutual funds with different share classes, brokers must understand, consider and disclose information about which particular share class would be most beneficial for the customer from an expense perspective," said Barry Goldsmith, NASD Executive Vice President and Head of Enforcement. "The failure by these firms to do this resulted

in their customers purchasing Class B and C shares when they would have been better served with Class A shares. The firms have agreed to a remediation plan that will give affected customers the opportunity to convert their holdings to a more financially advantageous mutual fund share class."

Class A shares typically charge a front-end sales charge and also may be subject to an asset-based sales charge, but it generally is lower than the asset-based sales charge imposed by Class B or Class C shares. Mutual funds may offer discounts, called breakpoints, on the front-end sales charge for Class A shares if an investor makes a large purchase, already holds other mutual funds offered by the same fund family, or commits to regularly purchasing the mutual fund's shares. To determine the appropriate discounts, an investor is often allowed to aggregate his purchases with holdings of other family members. Class B shares typically do not charge a front-end sales charge, but they do impose asset-based sales charges that may be higher than those associated with Class A shares. Class B shares also normally impose a contingent deferred sales charge (CDSC) which the investor may pay at the time the investor sells the shares. While the investor holds the shares, the CDSC normally declines and eventually is eliminated after a certain number of years. After the CDSC is eliminated, Class B shares often "convert" into Class A shares. When they convert, they will be subject to the same, lower asset-based sales charge as the Class A shares.

Class C shares usually do not impose a front-end sales charge on the purchase but they are often subject to a CDSC if sold within a short time of purchase, usually one year. Class C shares also typically impose higher asset-based sales charges than Class A shares, and since their shares generally do not convert into Class A shares, their asset-based sales charge will not be reduced over time. So even though investors do not pay a front-end sales charge for Class B or Class C shares, the potential CDSCs and the higher ongoing fees significantly affect the return on mutual fund investments, particularly at higher dollar levels.

In resolving this matter, the firms have agreed to a remediation plan that generally covers investors who, between January 1, 2002 and the dates of the settlement with each firm, purchased Class B shares totaling \$50,000 or more depending upon the expenses and charges of the fund and who under any ordinary circumstance would have been better off had they purchased A shares instead. The offer will also be extended to a limited number of Class C share investors who, during the same time frame, made purchases of \$500,000 or more and who, in view of all relevant circumstances, would have been better off had they purchases A shares instead. A number of mutual fund transaction exclusions from the plan also apply.

NASD has posted a special section on its Web site—Improper Sales of Mutual Fund Class B and Class C Shares—Remediation Information for Investors—to assist investors covered by the remediation plan.

The firms will contact affected customers within five months. Those customers will be given the opportunity to convert their Class B or Class C shares to Class A shares in a way that will restore the customers to the position they would have been in had they originally purchased Class A shares. Affected customers who have sold some or all of their Class B or Class C shares will be eligible to receive a cash payment in addition to, or instead of, receiving Class A shares.

Each firm will establish a response center to assist affected customers. The entire remediation process is expected to take approximately nine months to complete.

The three firms settled these actions without admitting or denying the allegations, but consented to the entry of NASD's findings.

Hedge Fund Manager, Former Broker John F. Mangan, Jr. Barred, Fined \$125,000 To Resolve Charges in PIPE Shares Deal

NASD Investigation into Other Individuals, Entities Continuing

NASD announced that John F. Mangan, Jr., a hedge fund manager formerly registered as a broker with Friedman, Billings, Ramsey & Co. (FBR) of Arlington, VA, has been permanently barred from associating with any NASD-registered firm and will pay a \$125,000 fine to settle charges that he deceptively obtained shares in a PIPE transaction, improperly sold the shares short, and shared in profits from the shares without obtaining permission from FBR.

A PIPE ("Private Investment in a Public Equity") is a private offering in which accredited investors agree to purchase restricted, unregistered securities of public companies. Only after the SEC approves the PIPE shares' registration are investors free to sell them on the open market. PIPE shares can only be offered to "accredited" investors—for example, investors with assets of \$1 million or more. NASD found that in September 2001, Maryland-based Compudyne Corporation and its placement agent, FBR, offered accredited investors—on a confidential basis—a PIPE deal proposing to sell 2,450,000 shares of common stock, which raised more than \$29 million.

Not later than Sept. 28, 2001, Mangan learned through a firm-wide research call that FBR had an investment banking relationship with Compudyne. Within a few days, Mangan received copies of the Compudyne Private Placement Memo, a Purchase Agreement and a sales script that FBR brokers were to use to market the PIPE transaction to potential investors.

NASD found that Mangan wanted to invest in the PIPE through one of a group of hedge funds he managed with a partner. Mangan contacted senior FBR officials to inquire whether the hedge fund could invest in the PIPE. These officials told Mangan in substance that a person associated with FBR should not invest in the Compudyne PIPE and refused Mangan permission to buy shares in the PIPE. Nevertheless, Mangan arranged for HLM Securities LLC ("HLM"), an investment advisor owned by Mangan's partner, to buy 80,000 shares in the PIPE. The restricted stock was sold at the below-market price of \$12 per share. In fact, FBR paid Mangan a commission of about \$6,880 as the broker responsible for HLM's purchase of the Compudyne PIPE.

Mangan and his partner agreed that Mangan would personally provide all the funds necessary to buy the PIPE shares and that Mangan and his partner would share equally in all profits from the PIPE. Mangan's partner was the only signatory for HLM on the Purchase Agreement. Mangan failed to seek and obtain written permission from FBR to purchase an interest in the Compudyne PIPE and failed to disclose that he had arranged to acquire an interest in the Compudyne PIPE through HLM, or that he had agreed to share profits from the PIPE transaction with his partner.

On Oct. 9 and Oct. 12, 2001, Mangan caused HLM to place orders to sell 80,000 shares of Compudyne, and based on those orders, the executing broker and prime broker treated the sales as "long" sales. In fact, HLM was naked short selling the shares, and no affirmative determinations were made that HLM could locate shares to borrow in order to make delivery by settlement date. Mangan intended for HLM to profit by covering the naked short position in Compudyne with shares acquired in the PIPE once they became registered.

On Oct. 31, 2001, after the PIPE shares were registered, HLM covered its 80,000-share short position using the 80,000 shares of Compudyne that HLM had bought in the PIPE. As they had agreed, Mangan and his partner shared equally in HLM's profits from the sale and purchase of Compudyne shares. Mangan received a total profit of approximately \$87,000.

In settling this matter with NASD, Mangan neither admitted nor denied the charges, but consented to the entry of NASD's findings. NASD's investigation into other individuals and entities involved in the Compudyne PIPE is continuing. In May of 2005, Hilary Shane, a hedge fund manager formerly registered with First New York Securities, was barred and ordered to pay more than \$1.45 million in fines and restitution by NASD and the Securities and Exchange Commission, to settle fraud and insider trading charges arising from her purchase and sale of Compudyne PIPE shares.