

APRIL 2006

Notice to Members

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Disciplinary and Other NASD Actions



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Notice to Members

APRIL 2006

SUGGESTED ROUTING

Internal Audit
Legal & Compliance
Operations
Registered Representatives
Senior Management
Systems
Trading
Training

KEY TOPICS

Short Interest
Rule 3360

GUIDANCE

Short Interest Reporting Requirements

SEC Approves Amendments to the Short Interest Reporting Requirements; **Effective Date: July 3, 2006**

Executive Summary

On February 3, 2006, the Securities and Exchange Commission (SEC) approved amendments to Rule 3360 relating to the short interest reporting requirements.¹ The amendments expand the short interest reporting requirements to over-the-counter (OTC) equity securities. The short interest reporting requirements, as amended, are set forth in Attachment A of this *Notice*. The amended short interest reporting requirements become effective on July 3, 2006.

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 and Discussion

Currently, Rule 3360(a) requires members to maintain a record of total short positions² in all customer³ and proprietary firm accounts in NASDAQ securities (and listed securities if not reported to another self-regulatory organization (SRO)) and requires members to report such information to NASD on a monthly basis.⁴ Short interest reports must be made as of the settlement date designated by NASD. Currently, the designated settlement date is the 15th of the month, or the preceding settlement date if the 15th is a non-settlement date. Reports must be received by NASD no later than the second business day after the reporting settlement date. After review by NASD, the short interest data is consolidated by security and disseminated to the public, generally on the eighth business day after the reporting settlement date.

On February 3, 2006, the SEC approved amendments to Rule 3360 that expand the short interest reporting requirements to OTC equity securities. For purposes of the amended short interest reporting requirements, OTC equity securities are defined as any equity security that is not listed on The NASDAQ Stock Market or a national securities exchange.⁵ Currently, members are required to maintain and report to NASD short positions in NASDAQ securities. Further, members must report to NASD short positions in listed securities that are not otherwise reported to another SRO. Accordingly, the amended short interest reporting requirements will require that members maintain and report to NASD all short positions in NASDAQ securities and OTC equity securities. If members have short positions in listed securities that are not otherwise reported to another SRO, those short positions should be reported to NASD as well.

In recognition of the technological and system changes that may be required to implement the new requirements, the implementation date for the amended short interest reporting requirements will be July 3, 2006.

Endnotes

- 1 See Securities Exchange Act Release No. 53224 (February 3, 2006), 71 FR 7101 (February 10, 2006) (File No. SR-NASD-2005-112).
- 2 Rule 3360(b) provides that short positions required to be reported under the rule are those resulting from short sales as the term is defined in SEC Rule 200 of Regulation SHO, with limited exceptions. SEC Rule 200 of Regulation SHO provides, in part, the following: "The term 'short sale' shall mean any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller."
- 3 Short sale positions held for other broker-dealers that fall within the definition of short position provided in Rule 3360(b) must be reported under Rule 3360(a), unless these positions already are reported to a self-regulatory organization. See *Notice to Members (NTM) 03-08* (January 2003).
- 4 Non-self-clearing broker-dealers generally are considered to have satisfied their reporting requirement by making appropriate arrangements with their respective clearing organizations. See *NTM 03-08* (January 2003).
- 5 For purposes of the short interest reporting requirements, OTC options and non-standard equity derivative products (e.g., equity swaps, contracts for differences, etc.) are not included within the definition of OTC equity securities.

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ATTACHMENT A

New language is underlined; deletions are in brackets.

3360. Short-Interest Reporting

(a) Each member shall maintain a record of total "short" positions in all customer and proprietary firm accounts in OTC Equity Securities, securities included in The Nasdaq Stock Market, and in each other security listed on a registered national securities exchange and not otherwise reported to another self-regulatory organization and shall regularly report such information to NASD in such a manner as may be prescribed by NASD. [For the purposes of this rule, the term "customer" includes a broker/dealer.] Reports shall be made as of the close of the settlement date designated by NASD. Reports shall be received by NASD no later than the second business day after the reporting settlement date designated by NASD.

(b) For purposes of this Rule[,]:

(1) "short" positions to be reported are those resulting from "short sales" as that term is defined in SEC Rule 200 of Regulation SHO, with the exception of positions that meet the requirements of Subsections (e)(1), (6), (7), (8), and (10) of SEC Rule 10a-1 adopted under the Act[.];

(2) the term "customer" includes a broker-dealer; and

(3) the term "OTC Equity Securities" shall mean any equity security that is not listed on The Nasdaq Stock Market or a national securities exchange.

Notice to Members

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SUGGESTED ROUTING

Internal Audit
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KEY TOPICS

OATS
Rule 6958
Rule 9610(a)

GUIDANCE

Exemptive Relief from the OATS Electronic Recording and Reporting Requirements; Enhancements to the OATS Web Interface

SEC Approves Expansion of NASD's Exemptive Authority under the OATS Rules; NASD Provides Additional Guidance Regarding Exemptive Relief and Encourages Exempted and Other Small Firms to Test the Enhanced OATS Web Interface

Executive Summary

In November 2005, NASD issued *Notice to Members (NTM) 05-78* announcing Securities and Exchange Commission (SEC) approval of amendments to Rules 6950 through 6957 (OATS Rules) relating to the Order Audit Trail System (OATS), as well as questions and answers regarding the application of the amended OATS reporting requirements. Among other things, the amendments to the OATS Rules permit NASD to grant exemptive relief from the OATS reporting requirements in certain circumstances to members that meet specified criteria. On March 30, 2006, the SEC approved further amendments to the OATS Rules that expand NASD's OATS exemptive authority to include electronic recording requirements. As amended, NASD has the authority to grant exemptive relief from the OATS electronic recording and reporting requirements for manual orders to members that meet specified criteria. The exemptive authority, as amended, is set forth in Attachment A of this *Notice* and becomes effective on May 8, 2006.

In this *Notice*, NASD staff also is reminding members of the criteria under which exemptive relief will be granted and is providing further information regarding the terms and conditions under which any such exemptive relief will apply. In addition, NASD staff is highlighting recent enhancements to NASD's OATS Interface that are designed, among other things, to facilitate OATS electronic recording and reporting of manual orders, especially for smaller firms. NASD is strongly encouraging members that may choose to use the enhanced Web OATS Interface system to contact NASD immediately to begin testing usage of the enhanced OATS Web Interface.¹ Member firms that are granted an exemption particularly are urged to consider testing the enhanced OATS Web Interface to determine whether it provides a viable tool to record and report their orders upon the expiration of any exemptive relief. The enhanced OATS Web Interface will be available in the testing environment as of April 24, 2006 and in the production environment as of May 8, 2006.

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.

For technical questions regarding OATS reporting, please contact the OATS Help Desk at (800) 321-NASD. Detailed information regarding all aspects of OATS Phase III, as well as general information relating to OATS, may be found on NASD's OATS Web site at www.nasd.com/oats.

Discussion

Exemptive Relief from the OATS Requirements

On September 28, 2005, the SEC approved amendments to the OATS Rules.² The amendments permit NASD to grant exemptive relief from the OATS reporting requirements to members that meet specified criteria, in circumstances where reporting of such information would be unduly burdensome for the member or where temporary relief from the OATS Rules (in the form of additional time to achieve compliance) would permit the member to avoid unnecessary expense or hardship. Since approval of these amendments, certain firms that meet the reporting exemptive criteria have noted that the failure concurrently to receive exemptive relief from the heightened electronic record retention requirements of the OATS Rules will result in the firms absorbing most, if not all, of the costs and burdens the exemptive relief was designed to address. Given this concern, NASD proposed, and the SEC approved, amendments to the OATS Rules to expand NASD's OATS exemptive authority to include electronic recording requirements.³

On March 30, 2006, the SEC approved new Rule 6958 and amended Rule 9610(a) to extend NASD's authority to grant exemptive relief to certain members from the reporting requirements of the OATS Rules for manual orders to include the requirement to record electronically such orders. Exemption requests will be evaluated under the procedures set forth in the Rule 9600 Series. At a minimum, members must meet the following criteria to be eligible for an exemption to the OATS electronic recording and reporting requirements for manual orders: (1) the member and current control affiliates and associated persons of the member have not been subject within the last five years to any final disciplinary action, and within the last ten years to any disciplinary action involving fraud; (2) the member has annual revenues of less than \$2 million; (3) the member does not conduct any market making activities in NASDAQ Stock Market equity securities; (4) the member does not execute principal transactions with its customers (with limited exceptions for error corrections); and (5) the member does not conduct clearing or carrying activities for other firms. The expanded exemptive authority becomes effective May 8, 2006.

Requests for Exemptive Relief from the OATS Requirements

Members eligible for an exemption from the OATS Rules must formally request the exemption and receive a letter from NASD granting such exemption before the exemption becomes effective. Detailed exemption procedures, including the exemption application, are available on NASD's OATS Web site at www.nasdaq.com/oats. The deadline to submit an application for exemptive relief to ensure review and processing by NASD prior to the May 8, 2006 implementation date was February 1, 2006. NASD cannot guarantee that exemptive applications received after that date will be reviewed and processed prior to the May 8, 2006 implementation date, although NASD staff will make every effort to do so.

NASD will consider exemption requests received prior to the publication of this *Notice* for both the recording and reporting requirements. Therefore, members that already have submitted to NASD a request for an exemption to the reporting requirements need not submit a new exemption request to request an exemption to the recording requirements. Future exemption requests, however, must specify the type of exemption(s) requested. Members meeting the criteria to be eligible to request an exemption that do not formally request and receive such an exemption are not automatically exempted. As a result, such members must begin recording and reporting OATS data regarding manual orders on May 8, 2006.

With respect to the exemptive requests received to date, NASD will be issuing letters granting exemptions from the OATS electronic recording and reporting requirements for a period of six months to those members that meet the required criteria. This exemptive relief is intended to provide such members additional time to implement an effective mechanism for electronic recording and reporting OATS information to NASD and to afford NASD an opportunity to evaluate the efficacy of its enhanced OATS Web Interface, as discussed in more detail on the next page.

Enhanced Web Interface for OATS Electronic Recording and Reporting

NASD also is providing information regarding several enhancements to the NASD's OATS Web Interface designed to reduce significantly the OATS electronic recording and reporting burdens for firms with limited order volume.⁴ Specifically, NASD is upgrading the OATS Web Interface, which is available at no cost to members, to improve usability and add functionality. First, the enhanced OATS Web Interface will include the creation of a Firm Profile, which will enable users to select specific fields for OATS to auto-populate and to set default values for specific fields that will be pre-populated on every order entry screen. The auto-generation and the pre-population of field values will significantly reduce the number of fields users are required to enter when electronic recording an OATS event.

Second, the enhanced OATS Web Interface will also include the creation of new data entry screens based on order events or actions on the order. Users will select a specific action to the order (e.g., Order Receipt or Origination or Order Execution instead of a report type code of NW, EX or OE). The new screens will allow users to enter order data throughout the day or to enter data all at once at any point during the day. The user may add any actions to the order until the reports are submitted. Upon submission, the OATS application will package and send the data to OATS on the firm's behalf. As with current OATS requirements, firms must submit OATS order events that occur during a particular OATS Business Day by 4:00:00 a.m. Eastern Time (ET) the following calendar day or they will be marked late by NASD.

Third, the enhanced OATS Web Interface will enable users to download the data to their own system prior to submission. This feature serves two purposes. It provides a medium for members to comply with their electronic recording requirements under NASD Rule 6954. It also allows users to maintain a record of events submitted to OATS.

NASD is publishing an updated OATS Subscriber Manual, which includes the OATS Web Interface enhancements. On April 10, 2006, the updated OATS Subscriber Manual will be available at www.nasd.com/oats. In addition, NASD will make the testing environment available for the OATS Web Interface enhancements as of April 24, 2006 and the production environment available as of May 8, 2006.

During the six-month exemption period, NASD will be evaluating the enhanced OATS Web Interface functionality to determine whether it reduces significantly the electronic recording and reporting burden for small members. The availability of an effective OATS Web Interface will be a major factor in NASD's decision to grant exemptions after the initial six-month exemptive period expires. For this reason, NASD strongly recommends that members granted an exemption contact NASD to begin testing usage of the OATS Web Interface enhancements.⁵ As NASD and member firms gain experience with the OATS Web Interface, NASD will be better able to evaluate and consider the effectiveness of OATS Web Interface reporting. Accordingly, firms exempted from the electronic recording and reporting requirements for the six-month period must reapply for any further exemptive relief and NASD will expect any such firm applying for a future exemption to demonstrate that complying with the OATS requirements continues to be unduly burdensome.

Endnotes

- 1 The OATS Web Interface is primarily designed to assist firms that have a relatively small number of OATS reportable events each day. As such, the OATS Web Interface will not likely be an effective mechanism for firms that are required to report a large number of OATS reportable events each day.
- 2 See Securities Exchange Act Release No. 52521 (September 28, 2005), 70 FR 57909 (October 4, 2005) (File No. SR-NASD-00-23). Those amendments, and applicable questions and answers, are further discussed in *NASD Notice to Members 05-78* (November 2005).
- 3 See Securities Exchange Act Release No. 53580 (March 30, 2006) (File No. SR-NASD-2006-040).
- 4 While the enhanced OATS Web Interface is designed to reduce significantly the OATS electronic recording and reporting burdens for manual firms with limited order volume, the enhanced OATS Web Interface is available as a mechanism for all eligible member firms, including member firms already required to report to NASD during OATS Phase I and Phase II.
- 5 Whether you are a firm planning to use the OATS Web Interface to submit order data to OATS, or if you are a firm that currently submits order data via the OATS Web Interface, please contact the OATS Help Desk at (800) 321-NASD or send an email to OATSphaseIII@nasd.com.

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ATTACHMENT A

New language is underlined; deletions are in brackets.

6950. Order Audit Trail System

* * * * *

6955. Order Data Transmission Requirements

(a) through (c) No Change.

[(d) Exemptions]

[(1) Pursuant to the Rule 9600 Series, the staff, for good cause shown after taking into consideration all relevant factors, may exempt, subject to specified terms and conditions, a member from the order data transmission requirements of this Rule for manual orders, if such exemption is consistent with the protection of investors and the public interest, and the member meets the following criteria:]

[(A) the member and current control affiliates and associated persons of the member have not been subject within the last five years to any final disciplinary action, and within the last ten years to any disciplinary action involving fraud;]

[(B) the member has annual revenues of less than \$2 million;]

[(C) the member does not conduct any market making activities in Nasdaq Stock Market equity securities;]

[(D) the member does not execute principal transactions with its customers (with limited exception for principal transactions executed pursuant to error corrections); and]

[(E) the member does not conduct clearing or carrying activities for other firms.]

[(2) An exemption provided pursuant to this paragraph (d) shall not exceed a period of two years. At or prior to the expiration of a grant of exemptive relief under this paragraph (d), a member meeting the criteria set forth in paragraph (d)(1) may request, pursuant to the Rule 9600 Series, a subsequent exemption, which will be considered at the time of the request, consistent with the protection of investors and the public interest.]

[(3) This paragraph shall be in effect until May 8, 2011.]

* * * * *

6958. Exemption to the Order Recording and Data Transmission Requirements

(a) Pursuant to the Rule 9600 Series, the staff, for good cause shown after taking into consideration all relevant factors, may exempt, subject to specified terms and conditions, a member from the recording and order data transmission requirements of Rules 6954 and 6955, respectively, for manual orders, if such exemption is consistent with the protection of investors and the public interest, and the member meets the following criteria:

(1) the member and current control affiliates and associated persons of the member have not been subject within the last five years to any final disciplinary action, and within the last ten years to any disciplinary action involving fraud;

(2) the member has annual revenues of less than \$2 million;

(3) the member does not conduct any market making activities in Nasdaq Stock Market equity securities;

(4) the member does not execute principal transactions with its customers (with limited exception for principal transactions executed pursuant to error corrections); and

(5) the member does not conduct clearing or carrying activities for other firms.

(b) An exemption provided pursuant to this Rule shall not exceed a period of two years. At or prior to the expiration of a grant of exemptive relief under this Rule, a member meeting the criteria set forth in paragraph (a) above may request, pursuant to the Rule 9600 Series, a subsequent exemption, which will be considered at the time of the request, consistent with the protection of investors and the public interest.

(c) This Rule shall be in effect until May 8, 2011.

* * * * *

9600. PROCEDURES FOR EXEMPTIONS

9610. Application

(a) Where to File

A member seeking exemptive relief as permitted under Rules 1021, 1050, 1070, 2210, 2315, 2320, 2340, 2520, 2710, 2720, 2790, 2810, 2850, 2851, 2860, Interpretive Material 2860-1, 3010(b)(2), 3020, 3150, 3210, 3230, 3350, 695[5]8, 8211, 8212, 8213, 11870, or 11900, or Municipal Securities Rulemaking Board Rule G-37 shall file a written application with the appropriate department or staff of NASD and provide a copy of the application to the Office of General Counsel of NASD.

(b) and (c) No Change.

Notice to Members

APRIL 2006

SUGGESTED ROUTING

Legal & Compliance
Operations
Senior Management

KEY TOPICS

New Member Applications
Rule 1013
Rule 1014
Standardized Application Form

GUIDANCE

New Member Applications

NASD Amends Rule 1013 to Adopt a Standardized Application Form (Form NMA) to be Used by All New Member Applicants; **Implementation Date: May 20, 2006**

Executive Summary

NASD is issuing this *Notice* to inform members and applicants for membership that NASD has amended Rule 1013 (New Member Application and Interview) to adopt a standardized application form, Form NMA, to be used by all new applicants applying for membership to NASD. NASD has also made several technical changes to Rule 1013 and Rule 1014 (Department Decision).

The proposed rule changes, which were filed with the Securities and Exchange Commission (SEC), became effective upon filing.¹ The implementation date of the amendment, which is also the date on which applicants must begin using Form NMA to apply for NASD membership, is May 20, 2006. Attachment A contains the text of the amendment. Attachment B contains a sample Form NMA.

Questions/Further Information

Questions regarding this *Notice* may be directed to Karin Marshall, Membership Manager, Regulation Policy, NASD Department of Member Regulation, at (202) 728-6954.

Background

Applying for NASD membership is a comprehensive process requiring the submission of extensive information, considerable attention to detail and a substantial time commitment. Rule 1013 identifies the requirements for submitting a new member application for NASD membership, including a listing of the documents required and a requirement that the applicant submit a “substantially complete” application.² Failure to submit complete and accurate information in a timely manner can result in the cancellation of an application and the loss of a portion of the application fee paid to NASD.³

Despite Rule 1013’s listing of the requirements for a new member application submission, NASD continues to receive incomplete or inadequate membership applications. These applications may require significant information requests to obtain missing documentation and require a great deal of time and resources to process them appropriately. Additionally, as noted above, if there is insufficient information contained in the original submission for the application, NASD’s Department of Member Regulation may determine that the application is not “substantially complete” and reject the application.

Discussion

To address these issues and to make the membership application process more efficient, NASD has created a standardized form, Form NMA, to assist new member applicants in the preparation of a complete application package and amended Rule 1013 to require the submission of Form NMA as part of the new membership application. Form NMA does not establish new or additional content requirements, which are already set forth in Rule 1013, but, rather, is a means to assist new member applicants in the preparation of a complete application package. Form NMA is organized according to the 14 individual standards for membership enumerated in Rule 1014 and lists the forms and supporting documentation required in an application submission.

Additionally, the Form classifies certain information as mandatory for submission with the initial application, including detailed financial and source of capital information, an organizational chart, a completed Form BD, a business plan and written supervisory procedures. If the required information is not received in the initial submission, NASD’s Department of Member Regulation may not deem the application as “substantially complete” pursuant to Rule 1013(a)(4) and may reject it. Accordingly, the identified information *must* be included in the application when it is first submitted and will be reviewed for content by NASD staff before the application can be deemed substantially complete.

By requiring the submission of the Form NMA with all new membership applications, NASD expects to streamline the application process by creating a more consistent application process and clearly outlining the information that must be submitted to process the application. Form NMA can be accessed directly at www.nasd.com/NMAform. Alternatively, persons can access the form by going to NASD's Web site (www.nasd.com), selecting the tab at the top of the page entitled "Registration & Qualifications" and following the links: Member Firms > How to Become a Member> Forms & Additional Documents. The implementation date of the rule amendment is May 20, 2006. Accordingly, all new membership applications submitted on or after that date must be on Form NMA.

Endnotes

- 1 See Exchange Act Release No. 53564 (March 29, 2006); 64 F.R. 16847 (April 4, 2006) (SR-NASD-2006-038). Under Section 19(b) of the Securities Exchange Act of 1934, the SEC has the authority to summarily abrogate this type of rule change within 60 days of filing.
- 2 See *generally* Rule 1013.
- 3 See Rule 1013(a)(4) ("If the Department determines within 30 days after the filing of an application that the application is not substantially complete, the Department may reject the application and deem it not to have been filed... [NASD] shall refund the application fee, less \$350, which shall be retained by [NASD] as a processing fee.").

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ATTACHMENT A

Text of approved rule changes.

New text is underlined; deleted text is bracketed.

1013. New Member Application and Interview

(a) Filing of Application

(1) - No Change.

(2) Contents

An Applicant shall submit an application using NASD Form NMA. The application shall include:

(A) through (Q) No Change.

(R) [a Web CRD entitlement request form]an NASD Entitlement Program Agreement and Terms of Use and an NASD Member Firm Account Administrator Entitlement Form[a Member Contact Questionnaire user access request form].

(3) Electronic Filings

Upon approval of the Applicant's [Web CRD entitlement request form] NASD Member Firm Account Administrator Entitlement Form, the Applicant shall submit its Forms U4 for each Associated Person who is required to be registered under NASD Rules, any amendments to its Forms BD or U4 and any Form U5 electronically via Web CRD. [Upon approval of the Applicant's membership, the Applicant shall submit any amendments to its Member Contact Questionnaire electronically.]

(4) through (5) No Change.

(b) Membership Interview

(1) through (7) No Change.

* * * * *

1014. Department Decision

(a). Standards for Admission

(1) through (5) No Change.

(6) The communications and operational systems that the Applicant intends to employ for the purpose of conducting business with customers and other members are adequate and provide reasonably for business continuity in each area set forth in Rule 1013(a)(2)(~~F~~E)(xii);

(7) through (14) No change.

* * * * *

(b) Not applicable.

(c) Not applicable.

ATTACHMENT B

NASD New Member Application Form (Form NMA)

I. Contents Of The Membership Application

NASD's New Member Application Form (Form NMA) is designed to assist Applicants in the preparation of an NASD New Member Application Package. The completed and signed Form, including all required forms and supporting documentation, is to be filed with NASD's Department of Member Regulation at the District Office in the District in which the Applicant intends to have its principal place of business (as defined in Rule 1011(l)). The Form must be accompanied by an application fee of \$5,000 for clearing and self-clearing firms or \$3,000 for all other firms. A complete listing of registration and examination fees can be found on the [NASD Web site](#).

II. Using This Form

This Form references information required by NASD Membership Rules. Some items may not be applicable to the Applicant's specific business plan. Additional documents may be requested once the Staff has an opportunity to review the application.

PLEASE NOTE: The Staff will NOT commence review of an application until it is substantially complete. Certain items that are always required to make an application substantially complete are indicated in the right column of the checklist provided on the Form with a "Y." These items **must be** included in the application when it is first submitted and will be reviewed for content by the Staff prior to deeming an application substantially complete. If an application is not deemed substantially complete, NASD shall refund the application fee, less a \$350 processing fee. If the Applicant determines to continue to seek membership, the Applicant must submit a new application and fee. See Rule 1013(a)(4).

Although only certain items are required to *commence* processing an application, all of the items indicated below, to the extent relevant to the Applicant's proposed business, are required to be submitted to NASD and will be reviewed before the application can be approved. NASD encourages Applicants to include as much of the required information as possible in the initial application package. Experience shows that applications containing complete information can be processed more quickly, with less need for the Staff to ask for supplemental information. Complete applications also help the Staff gain a prompt understanding of the Applicant's business plan, which facilitates NASD's ability to evaluate whether the Applicant meets the standards for admission to NASD. Applicants are also encouraged to consider consulting with District Office staff in advance of filing an application for membership in cases involving complex or novel business arrangements. **Underneath each line item in the space provided, please indicate that the information is enclosed and where it can be found in the application, when it will be forthcoming if it is not enclosed, or an "N/A" and an explanation of why it is not applicable to the application. Each line item in the application must be addressed when the application is first submitted. Applicants may use additional pages as necessary to provide the required information.**

III. Obtaining Online Documents

Please note that documents available online are highlighted throughout this checklist with hyperlinks. In the interest of a thorough application, it is recommended that Applicants review both [How to Become a Member](#) on the NASD Web site, as well as [The Guide to Continuing Membership](#), which contains product and service specific questions and other relevant information that the Applicant should address, as applicable, in its New Member Application.

IV. Organization

The Form is organized by reference to the 14 standards for admission set forth in Rule 1014(a). It is strongly recommended that the completed application be organized such that supporting documentation for each standard is separated and identified by tabs for ease of reference and review.

| Documentation or Information Description | Required for Initial Package |
|---|------------------------------|
| Standard 1: The application and all supporting documents are complete and accurate. | |
| <p>1. The Applicant must submit a detailed business plan that adequately and comprehensively describes all material aspects of the business that will be, or are reasonably anticipated to be, performed at and after the initiation of business operations. The business plan should also address future business expansion plans, if any, and include the following information:</p> <p>Note: The business plan is one of the most important components of the New Member Application. It is the Applicant’s responsibility to fully detail and communicate its proposed method of operation, administration, and supervision.</p> | Y |
| <p>A. A detailed description of each business activity to be conducted by the Applicant, including, but not limited to:</p> <ul style="list-style-type: none"> a. Number of markets to be made, if any, the type and volatility of the products, and the anticipated maximum inventory positions. b. Any plan to enter into contractual commitments, such as underwritings or other securities-related activities. c. Any plan to distribute or maintain securities products in proprietary positions, and the risks, volatility, degree of liquidity, and the speculative nature of the products. | Y |
| Response: | |
| <p>B. A list of the types of securities to be offered and sold and the types of retail or institutional customers to be solicited.</p> | Y |
| Response: | |

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| <p>C. A description of the methods and media to be employed to develop a customer base and to offer and sell products and services to customers, including the use of the Internet, telephone solicitations, seminars, or mailings.</p> | <p>Y</p> |
| <p>Response:</p> | |
| <p>D. A detailed description of how each of the respective business activities will be effected (e.g., a description of how securities will be bought and sold, and who will be responsible for execution and trade reporting).</p> | <p>Y</p> |
| <p>Response:</p> | |
| <p>E. How transactions will be settled and cleared (e.g., fully disclosed, etc.).</p> | <p>Y</p> |
| <p>Response:</p> | |
| <p>F. The capacity in which the Applicant will act (principal or agency).</p> | <p>Y</p> |
| <p>Response:</p> | |
| <p>G. If the Applicant intends to use e-commerce to effect securities transactions, submit copies of all disclosure documents to be provided to the customer, a description of how accounts will be opened and transactions supervised, and sample screens to be used. The Applicant must provide the staff with access to any Web site the Applicant will use and the URL address.</p> | <p>Y</p> |
| <p>Response:</p> | |
| <p>H. A management organizational chart. This chart should reflect the organizational hierarchy of the firm's management and, at a minimum, should identify by name, title, and CRD number (or Social Security number) the firm's Chief Executive Officer, President, Chief Compliance Officer, key supervising principals, and Financial and Operations Principal ("FinOp").</p> | <p>Y</p> |
| <p>Response:</p> | |

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| <p>I. An ownership organizational chart. This chart should reflect the ownership structure of the Applicant, including the percentage of ownership held by each individual or entity. Include a list of all affiliated entities or entities with common ownership. Include a description of the business conducted, officers and directors, and the owners with their corresponding ownership interest in such entities.</p> | <p>Y</p> |
| <p>Response:</p> | |
| <p>J. Copies of all corporate formation documents for Applicant and all control affiliated entities. For example, in the case of a corporation, include the Corporate Resolutions identifying officers/directors/owners and the Articles of Incorporation. In the case of a partnership, the partnership agreement, and in the case of a Limited Liability Company, the operating agreement and certificate of LLC.</p> | |
| <p>Response:</p> | |
| <p>2. The completed Form NMA.</p> | <p>Y</p> |
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| Documentation or Information Description | Required for Initial Package |
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| <p>Standard 2: The Applicant and its Associated Persons have all licenses and registrations required by state and federal authorities and self-regulatory organizations.</p> | |
| <p>1. One originally signed and notarized paper Form BD with applicable schedules. Include evidence of request for:</p> <ul style="list-style-type: none"> a. Registration with the Securities and Exchange Commission (“SEC”). b. Registration with states where firm will conduct business as required by state law. <p>Note: Certain states may require additional information for approval. It is the Applicant’s responsibility to determine the registration requirements of each state in which the Applicant wishes to register.</p> | Y |
| <p>Response:</p> | |
| <p>2. A list with name and CRD number of each associated person of the Applicant (as defined in Rule 1011(b)). With respect to each proposed associated person include the following:</p> <ul style="list-style-type: none"> a. Title. (Specifically identify the persons who will serve as the Applicant’s Executive Representative, AML Compliance Officer, and Chief Compliance Officer.) b. CRD Number. c. A statement as to whether the individual will be registered as a principal and/or representative with the Applicant. d. The registrations and licenses currently held by each individual. e. Any registration or licenses the individual intends to obtain and the date by which such examination will be scheduled as well as the anticipated date of completion of the examination. <p>Note: Pursuant to Rule 3013, each member must identify a principal to serve as Chief Compliance Officer. Additionally, pursuant to Rule 1013(a)(3), upon arrival of the Applicant’s NASD Entitlement Program Agreement and Terms of Use and NASD Member Firm Account Administrator Entitlement Form (see Item 13 under Standard 2), the Applicant shall submit its Form(s) U4 electronically for each Associated Person who is required to be registered under NASD Rules.</p> | Y |

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| <p>Note: Applications for NASD membership should not be submitted until all individuals required to be registered are prepared to complete all examination and qualification requirements. Failure to schedule and successfully complete examinations in a timely manner may result in a significant delay of the application review process, or a lapse or denial of the application. It is strongly suggested that any examination(s) be scheduled within the first 45 days of the application process and that all registration requirements be completed within the first 90 days of the application process.</p> | |
| <p>Response:</p> | |
| <p>3. If the Applicant is seeking a waiver of the two (2) principal requirements in Rule 1021(e), provide a detailed explanation that demonstrates the reason(s) for the waiver. Additionally, provide a contingency plan for situations where the sole General Securities Principal becomes unavailable to carry out his or her responsibilities.</p> <p>Note: Each Applicant is required to register two principals and a Financial and Operations Principal. In addition, certain business activities may require additional principal registrations (e.g., options, municipals, etc.). Refer to Rules 1020 and 1030 for appropriate registration of principals and representatives.</p> | |
| <p>Response:</p> | |
| <p>4. A description of duties and responsibilities of any non-registered officers, directors, owners, and control persons. See Rules 1020 - 1022 and 1060 and <i>Notice to Members 99-49</i>. Provide an attestation for officers, directors, owners, and control persons who will not participate in the day-to-day securities operations of the Applicant or act in any capacity that would require that these individuals become registered. <u>Sample forms</u> are provided.</p> | |
| <p>Response:</p> | |
| <p>5. One original NASD-approved fingerprint card for each associated person subject to SEC Rule 17f-2.</p> <p>OR Corresponding exemption notice(s) pursuant to SEC Rule 17f-2.</p> <p>Note: Fingerprint cards must be submitted promptly upon filing an electronic Form U4 for each person applying for registration. If a member fails to submit a fingerprint card within 30 days after NASD receives the electronic Form U4, the person's registration shall be deemed inactive. See Rule 1140(c)(2).</p> | |

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| Response: | |
| 6. If any of the Applicant's proposed principals are or will be dually registered, list the other broker-dealers with which the principals are or will be associated, in what capacity, and state the percentage of time that will be spent at the Applicant in carrying out their responsibilities on a weekly basis. | |
| Response: | |
| 7. One completed <u>New Member Assessment Report</u> . | Y |
| Response: | |
| 8. One company check, certified check, or money order payable to NASD for the appropriate application, registration, examination, and fingerprint fees. | Y |
| Response: | |
| 9. An executed copy of the <u>Security Sales Activity Statement</u> . | Y |
| Response: | |
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| <p>10. Registration with DTC for FINS number and Lost & Stolen Securities Registration.</p> <p>Note: This can only be completed after the application is deemed complete and the firm is assigned a CRD number.</p> <ul style="list-style-type: none">• FINS Number Depository Trust Company Attn: Aisha Pigott 55 Water Street 51st Floor New York, NY 10041 (212) 855-4173; Fax (212) 855-5445 Please include the name and address of the firm, phone number, and type of anticipated business.• Lost and Stolen Securities Securities Information Center (SIC) P.O. Box 9151 Boston, MA 02205-9151 (617) 345-4910 Attach a copy of the notification from the SIC indicating that registration has been requested and is pending. If the firm is an indirect inquirer, submit a copy of the agreement between it and the direct inquirer. | |
| Response: | |
| 11. <u>OATS registration</u> (see Rule 6950 Series and <i>Notice to Members 98-73</i>) | |
| Response: | |

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| <p>12. Other registrations and notifications as required by the proposed business plan.</p> <ul style="list-style-type: none"> a. Options: Registration with Market Surveillance for Exercise & Assignment Allocation Procedures. b. Municipals: MSRB Acknowledgement Letter and assigned MSRB identification number. Municipal Securities Rulemaking Board 1900 Duke Street Suite 600 Alexandria, VA 22314 (703) 797-6600 c. <i>Municipals</i>: Copy of MSRB notification about the Applicant’s capabilities for reporting municipal securities transactions (see MSRB Rule G-14). d. <i>Municipals</i>: Copy of MSRB notification about the Primary Electronic Mail Content (see MSRB Rule G-40). e. <i>Market Makers</i>: Application of Registration as a Nasdaq Market Maker. f. <i>Market Makers/Proprietary Trading</i>: Proprietary trading reporting symbol. g. <i>Corporate Bonds</i>: Copy of the corporate bond “TRACE” reporting agreement. NASD Market Operations 9509 Key West Avenue 5th Floor Rockville, MD 20850 (866) 776-0800 | |
| <p>Response:</p> | |
| <p>13. Completed <u>NASD Entitlement Program Agreement and Terms of Use and NASD Member Firm Account Administrator Entitlement Form</u>.</p> | Y |
| <p>Response:</p> | |

| Documentation or Information Description | Required for Initial Package |
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| <p>Standard 3: The Applicant and its Associated Persons are capable of complying with the federal securities laws, the rules and regulations thereunder, and NASD Rules, including observing high standards of commercial honor and just and equitable principles of trade.</p> | |
| <p>1. Applicants are advised that Rule 1014(b) contains a provision that creates a rebuttable presumption of denial where it is determined that the Applicant or its Associated Persons are the subject of any of the following events:</p> <ul style="list-style-type: none"> a. A state or federal authority or self-regulatory organization has taken permanent or temporary adverse action with respect to a registration or licensing determination regarding the Applicant or an Associated Person; b. An Applicant or Associated Person is the subject of a pending, adjudicated, or settled regulatory action or investigation by the Commission, the Commodity Futures Trading Commission, a federal, state, or foreign regulatory agency, or a self-regulatory organization; an adjudicated, or settled investment-related private civil action for damages or an injunction; a criminal action (other than a minor traffic violation) that is pending, adjudicated, or that has resulted in a guilty or no contest plea; or an Applicant, its control persons, principals, registered representatives, other Associated Persons, any lender of 5% or more of the Applicant's net capital, and any other member with respect to which these persons were a control person or a 5% lender of its net capital is subject to unpaid arbitration awards, other adjudicated customer awards, or unpaid arbitration settlements; c. An Associated Person was terminated for cause or permitted to resign after an investigation of an alleged violation of a federal or state securities law, a rule or regulation thereunder, a self-regulatory organization rule, or industry standard of conduct; d. A state or federal authority or self-regulatory organization has imposed a remedial action, such as special training, continuing education requirements, or heightened supervision, on an Associated Person. <p>To the extent that any of these events exist, Applicant should include a description of each event and demonstrate how, notwithstanding the presumption, the Applicant will be able to meet all the standards for admission in Rule 1014(a). See Rule 1014(b) and <i>Notice to Members 04-10</i> for additional information.</p> | <p>Y</p> |
| <p>Response:</p> | |

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| <p>2. Identification and description of any of the following events, unless the event has been reported to the Central Registration Depository (CRD®) system.</p> <ul style="list-style-type: none"> a. a regulatory action against or investigation of the Applicant or an Associated Person by the SEC, the Commodity Futures Trading Commission, a federal, state, or foreign regulatory agency, or a self-regulatory organization that is pending, adjudicated, or settled; b. an investment-related civil action for damages or an injunction against the Applicant or an Associated Person that is pending, adjudicated, or settled; c. an investment-related customer complaint or arbitration that is required to be reported on Form U4; d. a criminal action (other than a minor traffic violation) against the Applicant or an Associated Person that is pending, adjudicated, or that has resulted in a guilty or no contest plea; and e. a termination for cause or a permitted resignation after investigation of an alleged violation of a federal or state securities law, a rule or regulation thereunder, a self-regulatory organization rule, or an industry standard of conduct. | <p>Y</p> |
| <p>Response:</p> | |
| <p>3. Documentation of any of the events specified in Item #2 above. If none, so state.</p> | |
| <p>Response:</p> | |
| <p>4. To the extent that any of the events specified in Item #2 exist for the Applicant, and considering also all events reported into CRD, a detailed explanation as to how the Applicant is nonetheless capable of complying with industry rules, regulations, laws, and observing high standards of commercial honor and just and equitable principles of trade.</p> | |
| <p>Response:</p> | |
| <p>5. Identification and description of any sales practice violation, pending arbitration, or pending private civil action for the Applicant or Associated Person. If none, so state.</p> | |
| <p>Response:</p> | |

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| <p>6. <i>Municipals</i>: In certain circumstances, a municipal securities dealer may be prohibited, as a result of certain political contributions made by the firm or its employees, from engaging in negotiated municipal securities financial advisory or underwriting business. (See MSRB Rule G-37). If the Applicant is not subject to this prohibition, so state. If the Applicant believes it is subject to a prohibition on municipal securities business, provide a description of the prohibition and how the firm will monitor its prohibited activities.</p> | |
| <p>Response:</p> | |

| Documentation or Information Description | Required for Initial Package |
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| <p>Standard 4: The Applicant has established all contractual or other arrangements and business relationships with banks, clearing corporations, service bureaus, or others necessary to: (A) initiate the operations described in the Applicant’s business plan, considering the nature and scope of operations and the number of personnel; and (B) comply with the federal securities laws, the rules and regulations thereunder, and NASD Rules.</p> | |
| <p>1. A detailed description and copy of each contractual arrangement and/or business relationship the Applicant will have as part of its proposed activities, including:</p> <ul style="list-style-type: none"> a. Evidence of establishment of general bank accounts; b. SEC Rule 15c3-3(k)(2)(i) Account Agreement on bank stationery OR c. SEC Rule 15c3-3 Account Agreement on bank stationery; d. Clearing agreements (these must comply with Rule 3230) OR e. A letter of intent from the clearing firm and a draft clearing agreement if the clearing firm is unable to provide an executed agreement; f. Service Bureau Agreement; g. ACT Service Bureau/Executing Broker Supplement; and h. Expense Sharing Agreement, if any. Any Expense Sharing Agreement must be compliant with <i>Notice to Members 03-63</i>. | |
| Response: | |
| <p>2. Arrangements for Accounting Services, including:</p> <ul style="list-style-type: none"> a. Designation of Accountant Form; b. Audit Engagement Letter from Auditor pursuant to SEC Rule 17a-5(f)(2); c. Description of Accounting Services other than the annual independent audit to be performed by auditor; and d. Description of Accounting Services other than the annual independent audit to be performed by another accounting firm or consultant. | |
| Response: | |

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| 3. Copy of Registered Investment Advisor Forms ADV (if applicable) including Registered Investment Advisor ID Number. | |
| Response: | |
| 4. Fidelity Bond coverage (See Rule 3020 for required coverage), including name of insurer, amount of coverage and deductible, effective and expiration dates of coverage, and cancellation rider. Note: This can only be completed after the application is deemed complete and the firm is assigned a CRD number. | |
| Response: | |
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| Documentation or Information Description | Required for Initial Package |
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| <p>Standard 5: The Applicant has or has adequate plans to obtain facilities that are sufficient to: (A) initiate the operations described in the Applicant’s business plan, considering the nature and scope of operations and the number of personnel; and (B) comply with the federal securities laws, the rules and regulations thereunder, and NASD Rules.</p> | |
| <p>1. Identification of the intended location of the Applicant’s principal place of business. Also include identification of each location(s) where the Applicant will conduct business, including the total number of offices the Applicant expects to have in the first 12 months of operation, including whether each will be designated as a non-branch, branch, or Office of Supervisory Jurisdiction (“OSJ”) and who will manage each location. Include the names, titles, registration, location, and CRD numbers of the persons to be in charge of each office. Also include a written description of the anticipated business activity for each location.</p> | Y |
| Response: | |
| <p>2. A description of the business facilities (e.g., business area and floor plan), including a statement explaining how the proposed facilities are adequate for the proposed business. This description must address, among other things, the square footage, business equipment, and secure storage for books and records.</p> | |
| Response: | |
| <p>3. A copy of any final or proposed lease for all locations.</p> | |
| Response: | |
| <p>4. If the Applicant will share office space with another entity, include a detailed explanation of how the Applicant will separate its space from the other entity and ensure its customers have clarity about which firm with which they are dealing when on the premises. Also explain how the Applicant will establish and maintain the integrity and confidentiality of its broker-dealer information in light of the shared space.</p> | |
| Response: | |

| Documentation or Information Description | Required for Initial Package |
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| <p>Standard 6: The communications and operational systems that the Applicant intends to employ for the purpose of conducting business with customers and other members are adequate and provide reasonably for business continuity in each area set forth in Rule 1013(a)(2)(E)(xii).</p> | |
| <p>1. A description of the communications and operational system that the Applicant will employ to conduct the proposed business and a Business Continuity Plan for the Applicant pursuant to Rule 3510, detailing the plans and procedures the firm will use to ensure business continuity. The communications and operational system must be tailored to the firm's business plan and address:</p> <ul style="list-style-type: none"> a. System capacity to handle the anticipated level of usage; b. Supervisory or customer protection measures that may apply to customer use of, or access to, firm systems; c. Contingency plans in the event of systems or other technological or communications problems or failures that may impede customer usage or firm order entry or execution; d. System redundancies; e. Disaster recovery plans; f. System security; g. Disclosures to be made to potential and existing customers who may use firm systems; and h. Supervisory or customer protection measures that may apply to customer use of, or access to, such systems. <p>Pursuant to Rule 3510(c), the elements that comprise a business continuity plan are flexible and may be tailored to the size and needs of the member. Each plan, however, must at a minimum, address:</p> <ul style="list-style-type: none"> a. Data backup and recovery (hard copy and electronic); b. All mission critical systems; c. Financial and operational assessments; d. Alternate communications between customers and the member; e. Alternate communications between the member and its employees; f. Alternate physical location of employees; g. Critical business constituent, bank, and counter-party impact; | |

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| <p>h. Regulatory reporting;</p> <p>i. Communications with regulators; and</p> <p>j. How the member will ensure customers' prompt access to their funds and securities in the event that the member determines that it is unable to continue its business.</p> <p>(See Rule 3510 and <i>Notice to Members 04-37</i> for additional information).</p> | |
| <p>Response:</p> | |
| <p>2. Signed <u>Systems Certification Form</u>.</p> | |
| <p>Response:</p> | |

| Documentation or Information Description | Required for Initial Package |
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| <p>Standard 7: The Applicant is capable of maintaining a level of net capital in excess of the minimum net capital requirements set forth in SEC Rule 15c3-1 adequate to support the Applicant's intended business operations on a continuing basis, based on information filed under Rule 1013(b)(5).</p> | |
| <p>1. Financial information detailing the Applicant's sources of funding, current financial position, and projected revenues and expenses, including:</p> <ul style="list-style-type: none"> a. A trial balance, balance sheet, income statement, net capital computation, and general ledger, with the supporting schedules (including documentation to support all allowable assets such as bank statements and related reconciliations and computation of net capital, each of which has been prepared no more than 30 days before the filing date of the application); b. A statement of the Applicant's statutory minimum net capital requirement, pursuant to SEC Rule 15c3-1; c. Written Notification for Use of Alternative Standard of Net Capital computation pursuant to SEC Rule 15c3-1 (if applicable); d. A statement providing the paragraph of SEC Rule 15c3-1 under which the firm computes its net capital and the applicable exemption of SEC Rule 15c3-3. Provide a description of how business will be conducted to qualify Applicant for exemption. Please indicate if the Applicant is self-clearing; and e. A detailed monthly projection of income and expenses for the first 12 months of operations (revenue presented by product, service, and/or activity and expenses between fixed and variable) with a supporting rationale (including the projected number of registered persons, customers, and trading volume). <p>Note: The Applicant must represent how it will ensure financial assets required to meet all operating expenses and remain in capital compliance for a one-year period. Projected revenues will be given little, if any, weight as assets available to meet operating expenses during the start-up phase.</p> | <p>Y</p> |
| <p>Response:</p> | |

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| <p>2. A description of the nature and source of the Applicant’s capital with supporting documentation. Supporting documentation includes, but is not limited to, corporate minutes reflecting the authorization of funding and bank statements evidencing the deposits of funds. Documentation of any and all subordinated loan arrangements should also be included. Further, provide evidence of the source of funds that includes a copy of the check(s) or wire advances and statements for the source account(s). Statements for each account shall include the month in which the withdrawal was made and two previous months.</p> <p>Note: The description should trace funds from all sources (e.g., owners, other persons or entities, layers of ownership or control of the Applicant or other companies) contributing to the capital of the Applicant and should correspond to supporting documentation. The information provided must provide staff with a clear picture of the movement of funds from their origin to the Applicant.</p> | <p>Y</p> |
| <p>Response:</p> | |
| <p>3. A list of persons or entities, including CRD or Tax Identification Numbers, that have contributed or plan to contribute financing to the Applicant’s business with their corresponding percentage of ownership interest in the Applicant, if any, and the terms and conditions of such financing arrangements. Include copies of any loan agreements.</p> | <p>Y</p> |
| <p>Response:</p> | |
| <p>4. Details of any business activity not provided in response to queries under Standard 1 that the Applicant may engage in that reasonably could have a material impact on net capital within the first 12 months of business operations. Include a description of the risk to net capital presented by the Applicant’s proposed business activities. Also include a detailed description of any arrangements for additional capital should a business need arise.</p> | |
| <p>Response:</p> | |

| Documentation or Information Description | Required for Initial Package |
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| Standard 8: The Applicant has financial controls to ensure compliance with the federal securities laws, the rules and regulations thereunder, and NASD Rules. | |
| The Applicant must submit a description of the financial controls used to ensure financial and operational responsibility, to include the following: | |
| 1. Identity of the person who has signatory authority on the firm's financial accounts. | |
| Response: | |
| 2. Identify by name and CRD number the Applicant's FinOp and provide a detailed description of the individual's prior work experience. This description should also address how the individual satisfies Rule 1014(a)(10)(D) which requires one-year of direct or two-years related experience in the subject area to be supervised. Additionally, identify any other person responsible for overall control of financial and operational activities. | Y |
| Response: | |
| 3. Provide a statement as to whether the Applicant's FinOp would be dually registered with other broker-dealers. If yes, please provide the following: <ul style="list-style-type: none"> a. For each firm at which the FinOp is registered, please provide the firm name and CRD number, date of association, business line(s) of the firm, responsibilities at the firm, and the hours devoted to the firm per month; b. A description of any system, policies, and procedures that the firm will implement to enable the FinOp to access promptly access the firm's books and records and to keep abreast of any financial and related problems occurring at the firm; and c. A description of the procedures the Applicant will follow in the event the Applicant encounters a situation that may cause a net capital deficiency. The Applicant's procedures should outline when and how the Applicant would notify the FinOp, if the need should arise, and what action will be taken in order to comply with SEC Rules 17a-5 and 17a-11. | |
| Response: | |

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| <p>4. Description of how the firm will handle customer funds and/or securities.</p> | Y |
| Response: | |
| <p>5. Procedures for reconciliation of bank accounts and clearing statements, to include:</p> <ul style="list-style-type: none"> a. Who is responsible; b. When the reconciliations will be done; c. Records maintained; and d. Evidence of review. | |
| Response: | |
| <p>6. Description of system used to prepare monthly financial statements:</p> <ul style="list-style-type: none"> a. Manual or electronic books and records package program, outside software, or proprietary accounting system. b. Maintenance of financial records (e.g., GAAP accounting, cash vs. accrual). | Y |
| Response: | |
| <p>7. Description of how the firm will satisfy FOCUS filing requirements. Include any agreement with consultants, Service Bureaus, or others for FinOp support.</p> | Y |
| Response: | |

| Documentation or Information Description | Required for Initial Package |
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| <p>Standard 9: The Applicant has compliance, supervisory, operational, and internal control practices and standards that are consistent with practices and standards regularly employed in the investment banking or securities business, taking into account the nature and scope of the Applicant's proposed business.</p> <p>Standard 10: The Applicant has a supervisory system, including written supervisory procedures, internal operating procedures (including operational and internal controls), and compliance procedures designed to prevent and detect, to the extent practicable, violations of the federal securities laws, the rules and regulations thereunder, and NASD Rules.</p> | |
| <p>1. A copy of the Applicant's Written Supervisory Procedures ("WSPs"), internal operating procedures, compliance procedures, internal inspections plan, written approval process, and qualifications investigations required by Rule 3010.</p> <p>Note: The WSPs should include a description of the controls and procedures used by the firm to deter and detect misconduct and improper activity. At a minimum, the firm's WSPs should identify the designated responsible supervisor, describe the process the supervisor will follow to conduct each review, when (<i>i.e.</i>, how frequently) such actions will be taken and how the supervisor will evidence that the required supervisory steps were taken. <u>A repetition of the rule does not provide adequate guidance to a supervisor.</u> The firm's procedures will be evaluated in relation to its business plan, and procedures for products or services not included in the firm's business plan should NOT be in its WSPs. See Rule 3010 and <i>Notice to Members 99-45</i> for further guidance on the preparation of WSPs.</p> | Y |
| Response: | |
| <p>2. A completed copy of the <u>WSP Checklist</u>.</p> | Y |
| Response: | |

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| <p>3. A description of the Applicant's supervisory system.</p> <p>Note: The Supervisory System and the WSPs are separate requirements, each one of which an Applicant must address. Each should be tailored to the Applicant's specific business plan. The supervisory system will be composed of many different elements, both objective, such as regular reviews of specific areas of activity, and subjective, including placing competent, qualified, and experienced individuals in supervisory roles. The WSPs document the supervisory system that the Applicant has established. For example, a supervisory system may include elements such as automated exception reports and surveillance programs that monitor for unusual trading activity in customer accounts. The WSPs would instruct the supervisor on which reports produced by the surveillance system the supervisor is to review, including a description of how often these reports should be reviewed, the steps to be taken if suspicious activity is discovered, and how to document the supervisor's oversight activities. See Rule 3010 and <i>Notices to Members 98-96</i> and <i>99-45</i> for additional guidance.</p> <p>Note: Applicants are reminded that Rule 3010(b)(2) (the "Taping Rule") requires members to establish special supervisory procedures, including the tape recording of conversations, when they have hired more than a specified percentage of registered persons from certain firms that have been expelled or that have had their broker-dealer registrations revoked for violations of sales practice rules ("Disciplined Firms"). See Rule 3010(b)(2) and <i>Notice to Members 02-61</i> for further details. A list of Disciplined Firms is available on the NASD Web site.</p> | <p>Y</p> |
| <p>Response:</p> | |
| <p>4. A copy of the Applicant's Written Supervisory Control Procedures.</p> <p>Note: A member must identify in its written supervisory control procedures one or more principals who will establish, maintain, and enforce a system of supervisory control policies and procedures that test and verify that the member's supervisory procedures are sufficient, and create additional supervisory procedures where the need is identified by such testing and verification. Additionally, a member's written supervisory control procedures must include procedures that are reasonably designed to review and monitor certain activities, including the customer account activity of producing managers. A member may also be required to include procedures that are reasonably designed to provide heightened supervision over the activities of each producing manager. See Rule 3012 and <i>Notices to Members 04-71, 05-08, and 05-29</i> for additional guidance.</p> <p>Response:</p> | <p>Y</p> |

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|---|-----------------|
| <p>5. Supervisors</p> <ul style="list-style-type: none"> a. A description of the number, experience (see Note below), location, and qualifications of primary supervisors and principals; b. The number, experience, and qualifications of persons to be supervised by such personnel; c. The other responsibilities of the supervisors and principals associated with the Applicant, their full-time or part-time status with the Applicant (including the number of hours to be devoted to the Applicant in case of part-time status); d. Any business activities that the supervisors or principals may engage in outside of their association with the Applicant, and the hours per week devoted to such activities; and e. An explanation of how a part-time or off-site supervisor or principal will be able to discharge his or her designated functions on a part-time basis or while located away from the Applicant. <p>Note: Rule 1014(a)(10)(D) requires that “each Associated Person identified in the business plan to discharge a supervisory function has at least one year of direct experience or two years of related experience in the subject area to be supervised.” Statements regarding the experience of each supervising principal must include, but not be limited to: name of firm, position held, time period employed in each position, average number of registered persons supervised, the products and/or services for which supervision was provided, and other relevant information. See Rule 1021 and <i>Notice to Members 99-49</i> for further guidance on persons required to register as principals.</p> | <p>Y</p> |
| <p>Response:</p> | |
| <p>6. A list of all outside business activities and/or private securities transactions of any associated person. See Rule 3030 and Rule 3040.</p> | |
| <p>Response:</p> | |
| <p>7. Statement detailing all prior and current direct or indirect broker-dealer ownership, including partial ownership, of any proposed owners and principals of the Applicant.</p> | |
| <p>Response:</p> | |

| | |
|---|--|
| 8. A written acknowledgement that heightened supervision procedures and special educational programs may be required pursuant to <i>Notice to Members 97-19</i> for an Associated Person whose records reflect disciplinary actions or sales practice events. | |
| Response: | |

| Documentation or Information Description | Required for Initial Package |
|--|------------------------------|
| Standard 11: The Applicant has a recordkeeping system that enables Applicant to comply with federal, state, and self-regulatory organization recordkeeping requirements and a staff that is sufficient in qualifications and number to prepare and preserve required records. | |
| <p>1. A description of proposed recordkeeping system based on the size of the firm’s proposed business, the specific products involved, and the volume of business anticipated. The description should include:</p> <ul style="list-style-type: none"> a. Location of books and records (indicate if original record will be maintained in the main office, branch office, etc.); b. Format to be used for record storage, i.e. hard copy, microfilm/microfiche, optical storage technology or other electronic storage. If books and records will be stored electronically, proof of notice pursuant to SEC Rule 17a-4(f)(2)(ii). See <i>Notice to Members 97-43</i> and SEC Rule 17a-4(f)(2)(ii); c. Software used to prepare financial records; d. A statement as to whether the firm’s recordkeeping will be conducted using one of the following entities: <ul style="list-style-type: none"> • Service bureau • Clearing/correspondent agreements (See Rule 3230(a)(3)) • Piggyback arrangements | |
| Response: | |
| 2. Sample copies of all proposed books and records, including, but not limited to: customer account forms, blotters, ledgers, order tickets, confirmations or subscription agreements, and customer statements. <u>Suggested formats</u> have been provided. | |

| Documentation or Information Description | Required for Initial Package |
|---|------------------------------|
| <p>Standard 12: The Applicant has completed a training needs assessment and has a written training plan that complies with the continuing education requirements imposed by the federal securities laws, the rules and regulations thereunder, and NASD Rules.</p> | |
| <p>1. A copy of the Applicant's written Continuing Education Training Needs Assessment and Written Training Plan to comply with the Firm Element continuing education requirement of Rule 1120(b).</p> | |
| <p>Response:</p> | |
| <p>2. A completed <u>Continuing Education Plan</u> checklist.</p> <p>Note: See <u>The Continuing Education Program</u> on the NASD Web site for additional guidance.</p> | |
| <p>Response:</p> | |

| Documentation or Information Description | Required for Initial Package |
|--|------------------------------|
| <p>Standard 13: NASD does not possess any information indicating that the Applicant may circumvent, evade, or otherwise avoid compliance with the federal securities laws, the rules and regulations thereunder, or NASD Rules.</p> | |
| <p>Please provide a statement that describes how the Applicant meets this standard.</p> | |
| <p>Response:</p> | |

| Documentation or Information Description | Required for Initial Package |
|---|------------------------------|
| Standard 14: The application and all supporting documents otherwise are consistent with the federal securities laws, the rules and regulations thereunder, and NASD Rules. | |
| Please provide a statement describing how the Applicant meets this standard. | |
| Response: | |

Signature _____

Date _____

Print Name and Title _____

Notice to Members

APRIL 2006

SUGGESTED ROUTING

Internal Audit
Legal & Compliance
Operations
Registered Representatives
Senior Management
Systems
Trading
Training

KEY TOPICS

OATS
Rules 6950 - 6958
Rule 9610(a)

GUIDANCE

OATS Reporting Requirements

NASD Extends Compliance Date for Recent Amendments to NASD's Order Audit Trail System Rules; **Compliance Date: July 10, 2006**

Executive Summary

In November 2005, NASD issued *Notice to Members (NTM) 05-78* announcing Securities and Exchange Commission (SEC) approval of amendments to Rules 6950 through 6957 (OATS Rules) relating to the Order Audit Trail System (OATS), as well as questions and answers regarding the application of the amended OATS reporting requirements. In April 2006, NASD issued *NTM 06-15* announcing SEC approval of further amendments to the OATS Rules that expanded NASD's exemptive authority relating to manual orders to include the OATS electronic recording requirements. The compliance date of these amendments was May 8, 2006. NASD is issuing this *Notice* to advise members that on April 20, 2006, NASD filed a rule change for immediate effectiveness to extend the compliance date of these recent amendments to **July 10, 2006**.¹ The text of Rules 6957(c) and 6958(c), as amended, is set forth in Attachment A.

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.

For technical questions regarding OATS reporting, please contact the OATS Help Desk at (800) 321-NASD. Detailed information relating to OATS may be found on NASD's OATS Web site at www.nasd.com/oats.

Discussion

On September 28, 2005, the SEC approved amendments to the OATS Rules.² The amendments to the OATS Rules: (1) implement the OATS reporting requirements for manual orders (OATS Phase III); (2) provide that members are required to capture and report the time the order is received by the member from the customer for all orders; (3) expand the order transmittal requirements to include orders routed to a member's trading desk or trading department; (4) exclude certain members from the definition of "Reporting Member" for those orders that meet specified conditions and are recorded and reported to OATS by another member; and (5) permit NASD to grant exemptive relief from the OATS reporting requirements for manual orders to members that meet specified criteria.

On March 30, 2006, the SEC approved further amendments to the OATS Rules that expand NASD's OATS exemptive authority relating to manual orders to include electronic recording requirements.³ As amended, NASD has the authority to grant exemptive relief from the OATS electronic recording and reporting requirements for manual orders to members that meet specified criteria.

As described in *NTMs 05-78* and *06-15*, the compliance date of these amendments was scheduled for May 8, 2006. Since approval of these amendments, certain firms and service bureaus have requested that the compliance date of the amended OATS requirements be delayed, noting the significant technological changes required to implement the OATS requirements for manual orders, in particular. In response to the concerns raised by firms and service bureaus, on April 20, 2006, NASD filed a rule change for immediate effectiveness to extend the compliance date to July 10, 2006. NASD believes that the extended effective date will assist firms by providing additional time to ensure that all the necessary system changes can be tested and implemented, thereby helping to ensure the integrity and accuracy of OATS data.

In addition, as described in *NTM 06-15*, NASD has granted exemptions from the OATS requirements for a period of six months to those members that meet the specified criteria set forth in Rule 6958. Exemptions granted thus far were scheduled to begin on May 8, 2006 and expire on November 8, 2006. Given the delayed compliance date, all exemptions granted to date will commence on July 10, 2006 and expire on January 10, 2007. Members already granted exemptions need not resubmit an exemption request to extend their exemption to January 10, 2007.

Endnotes

- 1 See File No. SR-NASD-2006-052.
- 2 See Securities Exchange Act Release No. 52521 (September 28, 2005), 70 FR 57909 (October 4, 2005) (File No. SR-NASD-00-23). See also *NTM 05-78* (November 2005).
- 3 See Securities Exchange Act Release No. 53580 (March 30, 2006), 71 FR 17529 (April 6, 2006) (File No. SR-NASD-2006-040). See also *NTM 06-15* (April 2006).

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ATTACHMENT A

New language is underlined; deletions are in brackets.

6950. Order Audit Trail System

* * * * *

6957. Effective Date

The requirements of the Order Audit Trail System shall be effective in accordance with the following schedule:

(a) and (b) No Change.

(c) Manual Orders

The requirements of the Order Audit Trail System shall be effective on July 10, 2006[six months after publication of the revised *OATS Reporting Technical Specifications*] relating to SR-NASD-00-23, for all manual orders, provided that firms shall be required to report information item (18) specified in Rule 6954(b) only to the extent such item is available to them.

(d) No Change.

* * * * *

6958. Exemption to the Order Recording and Data Transmission Requirements

(a) through (b) No Change.

(c) This Rule shall be in effect until July 10, 2011[May 8, 2011].

Notice to Members

APRIL 2006

SUGGESTED ROUTING

Internal Audit
Legal & Compliance
Operations
Registered Representatives
Senior Management
Systems
Trading
Training

KEY TOPICS

Close-Out Requirements
SEC Regulation SHO
SEC Rule 203(b)(3)
Short Sales

GUIDANCE

Short Sales

SEC Division of Market Regulation Issues Interpretive Guidance Regarding Regulation SHO Close-Out Requirements; **Effective Date: May 1, 2006**

Executive Summary

NASD is issuing this *Notice* to highlight recent guidance published by the Securities and Exchange Commission (SEC) relating to the “close-out” requirements under Regulation SHO. Regulation SHO, among other things, imposes uniform delivery requirements on broker-dealers for certain securities that have a substantial level of failures to deliver at a registered clearing agency, referred to as “threshold securities.” Regulation SHO requires broker-dealers that are participants of a registered clearing agency (clearing agency participants) to take action to “close-out” failure-to-deliver positions in threshold securities that have persisted for 13 consecutive settlement days by purchasing securities of like kind and quantity.

On March 17, 2006, the SEC Division of Market Regulation published Question and Answer (Q&A) 5.8 providing interpretive guidance relating to the method by which clearing agency participants may apply any reductions to their end-of-day fail-to-deliver positions at the National Securities Clearing Corporation (NSCC) that occur during the applicable 13 consecutive settlement day period. Specifically, the SEC stated that clearing agency participants that choose to apply reductions to their close-out requirements prior to the 13th consecutive settlement day must first apply any reduction to the most recent increase in its fail to deliver position reflected at NSCC. NASD expects that all members will fully implement the methodology set forth in Q&A 5.8 by May 1, 2006.

Questions/Further Information

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

06-18

Discussion

As further detailed in *Notices to Members 04-93* (December 2004) and *05-33* (April 2005), on June 23, 2004, the SEC adopted certain provisions of a new short sale regulation, designated Regulation SHO.¹ Regulation SHO includes several new provisions relating to short sales, one of which imposes delivery requirements on broker-dealers for certain securities that have a substantial level of failures to deliver at a registered clearing agency, referred to as "threshold securities." Specifically, Rule 203(b)(3) of Regulation SHO requires broker-dealers that are participants of a registered clearing agency to take action to "close-out" failure-to-deliver positions in threshold securities that have persisted for 13 consecutive settlement days by purchasing securities of like kind and quantity. If the fail-to-deliver position is not closed out in the requisite time period, the broker-dealer and any broker-dealer for which it clears transactions are prohibited from effecting further short sales in that threshold security without borrowing or entering into a bona fide agreement to borrow the security.

On March 17, 2006, the staff of the SEC Division of Market Regulation published on its Web site interpretive guidance regarding the close-out requirements under Regulation SHO. Specifically, Q&A 5.8 provides guidance on the method by which clearing agency participants may apply any reductions in their end-of-day fail-to-deliver positions at NSCC that occur during the applicable 13 consecutive settlement day period for purposes of compliance with the Regulation SHO close-out requirements.² In this interpretive guidance, the SEC provides that, if prior to the 13th consecutive settlement day, the participant chooses to reduce its open fail-to-deliver position and such reduction is reflected in the participant's end-of-day net fail-to-deliver position at NSCC, the participant must first apply the reduction to the most recent increase in its fail-to-deliver position reflected at NSCC and then to any increase in its fails position that existed at NSCC on the day preceding that day and so forth until the entire amount of the reduction has been applied. The SEC guidance also provides specific examples to illustrate how to apply such reductions in accordance with the required methodology.

A copy of the interpretive guidance is available on the SEC's Web site at www.sec.gov/divisions/marketreg/mrfaqregsho1204.htm. NASD encourages members and other interested parties to review the interpretive guidance, as NASD expects that all members will fully implement the methodology set forth in Q&A 5.8 by May 1, 2006.

Endnote

1 See Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (August 6, 2004).

2 See Division of Market Regulation: Responses to Frequently asked Questions Concerning Regulation SHO, Question and Answer 5.8 (March 17, 2006).

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Notice to Members

APRIL 2006

SUGGESTED ROUTING

Legal and Compliance
Operations
Senior Management
Trading

KEY TOPICS

Market Orders
Rule 3380
Trade Shredding

GUIDANCE

Trade Shredding

SEC Approves New Rule 3380, Order Entry and Execution Practices; **Effective Date: May 25, 2006**

Executive Summary

On February 24, 2006, the Securities and Exchange Commission (SEC) approved new Rule 3380, Order Entry and Execution Practices, which prohibits conduct known as “trade shredding.”¹ Specifically, under the new rule, members and associated persons are prohibited from splitting any order into multiple smaller orders for execution, or any execution into multiple smaller executions for transaction reporting for the primary purpose of maximizing a monetary or in-kind payment to the member or associated persons as a result of the execution of such orders or the transaction reporting of such executions. Rule 3380, as adopted, is set forth in Attachment A of this *Notice*. The rule becomes effective on May 25, 2006.

Questions/Further Information

Questions regarding this *Notice* may be directed to the Legal Section, Market Regulation, at (240) 386-5126; or Kathryn M. Moore, Assistant General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 974-2974.

Background and Discussion

“Trade shredding” is a term used to describe the practice of splitting customer orders for securities into multiple smaller orders (e.g., a 1,000 share order is split into ten 100-share orders) for the primary purpose of maximizing payments or rebates to the member. Among other things, concerns have been raised about market participants increasingly engaging in the practice of trade shredding as a means to increase their share of market data revenues under the joint industry plans (Plans), where a Plan participant has adopted a practice of sharing its Plan revenues with market participants that send it orders.

To address these concerns, among others, the SEC adopted Regulation NMS, which contains amendments to the current Plan formulas used to allocate Plan income.² These modifications incorporate a more broad-based measure of a self-regulatory organization's (SRO) contribution to the consolidated trade stream, including both an SRO's quotes and trades, which is intended to reduce the incentives for trade shredding.

Although these modifications in Plan formulas should reduce the incentives for trade shredding, NASD proposed, and the SEC approved, new Rule 3380 to prohibit such practices. Specifically, new Rule 3380 prohibits members and associated persons from splitting any order into multiple smaller orders for execution or any execution into multiple smaller executions for transaction reporting for the primary purpose of maximizing a monetary or in-kind payment to the member or associated persons as a result of the execution of such orders or the transaction reporting of such executions. For purposes of Rule 3380, "monetary or in-kind amount" includes, but is not limited to, credits, commissions, gratuities, payments for or rebates of fees, or any other payments of value to the member or associated person.

Rule 3380 becomes effective May 25, 2006.

Endnotes

1 See Securities Exchange Act Release No. 53371 (February 24, 2006), 71 FR 11008 (March 3, 2006) (File No. SR-NASD-2005-144).

2 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37469 (June 29, 2005).

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ATTACHMENT A

New language is underlined.

3380. Order Entry and Execution Practices

No member or associated person may engage in conduct that has the intent or effect of splitting any order into multiple smaller orders for execution or any execution into multiple smaller executions for transaction reporting for the primary purpose of maximizing a monetary or in-kind amount to be received by the member or associated person as a result of the execution of such orders or the transaction reporting of such executions. For purposes of this rule, "monetary or in-kind amount" shall be defined to include, but not be limited to, any credits, commissions, gratuities, payments for or rebates of fees, or any other payments of value to the member or associated person.

Notice to Members

APRIL 2006

SUGGESTED ROUTING

Internal Audit
Legal & Compliance
Operations
Registered Representatives
Senior Management
Systems
Technology
Training

KEY TOPICS

NASD Rule 3360
Short Interest Reporting
Short Sales

GUIDANCE

Short Interest Reporting

Executive Summary

NASD is issuing this *Notice* to inform members of changes to the Regulation Filing Applications system, a Web-based system used by members to report, among other things, their monthly short interest positions to NASD. Specifically, NASD is modifying the Regulation Filing Applications system for reporting short interest positions to: (1) reject member submissions of short interest reports for the current reporting month that are submitted prior to the designated settlement date; (2) require that members append an exchange or market code for each issue symbol and short interest position reported; and (3) implement a validation process for all short interest reports to ensure that all exchange/market codes and issue symbols are valid and reject member reports that fail such validation. NASD will make the Regulation Filing Applications test site available with these changes as of June 1, 2006. The changes to the Regulation Filing Applications system are effective **July 3, 2006**.

Questions/Further Information

Questions concerning this *Notice* may be directed to the Legal Section, Market Regulation, at (240) 386-5126; Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8071; or Jocelyn Mello, NASD Market Regulation, at (240) 386-5091.

Background and Discussion

Short Interest Reporting

NASD Rule 3360 requires each NASD member to maintain a record of “total” short positions in all customer¹ and proprietary accounts in NASDAQ securities and OTC equity securities² (and securities listed on a registered national securities exchange if not reported to another self-regulatory organization) and to regularly report that information in the manner prescribed by NASD. Rule 3360 further requires that NASD members report short positions as of the close of the settlement date designated by NASD and that the data be received by NASD no later than the second business day following the reporting settlement date designated by NASD.³

Since February 2000, NASD members have been required to report short interest positions using the Shorts section of the Web-based Regulation Filing Applications system (hereinafter “the Shorts system”). During the time the Shorts system has been in place, NASD has noted several data integrity and other issues described in more detail below relating to the validation of issue symbols. To address these issues, NASD is implementing several technological changes to the Shorts system that are effective July 3, 2006.

Changes to the Regulation Filing Applications System

Reporting Issue Symbols That Are Active as of the Designated Settlement Date

NASD requires members to report short interest positions as of the close of a designated settlement date, which is the 15th of each month unless the 15th occurs on a weekend or other non-settlement date, in which case the designated settlement date is the preceding business day.⁴ NASD is responsible for disseminating short interest data for issues that are active as of the designated settlement date. It is ultimately the responsibility of each member to ensure that it is reporting accurate short interest data, including confirming that issue symbols are valid as of the designated settlement date.

Currently, the Shorts system permits NASD members to submit short interest reports as early as the trade date that corresponds to the designated settlement date for that month. As a result, the Shorts system will allow members to report short interest positions using issue symbols that are valid on trade date, but may no longer be valid issue symbols as of the designated settlement date. For example, a company’s issue symbol on trade date is ABCD; on the designated settlement date, however, the issue symbol changes to EFGH. Although the Shorts system will initially accept a member’s filing made on trade date that contains a short interest position for the symbol of ABCD, the Shorts system will not ultimately process the member’s filing because the issue symbol is no longer valid on the designated settlement date. The only valid issue symbol in the Shorts system is EFGH. Consequently, each month NASD staff must manually review all issue symbols that change between the trade date and the designated settlement date and note, as applicable, in their monthly validation letters to members any discrepancies.

To ensure that NASD is collecting members' short interest positions for issue symbols that are valid as of the designated settlement date, the Shorts system will be modified so that it will no longer accept short interest reports for the current reporting month prior to the designated settlement date. Upon implementation of the modified Shorts system, the system will begin accepting filings for the current month as of 8 a.m. ET on the designated settlement date. The filing period for each submission will be validated to determine whether the filing is for the current or a previous month.⁵ Should a firm attempt to submit a short interest filing through either the File Transfer Protocol (FTP) or upload process prior to the designated settlement date for the current reporting month, the submission will be rejected and members will receive the following message:

"The system is not prepared to accept any filings for the specified filing period at this point. Please resubmit this filing between the published Settlement Date (not before 8 AM Eastern Time) and the Due Date for the period."

If a member submits short interest filings by manually entering the data into the Web-based system, the member will not be able to edit the draft filings generated by the Shorts system until 8 a.m. ET on the designated settlement date, at which time the Shorts system will be available to accept such submissions.

Designating an Exchange or Market Code for Each Issue Symbol

Currently, the Shorts system does not permit issue symbols to contain special characters, which are commonly used elements in issue symbols. In submitting short interest filings, NASD members must eliminate any special characters (e.g., ABC.D becomes ABCD). As a result, certain short interest positions may be processed and disseminated under the incorrect issue symbol and/or exchange (e.g., exchange-listed security ABC.D is submitted to the Shorts system as ABCD and is identified by the Shorts system as a NASDAQ or OTC equity security ABCD).

In light of the potential for misreporting and/or improper processing of short interest data, members will be required to designate the appropriate exchange or market for each issue symbol and short position reported to the Shorts system.⁶ Members will be obligated to ensure that they are identifying the appropriate exchange or market code as of the designated settlement date for each issue symbol reported.

Members must append the appropriate exchange or market code to the corresponding issue symbol that represents the primary exchange or market in the United States on which the security is listed as of the designated settlement date, or for unlisted securities, the over-the-counter market.⁷ It is important to note that the exchange or market on which the short sale transactions that comprise the short interest positions were executed is not relevant and should not be considered. The following exchange and market codes are mandatory and must be included by members as part of their reported short interest positions.⁸

| Exchange/Market Code | Exchange/Market |
|----------------------|---|
| A | New York Stock Exchange |
| B | American Stock Exchange |
| C | Chicago Stock Exchange |
| D | Philadelphia Stock Exchange |
| E | Pacific Stock Exchange/ArcaEx |
| F | Boston Stock Exchange |
| G | National Stock Exchange (f/k/a Cincinnati Stock Exchange) |
| I | International Securities Exchange |
| K | CBOE |
| R | NASDAQ |
| S | Over-the-Counter |
| Z | Other |

Validation Process

For short interest filings submitted through the upload or FTP process, the Shorts system will perform a two-step validation process on both the exchange/market code and the issue symbol.⁹ First, as noted above, the exchange/market code must be a valid code.¹⁰ Second, the issue symbol must not only be a valid issue symbol for the exchange or market designated by the member, but it also must be a valid issue symbol as of the designated settlement date.¹¹ If any of these conditions are not met, an error message will be generated, the short position will be rejected and removed from the filing, and the filing will be placed in "draft" status.¹² Once the filing is in "draft" status, a member is required to review its submission and make corrections to the data by the designated due date. A member can correct the data using either one of the following methods. First, a member can make a correction to the data contained in the upload or FTP file it generated for the purposes of reporting its short interest data and resubmit the file through the upload or FTP process into the Shorts system. Second, the member can correct the data manually through the Shorts system by using the "Add Symbols" functionality.

The same validation process described above also will be applicable to filings that are manually entered into the Shorts system. NASD notes that neither the exchange/market code nor issue symbol fields can be edited while in "draft" status. Therefore, to change either the exchange/market code or issue symbol, members will need to input a value of zero (0) in the "Current Position" column and then re-enter the correct exchange/market code, issue symbol, and current position using the "Add Symbols" functionality.

Although NASD staff anticipates that these initial validations performed on short interest filings by the Shorts system will result in more accurate submissions, further information requests and analysis by NASD staff will continue to be necessary to ensure that the reported exchange/market code, issue symbol and short positions are accurate.

Modification to the File Format

The requirement that members include an exchange/market code will necessitate that members modify the format of the files uploaded or sent via FTP into the Shorts system. Specifically, the records for the short interest data will need to include a field for the exchange/market code.

To report via the upload or FTP process, the member must create and save an ASCII text file. The file should be created using four types of records. Below is a detailed description of the required file format, including the addition of the exchange/market code.

Record Type 1 - Firm Identification Record

Record Type 1 must always be the first row in the record submitted to NASD. Members must populate the first field in Record Type 1 with "A1." Members must also populate the SEC number and the firm number fields. These numbers must be correct or the file will be rejected.

| Field | Name | Type | Length | Positions | Format | Description |
|-------|-------------|--------|--------|-----------|--------|---|
| 1 | ID1 | CHAR | 2 | 1-2 | "A1" | Must have the code "A1" to identify the record type. |
| 2 | Firm Name | CHAR | 30 | 3-32 | | Name of the firm reporting the short position. |
| 3 | Firm Number | NUMBER | 6 | 33-38 | | Firm Number (may be the CRD#, NASD# or Broker/Dealer#). |
| 4 | SEC Number | NUMBER | 5 | 39-43 | XXXXX | SEC Number (do not include the "8-" prefix). |
| 5 | NSCC Number | NUMBER | 4 | 44-47 | | NSCC number. |
| 6 | Prepared By | CHAR | 25 | 48-72 | | Name of the person to contact at the firm. |

Record Type 2 - Firm Contact Record

Record Type 2 must always be the second row in the record submitted to NASD. Members must populate the first field in Record Type 2 with "A2."

| Field | Name | Type | Length | Positions | Format | Description |
|-------|-------------------|--------|--------|-----------|--------------|---|
| 1 | ID2 | CHAR | 2 | 1-2 | "A2" | Must have the code "A2" to identify the record type. |
| 2 | Contact Number | NUMBER | 12 | 3-14 | nnn-nnn-nnnn | Telephone number at firm (include the dashes). |
| 3 | Contact Extension | NUMBER | 4 | 15-18 | | Telephone extension number. |
| 4 | Contact Title | CHAR | 25 | 19-43 | | Title of the Contact Person. |
| 5 | Settlement Date | DATE | 6 | 44-49 | mmddy | Settlement date. |
| 6 | Trade Date | DATE | 6 | 50-55 | mmddy | Trade date. |
| 7 | CBOE DEA | CHAR | 1 | 56-57 | "Y" | Enter "Y" if CBOE is the firm's designated examining authority. |

Record Type 3 - Short Interest Data

One record of this type must be created for each short position. Members must populate the first field in this record with the letter "B" followed by a blank space. Record Type 3 will begin at row three.

| Field | Name | Type | Length | Positions | Format | Description |
|-------|---------------|--------|--------|-----------|--------|--|
| 1 | ID3 | CHAR | 2 | 1-2 | "B " | Must have the code "B " (the letter "B" followed by a space) to identify the record type. |
| 2 | Exchange | CHAR | 1 | 3 | | The code supplied should represent the U.S. primary exchange or market on which the security is listed as of the designated Settlement Date. |
| 3 | Symbol | CHAR | 10 | 4-13 | | Symbol for the security, left justified. |
| 4 | Security Name | CHAR | 30 | 14-43 | | Name of the security, left justified. |
| 5 | Position | NUMBER | 9 | 44-52 | | Short position for the security, right justified. |

Record Type 4 - Trailer Record

Record Type 4 must contain data identifying the total number of records in the file. Members must populate the first field in Record Type 4 with "99." Record Type 4 is always the last row in the record.

| Field | Name | Type | Length | Positions | Format | Description |
|-------|---------------|--------|--------|-----------|--------|--|
| 1 | ID4 | CHAR | 2 | 1-2 | "99" | Must have the code "99" to identify the record type. |
| 2 | Total Records | NUMBER | 5 | 3-7 | | Total number of records in the file, including the header records, but excluding the trailer record. This should be right justified. |

Example Short Position Filing:

| | | | |
|----------------|----------------------|-----------------|-----------|
| A1 | ACME SECURITIES, INC | 012345099991111 | JOE SMITH |
| A2202-555-1114 | VICE PRESIDENT | 101598101298 | |
| B RABCD | ALPHABET SOUP CO. | 000015500 | |
| B BXYZ | END OF THE LINE INC. | 000009950 | |
| 9900004 | | | |

Testing and Implementation of the Changes to the Regulation Filing Applications System

NASD recognizes that the changes to the Shorts system will require members to make modifications to their systems and processes. Members will have an opportunity to test their program changes as of June 1, 2006 using the Regulation Filing Applications test site, which can be found on NASD's Web site at: <https://regfilingtest.nasd.com>. For members that encounter technical problems and require assistance, please contact the NASD Help Desk at (800) 321-NASD.

The changes to the Shorts system are effective July 3, 2006. As such, members must submit short interest reports containing the exchange/market code beginning with the July 2006 filing period.

Endnotes

- 1 For purposes of NASD Rule 3360, the term "customer" includes a broker-dealer. Consequently, short positions in accounts held for other broker-dealers must be reported unless the position is otherwise reported to another self-regulatory organization. See *Notice to Members 03-08 (January 2003)*.
- 2 On February 3, 2006, the Securities and Exchange Commission (SEC) approved amendments to NASD Rule 3360 that expand the short interest reporting requirements to OTC equity securities. The amended short interest reporting requirements become effective July 3, 2006. See *Notice to Members 06-14 (April 2006)*.
- 3 Members are reminded that NASD must receive short interest data for exchange-listed securities no later than 1 p.m., Eastern Time (ET), on the designated due date. Short interest data for NASDAQ and OTC equity securities must be received by NASD no later than 6 p.m., ET, on the designated due date.
- 4 A schedule of NASD's designated settlement dates, as well as other relevant dates relating to short interest reporting, can be found on NASD's Web site at www.nasd.com under Regulatory Systems > Regulation Filing Applications > Short Interest Reporting > Schedule of Reporting Dates.
- 5 The Shorts system will permit members to submit and/or amend filings for previous filing periods.
- 6 This new field requirement is similar to that which currently exists for members that manually input short positions into the Shorts system. For each new issue symbol that is manually added to a filing, the Shorts system requires that members designate an exchange.
- 7 For securities that are dually listed, the exchange code should represent the primary U.S. exchange or market on which the security is listed.
- 8 All short interest positions reported in NASDAQ-listed securities (currently National Market and NASDAQ Capital Market securities) must be identified with an exchange/market code of "R." All OTC equity securities must be identified with an exchange/market code of "S."
- 9 If either an exchange/market code or issue symbol is missing, the entire filing will be rejected.
- 10 Members should note that the Shorts system will not validate the issue symbol if the exchange/market code is other than one designated for NASDAQ, Over-the-Counter, or AMEX. Short positions designated with all other exchange/market codes will be compiled and sent to SIAC for distribution to the appropriate exchange or market. Similarly, if the issue symbol is no longer active on the exchange or market designated by a member, the short position will be routed to SIAC.
- 11 If a U.S. symbol does not exist for the security (e.g., short interest positions in foreign securities not traded in the U.S.), the member would not be required to report the short interest position to NASD. It is important to note, however, that NASD may require firms to report manually short interest information for these securities upon request.
- 12 Members that upload or FTP their short interest reports can view their "error" and "warning" messages using the report posted on the "Job Status" screen of the Shorts system.

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Disciplinary and Other NASD Actions

REPORTED FOR APRIL

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 March 2006.

Firm Expelled, Individual Sanctioned

PAZ Securities, Inc. (CRD #17554, Boca Raton, Florida) and Joseph Mizrachi (CRD #337288, Registered Principal, Boca Raton, Florida). The firm was expelled from NASD membership and Mizrachi was barred from association with any NASD member in any capacity. The SEC affirmed the sanctions imposed by NASD. The sanctions were based on findings that the firm and Mizrachi failed to respond to NASD requests for information.

The firm and Mizrachi have appealed this decision to the United States Court of Appeals, and the sanctions are in effect pending review. (NASD Case #C07030055)

Firms Fined, Individuals Sanctioned

Capital Growth Financial, LLC (CRD #41040, Boca Raton, Florida), Michael Barry Falken (CRD #862958, Registered Principal, Coral Springs, Florida), and Michael Scott Jacobs (CRD #1818665, Registered Principal, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver and Consent (AWC) in which the firm was censured, fined \$45,000, \$10,000 of which was jointly and severally with Falken, and required to file all sales literature and advertisements with NASD, as defined by NASD Conduct Rule 2210(a), except for PowerPoint presentations used by the firm in public seminars, at least 10 days prior to their first use. The firm is also required to provide a copy of its proposed PowerPoint presentations to NASD at least 30 days prior to conducting any such seminar, so as to allow NASD sufficient time to review and approve the proposed public communication. In that regard, the firm agrees to not conduct any public seminar for 30 days from the date of acceptance of this AWC.

Falken was suspended from association with any NASD member in all principal capacities for 10 business days. Jacobs was fined \$10,000 and suspended from association with any NASD member in all principal capacities for 45 days. Without admitting or denying the findings, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Jacobs, sold

securities that were not registered with the SEC. In connection with the securities offering, the firm used general solicitation sales techniques and sold the securities to non-accredited investors, thereby eliminating the offering from any registration exemption. The findings stated that the firm, acting through Falken, approved the use of letters and invitations to seminars to be sent to prospective clients of the firm that failed to disclose that the referenced securities were subject to a high degree of risk, failed to disclose risks specific to the securities, were misleading by being promissory of successful investment results, and otherwise made exaggerated, unwarranted or misleading statements. The findings also included that Jacobs prepared and approved a PowerPoint presentation that was misleading and inconsistent with the private placement memorandum, and made other statements concerning market conditions that were without a reasonable basis. NASD also found that the firm, acting through Jacobs, failed to establish, maintain and enforce an adequate supervisory system, including written procedures, reasonably designed to achieve compliance with applicable rules and regulations related to the sale of private offerings. In addition, NASD found that the firm failed to establish anti-money laundering (AML) procedures reasonably designed to achieve compliance with the US Patriot Act and the Bank Secrecy Act and the implemented regulations promulgated thereunder by the Department of Treasury.

Falken's suspension began on March 6, 2006, and concluded at the close of business on March 17, 2006. Jacobs' suspension began on March 6, 2006 and will conclude at the close of business on April 19, 2006. (NASD Case #E072003099001)

Choice Investments, Inc. (CRD #17665, Austin, Texas), Donald Arthur Itzen (CRD #853436, Registered Principal, Austin, Texas), and Jean Paul Cruikshank (CRD #3230480, Registered Representative, Missouri City, Texas) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$10,000, jointly and severally with Itzen, and ordered to pay \$9,048, plus interest, jointly and severally with Cruikshank, in restitution to a public customer. Itzen was also suspended from association with any NASD member in any principal or supervisory capacity for 10 days. Cruikshank was also fined \$15,000 and suspended from association with any NASD member in any capacity for one year. The

fine must be paid before Cruikshank reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, the respondents consented to the described sanctions and to the entry of findings that Cruikshank recommended investment transactions to a public customer that were unsuitable in light of her financial condition, investment objectives, investment experience and net worth. The findings stated that Cruikshank guaranteed the customer against losses, and to partially fulfill his guarantee, he gave the customer a \$1,000 check drawn from his personal bank account. The findings also stated that Cruikshank made unwarranted or misleading written claims, made predictions or projections of performance, and failed to provide a sound basis for evaluating facts regarding recommended investment products. The findings also included that the firm, acting through Itzen, failed to establish procedures reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules addressing how a supervisor conducts a suitability review of customer transactions. NASD found that Itzen failed to supervise Cruikshank's securities recommendations to a public customer, and failed to enforce the firm's written supervisory procedures regarding the approval of new customer accounts.

Itzen's suspension will begin on April 17, 2006, and will conclude at the close of business on April 26, 2006. Cruikshank's suspension will begin on April 17, 2006, and will conclude at the close of business on April 16, 2007. (NASD Case #E062003053802)

Firm and Individual Fined

Integrity Trading, Inc. (CRD #104236, Kirkland, Washington) and Jeffrey Wade Hockanson, (CRD #1916556, Registered Principal, Kirkland, Washington) submitted a Letter of Acceptance, Waiver and Consent in which the firm and Hockanson were censured and fined \$15,000, jointly and severally. Without admitting or denying the findings, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Hockanson, permitted associated persons to engage in the securities business of the firm while their registrations were inactive as a result of the firm's failure to timely submit appropriate and complete fingerprint cards to NASD. (NASD Case #E3B2004001803)

Firms Fined

Access Financial Group, Inc. (CRD #33065, Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$51,000 and ordered to pay \$23,353.23, plus interest, in disgorgement in partial restitution to public customers. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it effected riskless principal bond transactions and charged markups that were excessive and unfair, in that the amount charged was greater than the amount warranted by market conditions, the cost of executing the transactions, the value of services rendered to public customers and other pertinent factors. The findings also stated that the firm failed to timely report customer transactions in municipal securities. The findings also stated that the firm effected corporate bond transactions that were Trade Reporting and Compliance EngineSM (TRACESM) eligible, and failed to report the transactions to NASD. The findings also included that the firm failed to establish, maintain and enforce adequate written supervisory procedures designed to achieve compliance with applicable securities laws and regulations regarding the review of markups and markdowns assessed on government securities transactions and TRACE reporting. (NASD Case #E8A2004000101)

Computershare Securities Corporation (CRD #107023, Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$60,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it executed securities transactions while failing to maintain its minimum required net capital. The findings stated that the firm failed to comply with SEC Rule 17a-3(a) in that it prepared inaccurate trial balances and net capital computations for numerous months. The findings also stated that the firm failed to comply with SEC Rule 17a-5 in that it filed inaccurate NASD Financial Operational Combined Uniform Single (FOCUS) Part IIA Reports for several months. (NASD Case #E8A2005005301)

Credit Suisse First Boston LLC n/k/a Credit Suisse Securities (USA) LLC (CRD #816, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined

\$60,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it acquired a Private Clients Service business from another member firm that was to provide clearing, custody, and TRACE reporting services to the business under a separate market identifier that 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.

The findings stated that the separate market identifier reported transactions in TRACE-eligible securities to TRACE that it was not required to report, but failed to report other transactions that it was required to report. The findings also stated that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning TRACE reporting. (NASD Case #20050001793-01)

CyberTrader, Inc. (CRD #44523, Austin, Texas) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it submitted reports with respect to equity securities traded on the NASDAQ Stock Market to the Order Audit Trail SystemSM (OATSSM) that were not in the electronic form prescribed by NASD. The findings stated that the reports were rejected by the OATS system and notice of such rejection was made available to the firm on the OATS Web site but the firm did not correct or replace any of the reports. The findings also stated that the firm failed to enforce its written supervisory procedures that specified that the OATS Administrator must repair Reportable Order Event (ROEs) rejections. (NASD Case #20042000267-01)

Deutsche Bank Securities, Inc. (CRD #2525, 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 findings, 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 some of the last sale reports as late. The findings stated that the firm failed to designate transactions executed outside normal market hours as ".T," and incorrectly designated them as

“.SLD.” The findings also stated that the firm failed to enforce its written supervisory procedures for trade reporting that specified that the designated supervisor would review and initial the late trade report and the potential late trade report on a daily basis. **(NASD Case #20050004905-01)**

Empire Financial Group, Inc. (CRD #28759, Longwood, Florida) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$15,000 and required to pay \$192.53, plus interest, in restitution to public customers. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to use reasonable diligence in transactions with a customer to ascertain the best inter-dealer market, and failed to buy or sell in such market so that the resultant price for its customer was as favorable as possible under prevailing market conditions. The findings stated that the firm sold and bought eligible securities for its own account while it held unexecuted market or limit orders. **(NASD Case #20050000667-01)**

Fulcrum Global Partners LLC (CRD #104455, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$47,500 and required to revise its written supervisory procedures regarding SEC Rules 11Ac1-5 and -6, NASD Marketplace Rule 6541, transaction reporting, NASD’s Firm Quote Rule, and NASD rules concerning locked and/or crossed markets and compliance with Section 28(e) safe harbor concerning soft dollar compensation. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that the firm failed to report, or reported incorrectly, transactions as riskless principal in NASDAQ National Market securities or an OTC equity security to NASDAQ. The findings stated that the firm failed to report the correct symbol indicating whether the firm executed transactions in eligible securities in a principal, riskless principal or agency capacity to NASDAQ and failed to accept or decline a transaction in an eligible security in NASDAQ within 20 minutes after execution. The findings also stated that the firm transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data. The findings also included that the firm effected short sales in a listed security below the price at which the last sale thereof, regular way, was reported pursuant to an effective transaction reporting plan, and failed to

provide written notification disclosing that the transaction was executed at an average price to its customer. NASD found that the firm’s supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning SEC Rules 11Ac1-5 and -6, NASD Marketplace Rule 6541, transaction reporting, NASD’s Firm Quote Rule and NASD’s rules concerning locked and/or crossed markets, and compliance with Section 28(e) safe harbor concerning soft dollar compensation. NASD also found that the firm failed to resubmit rejected ROEs to OATS within the required five business days, thereby resulting in an inaccurate and/or incomplete audit trail. **(NASD Case #20050003966-01)**

Hill, Thompson, Magid & Co., Inc. (CRD #2202, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$25,000 and required to revise its written supervisory procedures regarding best execution, affirmative determination, trade reporting, the tick test, order handling, order execution reports, Automated Confirmation Transaction Service (ACT) reporting requirements, SEC SHO Rule 202 threshold securities, locked and crossed markets and OATS. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data by omitting route identifications. The findings stated that the firm failed to provide documentation evidencing the classification of an order. The findings also stated that the firm’s supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning best execution, affirmative determination, trade reporting, the tick test, order handling, order execution reports, ACT reporting requirements, SEC SHO Rule 202 threshold securities, locked and crossed markets and OATS. **(NASD Case #20042000233-01)**

Kirlin Securities, Inc. (CRD #21210, Syosset, 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 findings, the firm consented to the described sanctions and to the entry of findings that it failed to amend Uniform Applications for Securities Industry Registration or Transfer (Forms U4) and Uniform Termination Notices

for Securities Industry Registration (Forms U5) within 30 days after learning of the facts or circumstances giving rise to the amendment. The findings stated that the firm's written supervisory procedures failed to address certain areas including books and records, net capital computations, clearing arrangement, corporate collateralized mortgage obligations (CMOs), margin accounts, branch office activities, equity trade reporting, corporate bond TRACE reporting and how documents will be evidenced for review. NASD found that the firm failed to report transactions using the proper ".SLD" late trade modifier, and failed to report transactions to ACT within 90 seconds. (NASD Case #ELI20020057-01)

Paulson Investment Company, Inc. (CRD #5670, Portland, Oregon) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$175,000 and required to pay \$150,000 in restitution representing the profits obtained by hedge fund clients through market timing activities. The firm must also certify to NASD that it has reviewed its procedures regarding market timing, late trading, recordkeeping and responses to regulatory inquiries, and has established systems and procedures reasonably designed to achieve compliance with the laws, regulations, and rules concerning those matters and to ensure that prospectus fund exchange limits and provisions of selling agreements are enforced. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it engaged in market timing practices and failed to establish, maintain and enforce a supervisory system and written procedures reasonably designed to prevent and detect deceptive market timing activity. The findings stated that the firm failed to adequately respond to "red flags" that the firm and hedge fund clients were engaged in improper market timing practices and failed to take effective action to address these market timing activities. (NASD Case #EAF0400370002)

Rance King Securities Corp. (CRD #15737, Long Beach, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that, in connection with share transactions, it paid, or caused to be paid, \$29,000 in commissions to real estate brokers who were not registered persons. The findings stated that

the firm, in connection with tenant-in-common transactions, paid, or caused to be paid, \$294,000 in commissions to real estate brokers who were not registered persons. (NASD Case #E0220040124-01)

UBS Securities, LLC (CRD #7654, Stamford, Connecticut) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data. (NASD Case #20042000143-01)

vFinance Investments, Inc. (CRD #44962, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$17,500 and required to revise its written supervisory procedures regarding SEC Rule 11Ac1-4. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings 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 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 minimus* change in relation to the size associated with the firm's bid or offer in each security. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning SEC Rule 11Ac1-4. The findings also stated that the firm transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data. The findings also included that the firm failed to report route reports for ROEs to OATS. (NASD Case #20042000061-01)

Individuals Barred or Suspended

Stephen Cutler Arnold (CRD #1178562, Registered Representative, Camarillo, California) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000, suspended from association with any NASD member in any capacity for 90 days, and required to pay public customers \$17,655, plus interest, in restitution. Without admitting or denying the findings,

Arnold consented to the described sanctions and to the entry of findings that he participated in private securities transactions and received commissions without providing prior written notice to, and receiving prior written approval from, his member firm.

Arnold's suspension began on March 6, 2006, and will conclude on June 3, 2006. (NASD Case #E0220020636-01)

John Michael Babiarz (CRD #3047247, Registered Principal, Peabody, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 20 business days. Without admitting or denying the findings, Babiarz consented to the described sanctions and to the entry of findings that he recommended securities transactions to a public customer without having a reasonable basis for believing that the recommendation and resultant transactions were suitable for the customer in light of the customer's investment objectives, financial situation and needs.

Barbiarz' suspension began on March 20, 2006, and will conclude at the close of business on April 17, 2006. (NASD Case #2005002047301)

Dan Israel Barish (CRD #2133441, Registered Principal, West Bloomfield, 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 15 business days. Without admitting or denying the findings, Barish consented to the described sanctions and to the entry of findings that he engaged in a private securities transaction and neglected to give prior written notice to, and receive prior written approval from, his member firm.

Barish's suspension began on March 6, 2006, and concluded at the close of business on March 24, 2006. (NASD Case #E8A2004075501)

Sammy Battista (CRD #4652820, Associated Person, Hamilton, 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 findings, Battista consented to the described sanction and to the entry of findings that in connection with a public customer's life insurance application, he requested that

a co-worker impersonate the customer during a personal history interview his member firm conducted. The findings stated that Battista failed to respond to NASD requests for information. (NASD Case #20050022551-01)

Christopher Wilson Black (CRD #1856976, Registered Representative, Bellevue, Washington) submitted an Offer of Settlement in which he was fined \$25,000 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Black consented to the described sanctions and to the entry of findings that he altered handwritten notes of meetings with a public customer to remove personal comments about the customer and to add information regarding conversations he claimed to have had with the customer about the customer's financial situation, holdings, margin and option strategies. The findings stated that Black placed the altered notes in the customer's file, subsequently provided the altered notes to his member firm during discovery in an arbitration hearing, and failed to timely notify his firm that the notes had been altered.

Black's suspension began on March 20, 2006, and will conclude at the close of business on March 19, 2007. (NASD Case #CAF040084)

Barbara Susan Blonsky (CRD #1226531, Registered Representative, Mt. Laurel, New Jersey) 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 10 business days. Without admitting or denying the findings, Blonsky consented to the described sanctions and to the entry of findings that she attempted to settle a complaint with a public customer by paying the customer \$2,400 without her member firm's knowledge or approval.

Blonsky's suspension began on March 20, 2006, and concluded at the close of business on March 31, 2006. (NASD Case #2005002265801)

Brian P. Carr (CRD #2577346, Registered Representative, Madison, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000, ordered to pay \$19,786.97, plus interest, in restitution and suspended from association with any NASD member in any capacity for four months. Without admitting or denying the findings,

Carr consented to the described sanctions and to the entry of findings that he made investment recommendations to a public customer without having a reasonable basis for believing that such recommendations were suitable based on the customer's investment objectives, financial situation and needs.

Carr's suspension began on March 20, 2006, and will conclude at the close of business on July 19, 2006. (NASD Case #E9B20030438-02)

Michael Joseph Cassano (CRD #2909613, Registered Representative, Lexington, Kentucky) 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 findings, Cassano consented to the described sanction and to the entry of findings that he borrowed \$15,500 from public customers in contravention of his member firm's written procedures prohibiting registered representatives from borrowing money from customers. The findings stated that Cassano failed to respond to NASD requests for information. (NASD Case #20050004481-01)

Michael Kevin Coleman (CRD #1433865, Registered Representative, Worcester, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Coleman consented to the described sanction and to the entry of findings that he failed to answer all questions posed to him during an NASD on-the-record interview. (NASD Case #20050017796)

Anthony Louis Cortellessa (CRD #54624, Registered Representative, Bayonne, 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 findings, Cortellessa consented to the described sanction and to the entry of findings that he obtained over \$750,000 from public customers to purchase promissory notes, or to be invested in a trust fund, and instead misused the funds for other purposes. (NASD Case #20050027013-01)

Dennis Eugene Derr (CRD #1939854, Registered Representative, Camarillo, California) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000, suspended from association with any NASD member in any capacity for two years, and

ordered to disgorge commissions in the amount of \$90,240, plus interest, to public customers. The fine and restitution amounts must be paid before Derr reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Derr consented to the described sanctions and to the entry of findings that he participated in private securities transactions, for commission, without providing prior written or oral notification to, and receiving prior written approval from, his member firm.

Derr's suspension began on March 20, 2006, and will conclude at the close of business on March 19, 2008. (NASD Case #E0220020636-02)

Craig Jude Dixon (CRD #3064467, Registered Principal, Manorville, New York) submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for 60 days, permanently barred from association with any NASD member except as a Limited Representative—Investment Company Products/Variable Contracts, and required to take and pass NASD's Series 6 exam within 90 days of becoming associated with any NASD member. In light of Dixon's financial status, no monetary sanctions have been imposed. Without admitting or denying the allegations, Dixon consented to the described sanctions and to the entry of findings that he engaged in a manipulative scheme to inflate the share price of a security by placing a series of small buy orders into the market at successively higher prices and then crossing blocks of shares of the security between customer accounts at artificially inflated prices. The findings stated that Dixon participated in the unregistered distribution of securities by processing the receipt and sale of unregistered shares without valid exemption under Section 5 of the Securities Act of 1933. The findings also stated that Dixon directly or indirectly, by use of means or instrumentalities of interstate commerce, intentionally or recklessly employed a device, scheme or artifice to defraud or engaged in an act, practice or course of business that operated, or would operate, as a fraud or deceit in connection with the purchase or sale of a security.

Dixon's suspension began on March 20, 2006, and will conclude at the close of business on May 18, 2006. (NASD Case #CMS040165)

William Hall Formy-Duval (CRD #2212332, Registered Principal, Wilmington, North Carolina) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in all principal and supervisory capacities. In light of Formy-Duval's financial status, no monetary sanctions have been imposed. Without admitting or denying the findings, Formy-Duval consented to the described sanctions and to the entry of findings that he allowed an individual to function as a registered person with his member firm without the benefit of registration, despite the fact that the individual was serving an NASD suspension. The findings stated that Formy-Duval failed to ensure that his member firm maintained its required minimum net capital, and caused his firm to prepare inaccurate net capital computations and to file inaccurate FOCUS reports.

The findings also stated that Formy-Duval failed to use a proper escrow account in connection with a securities offering, and failed to close the offering and return funds to customers at the offering's expiration when the minimum contingency had not been met. The findings also included that Formy-Duval failed to reasonably supervise his member firm and its representatives to prevent and detect sales practice violations. NASD found that Formy-Duval failed to enforce his firm's supervisory procedures and failed to establish and enforce an adequate supervisory system in that he failed to ensure that all covered employees attended annual compliance meetings, failed to ensure that the principal of the firm reviewed correspondence, advertising and sales literature, and failed to establish any written procedures for sales of private placements. (NASD Case #E072004000301)

Alvin Waino Gebhart, Jr. (CRD #1005905, Registered Principal, Fallbrook, California) and Donna Traina Gebhart (CRD #2708528, Registered Principal, Fallbrook, California). Alvin Gebhart, Jr. was barred from association with any NASD member in any capacity. Donna Gebhart was fined \$15,000, suspended from association with any NASD member in any capacity for one year, and ordered to requalify by exam before re-entering the securities industry. The SEC affirmed NASD's sanctions following the appeal of a National Adjudicatory Council (NAC) decision. The sanctions were based on findings that the respondents sold unregistered securities that were not exempt from registration, engaged in private securities transactions without providing written notice to, or receiving written

approval from, their member firm, and recklessly omitted material facts in connection with the sales of securities.

Alvin Gebhart, Jr. and Donna Gebhart have appealed this decision to the United States Court of Appeals, and the sanctions, except for the bar, are not in effect pending review. (NASD Case #C02020057)

Taihua Terry Ho (CRD #843618, Registered Representative, Fresh Meadows, New York) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Ho consented to the described sanction and to the entry of findings that he participated in a manipulative scheme or course of business designed to inflate the share price of OTC Bulletin Board-traded issuers and to create the false appearance of active trading in those securities. The findings stated that the manipulative scheme involved the entry of customer buy orders at progressively higher prices and the entry of matched orders to buy and sell shares of the companies. The findings also stated that Ho failed to disclose his outside business activities to his member firm. (NASD Case #20042000053-01)

Russell Orville Hodder, Jr. (CRD #2179109, Registered Representative, Comstock Park, Michigan) was barred from association with any NASD member in any capacity. The sanction was based on findings that Hodder effected, or caused to be effected, securities transactions in public customers' accounts without their prior knowledge or authorization and in the absence of written or oral authorization to exercise discretion in their accounts. The findings stated that Hodder signed public customers' names on withdrawal statement forms or checks totaling \$56,500, without their knowledge or consent, and without written or oral authorization to do so, and used the funds to invest in a company he controlled. The findings also stated that Hodder failed to respond to NASD requests for information. (NASD Case #E8A2003076301)

Philippe Noel Keyes (CRD #1172528, Registered Representative, Valencia, California) was barred from association with any NASD member in any capacity. The NAC imposed the sanction following appeal of an Office of Hearing Officers (OHO) decision. The sanction was based on findings that Keyes engaged in private securities transactions without providing prior written

notice to, and receiving prior written approval from, his member firm. The findings also stated that Keyes used unbalanced and misleading sales literature in connection with the recommendation and sale of securities.

Keyes has appealed this decision to the SEC, and all sanctions are in effect pending consideration of the appeal. (NASD Case #C02040016)

Jeffrey Chamberlain Kline (CRD #3204373, Registered Principal, Hilton Head Island, South Carolina) submitted an Offer of Settlement 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 Kline reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Kline consented to the described sanctions and to the entry of findings that he forged a public customer's signature on an IRA Contribution Authorization Form without the customer's prior knowledge, authorization or consent.

Kline's suspension began on March 6, 2006, and will conclude at the close of business on May 4, 2006. (NASD Case #2005001407501)

Albert Douglas Lalonde (CRD #4900970, Associated Person, Rochester, 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 six months. The fine must be paid before Lalonde reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Lalonde consented to the described sanctions and to the entry of findings that he willfully failed to disclose material facts on his Form U4.

Lalonde's suspension began on March 6, 2006, and will conclude at the close of business on September 5, 2006. (NASD Case #2005000676501)

Haim Aron Levy (CRD #4485483, Associated Person, Queens, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Levy failed to respond to NASD requests for information. The findings also state that Levy willfully failed to disclose material facts on his Form U4 and his employment application. (NASD Case #E1020040826-01)

George Douglas Linicomn (CRD #4594756, Registered Representative, Corsicana, Texas) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Linicomn consented to the described sanction and to the entry of findings that he willfully failed to disclose a material fact on his Form U4. (NASD Case #E062004040001)

Richard Lawrence MacDuff (CRD #4306223, Registered Representative, Silverdale, Washington) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, MacDuff consented to the described sanction and to the entry of findings that he engaged in private securities transactions outside the regular course of his employment with a member firm, failed to provide prior notice to his firm describing in detail his proposed transactions and his role therein, and failed to receive written approval from his firm. The findings stated that MacDuff prepared and distributed sales literature in the form of newsletters to public customers without the knowledge or consent of registered principals of his member firms. The findings also stated that MacDuff prepared and distributed newsletters that contained statements that were unwarranted and misleading, and failed to name the member firm with which he was associated, and failed to file the sales literature with NASD's Advertising Department. (NASD Case #2005000920402)

Robert Franklyn Malin (CRD #1178312, Registered Principal, New York, New York) submitted an Offer of Settlement in which he was fined \$15,000 and suspended from association with any NASD member in a principal capacity for 30 days. Without admitting or denying the allegations, Malin consented to the described sanctions and to the entry of findings that he, acting on behalf of his member firm, signed a Form (SL-6) Collateral Agreement and Secured Demand Note (SL-6 SDN) Document without disclosing the existence of a side agreement and a Limited Power of Attorney Form to NASD. The findings stated that by failing to disclose the existence of these forms to NASD, Malin caused false, incomplete and misleading filings to be made with NASD, which Malin knew, or should have known, were false, incomplete and misleading.

Malin's suspension began on March 20, 2006, and will conclude at the close of business on April 18, 2006. (NASD Case #E102004085602)

Cheryl Lynn Mize (CRD #4270587, Registered Representative, Indianapolis, Indiana) 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 findings, Mize consented to the described sanction and to the entry of findings that she willfully failed to disclose material facts on her Form U4. The findings stated that Mize failed to respond to NASD requests for information and documents. (NASD Case #2005002369701)

David Michael Nelson (CRD #4603121, Registered Representative, Wilmot, South Dakota) 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 Nelson reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Nelson 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.

Nelson's suspension began on March 20, 2006, and concluded at the close of business on March 31, 2006. (NASD Case #20050010082-01)

Marc Christopher Newton (CRD #2684599, Registered Representative, Pickerington, Ohio) submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for five months. Without admitting or denying the findings, Newton consented to the described sanctions and to the entry of findings that he affixed his supervisor's signature, without his supervisor's knowledge or consent, on annuity reporting sheets that his member firm required to be submitted with annuity applications. The findings stated that Newton affixed the signature of a public customer to a fee in lieu of commission agreement.

Newton's suspension began on April 3, 2006, and will conclude on September 2, 2006. (NASD Case #E8A20040879-02/20050010595)

Marilyn Ruth O'Leary (CRD #1112613, Registered Principal, Palm Beach Gardens, Florida) submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$3,500 and suspended from association with any NASD member in any capacity for 90 days. Without admitting or denying the findings, O'Leary consented to the described sanctions and to the entry of findings that she caused her member firm to maintain inaccurate books and records. The findings stated that O'Leary sold unregistered shares of a stock without any exemption.

O'Leary's suspension began on March 6, 2006, and will conclude on June 3, 2006. (NASD Case #EAF0300770003)

Kent David Oz (CRD #2665265, Registered Principal, New York, New York) submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 18 months. The fine must be made before Oz reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Oz consented to the described sanctions and to the entry of findings that he violated the firm's anti-money laundering procedures and his member firm's written supervisory procedures in that he effected transactions that had no business or apparent lawful purpose, and failed to obtain approval from designated senior management personnel prior to effecting transactions that were executed at off-market prices. The findings stated that Oz failed to contact a broker-dealer's senior managers to ascertain reasons for off-market transactions and to exchange correspondence documenting such reasons. The findings also stated that Oz failed to ensure that confirmations sent to his customers stated that the transactions were effected at a non-standard settlement price at the customer's request. In addition, the findings stated that Oz failed to have new products or product structures validated and approved prior to trading, and to confine their trading to firm-approved products.

Oz' suspension began on March 20, 2006, and will conclude at the close of business on September 19, 2007. (NASD Case #E102002159103)

James Ronald Parker (CRD #356630, Registered Representative, Fair Oaks, California) submitted a Letter of Acceptance, Waiver and Consent in which he was suspended from association with any NASD

member in any capacity for one month. In light of Parker's financial status, no monetary sanction has been imposed. Without admitting or denying the findings, Parker consented to the described sanction and to the entry of findings that he distributed, or caused to be distributed, sales literature to public customers that did not conform to the applicable standards for communications with the public NASD requires.

Parker's suspension began on March 6, 2006, and will conclude at the close of business on April 5, 2006. (NASD Case #E0120040345-01)

Robert Christopher Patrick (CRD #2854687, Registered Principal, Ronkonkoma, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Patrick executed unauthorized transactions in a public customer's account without the customer's prior knowledge or consent. (NASD Case #ELI2003032201)

Rodney Joseph Robito (CRD #2214766, Registered Principal, Pelham, New Hampshire) 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 findings, Robito consented to the described sanction and to the entry of findings that he improperly used \$16,182.86 that he received from public customers to fund their IRA accounts. The findings stated that Robito failed to respond to an NASD request for information. (NASD Case #2005002738801)

Dulce Maria Salaverria (CRD #4724934, Associated Person, Maracaibo, Venezuela) was barred from association with any NASD member in any capacity. The NAC imposed the sanction following Salaverria's appeal of a decision issued by OHO. The sanction was based on findings that Salaverria submitted a falsified examination score report to her employing member firm. (NASD Case #C07040077)

Mark Alan Shiver (CRD #1961734, Registered Representative, Knightdale, North Carolina) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$15,742.19, including disgorgement of \$10,742.19 of profits related to market timing activities, and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Shiver reassociates with any NASD member following the

suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Shiver consented to the described sanctions and to the entry of findings that he facilitated the circumvention of mutual fund company trading restrictions placed on accounts owned by hedge fund companies intended to prevent market timing.

Shiver's suspension began on March 20, 2006, and will conclude at the close of business on June 19, 2006. (NASD Case #E0420030634-01)

Kerie Anne Smith (CRD #4512256, Associated Person, Allentown, Pennsylvania) 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 findings, Smith consented to the described sanction and to the entry of findings that she changed the surrender charge percentage that was shown on an Investment Switch Acknowledgement form signed by a public customer to a higher percentage without the customer's knowledge or authorization. The findings stated that Smith failed to respond to NASD requests for information and to give testimony. (NASD Case #2006004237301)

William Warren Smith (CRD #1932595, Registered Representative, Collierville, Tennessee) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Smith consented to the described sanction and to the entry of findings that he falsified Letters of Authorization in order to effect fund transfers totaling \$9,200 from a public customer's account to his personal checking account without the customer's knowledge or consent, thereby converting the funds for his own use and benefit. (NASD Case #E052004033202)

Evan Taber (CRD #1892751, Registered Representative, Plantation, Florida) 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 findings, Taber consented to the described sanctions and to the entry of findings that he guaranteed a public customer against loss in connection with the customer's bridge loan purchase.

Taber's suspension began on February 24, 2006, and concluded on March 25, 2006. (NASD Case #2005000904401)

Scott Frederick Takacs (CRD #3177647, Registered Representative, Artesia, New Mexico) was barred from association with any NASD member in any capacity. The sanction was based on findings that Takacs prepared and submitted requests for reimbursements of business travel expenses that he had not incurred to his member firm, and accepted the funds knowing that he had not incurred them. The findings stated that Takacs failed to respond to NASD requests for information and to provide testimony. (NASD Case #E3A2004032801)

Richard Harlan Webb, Jr. (CRD #1362819, Registered Representative, Bothell, Washington) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the findings, Webb consented to the described sanctions and to the entry of findings that he effected discretionary transactions in a public customer's account without his member firm's prior written authorization and acceptance of the account as discretionary. The findings stated that Webb caused his firm's books and records to be inaccurate by indicating that trades on order tickets were unsolicited when, in fact, he had solicited those transactions.

Webb's suspension began on March 6, 2006, and concluded at the close of business on March 24, 2006. (NASD Case #E3B20040197-01)

Jason Joseph Wilde (CRD #2787538, Registered Representative, Jersey City, New Jersey) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Wilde consented to the described sanction and to the entry of findings that he engaged in fraudulent misrepresentations and omissions to induce purchases or to discourage sales of a security. The findings stated that Wilde engaged in unauthorized trading and other deceptive practices, and knowingly or recklessly provided substantial assistance to others engaging in similar misconduct to further the scheme. The findings also stated that prior to effecting transactions, Wilde failed to provide public customers with a risk disclosure document containing the information required by penny

stock rules, and obtain a signed and dated written statement from the customers acknowledging the document's receipt. The findings also included that Wilde failed to disclose to public customers, either orally or in writing, the inside bid and offer quotations for the security prior to effecting transactions, and failed to provide the same in writing at or prior to the same of any written confirmation sent to the customer. NASD found that Wilde failed to keep and preserve records of such disclosures as required by the penny stock rules. (NASD Case #CMS040165)

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

Steven Anthony Bencivenga, Jr. (CRD #3000161, Registered Representative, Brooklyn, New York) was named as a respondent in an NASD complaint alleging that he effected securities transactions in public customers' accounts without their knowledge, authorization or consent, and without reasonable grounds for believing that the transactions were suitable based upon the customers' financial situation, investment objectives and financial needs. The complaint alleges that Bencivenga utilized margin in customers' accounts without the prior knowledge, authorization or consent, and without signing a margin agreement and disclosures. The complaint also alleges that Bencivenga did not obtain written authorization from customers permitting him to either accept instruction from an individual with respect to their accounts, or to enter transactions based on communication with an individual. The complaint further alleges that Bencivenga did not possess or make reasonable efforts to obtain information from customers about their financial status, and did not obtain, complete and/or update new account documentation or account agreements from the customers' prior firm before effecting transactions in their account. In addition, the complaint alleges that

Bencivenga effected a number of unauthorized transactions in the customers' new account in an attempt to respond to complaints they expressed, and to raise illicit profits in order to settle complaints and resolve their concerns. (NASD Case #E1020031192-01)

Donald Scott Huffman (CRD #4449502, Registered Representative, Boardman, Ohio) was named as a respondent in an NASD complaint alleging that he received \$5,600 from public customers to purchase insurance, but he used the funds for some purpose other than for the customers' benefits. The complaint also alleges that Huffman created and gave an Evidence of Insurance Form to a public customer that represented that the customer's house was insured when, in fact, it was not. (NASD Case #E8A2004067501)

Nora Lynn Newell (CRD #1765390, Registered Representative, Chattanooga, Tennessee) was named as a respondent in an NASD complaint alleging that she borrowed funds totaling \$45,000 from public customers. The complaint alleges that Newell recommended and executed the liquidation of various mutual fund holdings in public customers' accounts for the purpose of funding the loans, and falsely represented to the customers that she would use the funds for real estate investments and she would repay the loan with interest. The complaint also alleges that Newell never made any principal or interest payments on the loans, and did not have reasonable grounds for believing that the recommendation to liquidate and the resultant mutual fund sale transactions were suitable for the customers based on their financial situations, investment objectives or needs. In addition, the complaint alleges that Newell failed to respond to NASD requests for information. (NASD Case #E052004024601)

Peter Rhee (CRD #2964890, Registered Representative, Garfield, New Jersey) was named as a respondent in an NASD complaint alleging that he caused purchase and sales transactions in public customers' accounts without their authorization or consent. The complaint also alleges that Rhee failed to respond to NASD requests for information and to appear for an on-the record interview. (NASD Case #E9B2004049101)

Joseph Gerard Vitetta (CRD #1536695, Registered Representative, Sea Bright, New Jersey) was named as a respondent in an NASD complaint alleging that he recommended that a public customer surrender a variable annuity and deposit the funds in an investment account without having reasonable grounds to believe that the sale was suitable in light of the customer's financial situation, investment objectives, and the contract terms of the annuity product. The complaint alleges that Vitetta obtained \$37,000 from the customer for investment purposes and converted or misused the funds for his own use and benefit without the customer's knowledge, authorization or consent. The complaint also alleges that Vitetta obtained a loan from a public customer through pressure, misrepresentation or advantage contrary to his member firm's policy and procedures governing the circumstances under which brokers could obtain loans from customers. The complaint further alleges that Vitetta willfully failed to disclose material information on his Form U4. (NASD Case #E1020041225-01)

Jeffrey S. Weick (CRD #4293526, Registered Representative, Coconut Creek, Florida) was named as a respondent in an NASD complaint alleging that he executed numerous unauthorized trades in multiple public customer accounts, and overbought trades that were unauthorized in a pattern of knowing misconduct and failed to describe that he was executing unauthorized trades in the customer's accounts to them. The complaint also alleges that Weick, directly or indirectly, in connection with the offer or sale of securities, by the use of means or instrumentalities of interstate commerce, or of 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 courses of business which operated or would operate as a fraud or deceit upon purchasers or prospective purchasers. (NASD Case #E072004078401)

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

Nalico Equity Corporation
Giessen, Germany
(March 2, 2006)

Firms Suspended for Failure to Supply Financial Information

The following firms were 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.)

Equity Planning Securities Corp. n/k/a
The Draken Group, Inc.
Lawrenceville, Georgia
(March 13, 2006 to March 29, 2006)

Geo Securities, Inc.
Dallas, Texas
(March 13, 2006)

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

Gwendolyn Faye Cash
Memphis, Tennessee
(March 2, 2006)

Individuals Barred Pursuant to NASD Rule 9552(h)

Kimberly Gallops Anthony
Vestavia Hills, Alabama
(March 3, 2006)

Ian Philmore Bynoe
Brooklyn, New York
(February 21, 2006)

Daniel Lucian Cammarano III
West Palm Beach, Florida
(February 14, 2006)

Justin Andre Inniss
Brooklyn, New York
(March 14, 2006)

Anssy Akhabue Okoebor
Ladera Ranch, California
(March 29, 2006)

Roman Pasinkovsky
Brooklyn, New York
(March 28, 2006)

Roy Roxton Smith, Jr.
Jonesboro, Arizona
(March 13, 2006)

Samuel Lackland Talbot
Jacksonville, Florida
(March 15, 2006)

Roger Glen Wilson
Irving, Texas
(February 24, 2006)

Vladimir Ziskind
Brooklyn, New York
(March 8, 2006)

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.)

Richard Joseph Arena, Jr.
E. Patchogue, New York
(March 1, 2006)

Sandeep Bardia
Maspeth, New York
(March 20, 2006)

Clark M. Chasten, II
Glenwillow, Ohio
(February 27, 2006)

Russell Rodney Cloward
West Jordan, Utah
(February 13, 2006)

Charles Dean Crystal
Colorado Springs, Colorado
(March 1, 2006)

John Derek Elwin
Lake Worth, Florida
(February 27, 2006)

Lyn Jeanne Flanagan
San Diego, California
(March 28, 2006)

Damascus Isaiha Lee
Brooklyn, New York
(February 28, 2006)

Kenneth Lee McLaughlin
Akron, Ohio
(March 13, 2006)

Todd Michael Newman
Royal Palm Beach, Florida
(March 20, 2006)

E. James Pritchett
Metairie, Louisiana
(February 21, 2006)

Claude St. Jean
Tampa, Florida
(February 21, 2006)

Mark Ivan Sikkenga
Kalamazoo, Michigan
(March 13, 2006)

Thomas William Yurachek
St. Charles, Missouri
(February 21, 2006)

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.)

Joseph Byron Andrews
Cave Creek, Arizona
(March 15, 2006)

Timothy John Carmichael
Madison, New Jersey
(March 15, 2006)

Ronald Raymond Cournoyer
Warwick, Rhode Island
(February 1, 2006)

Brian Lee Crawley
New Rochelle, New York
(March 15, 2006)

Gerald Dean Cronenwett
Fishers, Indiana
(March 16, 2006)

Henry Daniel Davidson
Newport Coast, California
(March 16, 2006)

Todd William Haines
Boise, Idaho
(February 1, 2006)

William Henry Harris, Jr.
Phoenix, Arizona
(March 30, 2006 to April 4, 2006)

Patrick Steven Jage
Oak Brook, Illinois
(March 16, 2006)

Gerardo Maroto
Oceanside, New York
(March 16, 2006)

Anssy Akhabue Okoebor
Ladera Ranch, California
(March 16, 2006,
NASD Arbitration Case #05-04253)
(March 30, 2006,
NASD Arbitration Case #05-02494)

Clifford John Pinner

Nutley, New Jersey
(March 9, 2006)

John Eric Poulson

Mill Valley, California
(March 16, 2006)

Mauricio Valencia

Jackson Heights, New York
(July 20, 2005 to March 9, 2006)

Kevin James Wallace

Singapore, Singapore
(March 16, 2006)

Gary Steven Wood

Crystal Bay, Nevada
(March 16, 2006)

NASD Fines Merrill Lynch \$5 Million for Call Center Supervisory Failures, Sales Contest Violations

Call Center Sales Contests Prohibited for Three Years, Firm Ordered To Impose Special Supervisory Measures Until Corrective Measures Completed

NASD has fined Merrill Lynch, Pierce, Fenner & Smith Inc. \$5 million for supervisory failures, registration violations, impermissible sales contests and other violations in connection with the operation of its Financial Advisory Center (FAC) located in Hopewell, NJ and Jacksonville, FL. The firm was also prohibited from staging any sales contests for FAC personnel for three years.

In addition, Merrill Lynch was ordered to retain, at its own expense, an independent consultant to recommend corrective measures to firm policies and supervisory and compliance procedures and systems for the FAC. Until those corrective measures are implemented, Merrill Lynch must impose special supervisory procedures, including monitoring calls between FAC personnel and customers.

In connection with the announcement, NASD is releasing a new Investor Alert, "Customer Advisory Centers: Not Your Typical Securities Firm Call Center."

"Regardless of the size of their brokerage account, all investors are entitled to services from registered representatives acting in their clients' best interests

who are reasonably supervised by properly registered professionals," said NASD Senior Vice President and Acting Head of Enforcement James Shorris. "In this case, Merrill Lynch failed to meet these basic standards by permitting its call center to function without proper supervisory controls, which gave rise to impermissible sales contests, unsuitable mutual fund switches and other systemic failures."

NASD found that, from 2001 to 2004, Merrill Lynch did not have an adequate supervisory system and procedures that were reasonably designed to oversee the trading activities of its registered representatives at the FAC, referred to within the firm as Investment Service Advisors (ISAs). Certain of the ISAs engaged in a pattern of mutual fund switch recommendations that were accompanied by misrepresentations and omissions of facts to customers. Further, Merrill Lynch permitted individuals lacking the proper securities licenses and qualifications to be responsible for the supervision of the ISAs. Merrill Lynch also conducted several sales contests which improperly awarded non-cash compensation to ISAs in the form of rock concert tickets, sporting events and dinners based solely on the sale of the firm's proprietary mutual funds.

The FAC was originally designed as a centralized "call center," where customers could call with questions or requests about their accounts and which initially held only a small number of customer accounts. NASD found that the character of the FAC changed in 2001. As a result of an overall Merrill Lynch strategy to improve its retail business by "segmenting" customer accounts, the firm began relocating thousands of customer accounts from branch offices throughout the country to the FAC. Generally, smaller accounts with assets of \$100,000 or less, or those with minimal transactional activity, were moved to the FAC, in part so that Merrill Lynch's full service Financial Advisors in branch offices could devote more attention to larger accounts.

NASD found that between March 2001 and August 2002, more than 1 million customers were transferred to the FAC. At its peak size in 2002, the FAC had approximately 1.3 million accounts holding approximately \$20 billion in assets. That year, the FAC had gross revenues of approximately \$210 million.

For new FAC accounts, Merrill Lynch promised around-the-clock customized financial advice from a "team of

Merrill Lynch professionals.” NASD found that Merrill Lynch failed to disclose that the ISAs often had five years or less brokerage experience, and that when making recommendations regarding securities, they were limited to mutual funds. ISAs were prohibited from soliciting orders in equities or bonds, unless requested to do so by a client.

ISAs solicited securities transactions from the newly transferred customers, generating millions of dollars in annual gross revenues for Merrill Lynch. There was significant mutual fund switching activity. For example, in one week in March 2002, there were approximately 1,324 mutual fund switches reported by the FAC. Moreover, NASD found that several ISAs recommended mutual fund switches that were not suitable for their customers. For example, ISAs had an obligation, before making a recommendation, to consider whether many of those switches were necessary given that reasonable, free-exchange alternatives were available for customers within their existing mutual fund families. NASD also found that, in connection with the unsuitable switches, certain of the ISAs made false representations to customers, and/or omitted material facts, concerning costs and other important information.

NASD found that, from 2001 through 2004, Merrill Lynch lacked an adequate supervisory system and procedures reasonably designed to supervise the ISAs, particularly given the growth of the FAC. Merrill Lynch, among other things, lacked adequate written supervisory procedures regarding mutual fund recommendations (including switch transactions); did not employ a sufficient number of properly trained and qualified supervisors to monitor activities within the FAC; and failed to conduct annual compliance audits for the FAC’s two most active years. Thousands of mutual fund switches were not reviewed or were not adequately reviewed by Merrill Lynch principals.

NASD also found that Merrill Lynch’s form “switch letters” sent to customers were often inaccurate. Specifically, the letters represented that the administrative manager signing the letter had discussed the mutual fund switch with the ISA to confirm that proper disclosure of costs had been made to the customer. In fact, the administrative managers rarely discussed this issue with the ISA before sending the switch letters.

Merrill Lynch allowed its FAC sales managers to exercise direct supervisory responsibility over the ISAs. The majority of those sales managers, however, were not properly registered as securities principals. They were therefore not qualified to supervise ISAs. NASD also found that, even with approximately 300 ISAs generating thousands of trades per day, Merrill Lynch employed only three to six registered principals to review all of the transactions.

NASD’s investigation showed that, in 2002, the FAC conducted three sales contests that violated the non-cash compensation rule because they favored the sale of Merrill Lynch’s proprietary mutual funds. NASD rules prohibit non-cash compensation arrangements between firms and their brokers for sales of mutual funds and variable contracts that are not based on concepts of “total production” and “equal weighting”—that is, the contests must be based on total sales of all products within a single category, such as mutual funds.

NASD found that the firm offered and awarded various forms of non-cash compensation to the contest winners. For example, one contest rewarded the six ISAs who sold the most proprietary mutual fund products with tickets to a rock concert. Another offered a total of \$10,000 in expense credits to the top four teams of ISAs in total of proprietary product sales. These contests, along with several other contests based on overall production, contributed to a dramatic increase in the volume of proprietary mutual fund sales by the FAC. For example, in the first half of 2002, gross sales of proprietary products increased from \$36.4 million in the first quarter to \$138.7 million in the second quarter—an increase of nearly 300 percent.

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

NASD Hearing Panel Dismisses Profit Sharing Complaint Against Invemed

An NASD hearing panel dismissed an April 2003 NASD disciplinary complaint against Invemed Associates of New York, which charged Invemed with unlawful profit-sharing activities in late 1999 and early 2000 in connection with “hot” IPO shares it allocated to its customers.

In its complaint, NASD Enforcement alleged that Invemed engaged in improper profit sharing by accepting higher-than-normal commission rates from customers seeking IPO allocations. The complaint also alleged that Invemed violated NASD's corporate finance rules by failing to file information disclosing Invemed's receipt of the inflated rate commission payments and Invemed's profit sharing in its customers' accounts; that Invemed failed to maintain accurate books and records that reflected the shared customers' profits; that Invemed failed to supervise its registered representatives because it failed to follow up on numerous "red flags" of improper profit sharing; and that Invemed failed to establish, maintain and enforce an adequate supervisory system and written supervisory procedures reasonably designed to achieve compliance with applicable federal securities laws and NASD rules regarding allocation of IPO shares, the receipt of commissions and the supervision of employees who allocated IPO shares.

The hearing panel concluded that NASD Enforcement failed to prove that Invemed shared in the profits of its customers' accounts or engaged in conduct that contravened high standards of commercial honor or just and equitable principles of trade. It therefore dismissed the primary charges as well as the related corporate finance rule charge, the books and records charge and the failure to supervise charge, since those charges depended upon an affirmative finding of improper profit sharing. The panel also concluded that NASD Enforcement failed to prove its inadequate supervisory system and procedures allegations, and dismissed that remaining charge as well. Unless the matter is appealed to NASD's National Adjudicatory Council (NAC), or is called for review by the NAC, the hearing panel's decision becomes final after 45 days.

NASD Fines Boston Capital Securities \$1.2 Million for Corporate Financing Disclosure and Compensation Violations

Firm Continued to Sell Limited Partnerships to Public Despite NASD Notice of Deficiency

NASD has fined Boston Capital Securities, Inc. (BCSI) \$1.2 million for violations relating to the firm's public offerings of tax-advantaged limited partnership interests. NASD also charged BCSI for supervisory deficiencies relating to the firm's underwriting of public securities offerings.

NASD found that BCSI conducted a 2004-2005 public offering of approximately \$60 million in limited partnership investments without obtaining the necessary NASD clearance. Moreover, BCSI continued selling the limited partnerships even after receiving notice from NASD's Corporate Financing Department that it needed to provide additional information before the offering could commence.

Separately, NASD found that BCSI received approximately \$700,000 in excessive underwriting compensation from a 2002 public offering, and inaccurately disclosed its underwriting compensation in the prospectus for that 2002 offering.

"Full and accurate disclosure of material information in public offering documents is critical for the operation of our capital markets," said NASD Senior Vice President and Acting Head of Enforcement James Shorris. "NASD's Corporate Financing rules are designed to ensure that the required disclosures are made to investors and that the terms of each underwriting are fair and reasonable."

NASD's Corporate Financing rule prohibits any member firm from participating in certain public offerings of securities unless specified offering documents have been filed and reviewed by NASD's Corporate Financing Department. Further, the member firm cannot begin selling the public offering until the Corporate Financing Department has notified the firm in writing that NASD has no objections to the proposed underwriting. NASD rules also require that all offering expenses be fair and reasonable and limit a broker dealer's compensation based on the type of offering and the gross proceeds in the offering. Further, underwriting compensation must be disclosed accurately in the offering's prospectus.

NASD found that, on Aug. 23, 2004, BCSI began a public offering of certificates issued by Boston Capital Tax Credit Fund V L.P., even though the firm had not received the necessary NASD clearance. Moreover, on the following day, NASD's Corporate Financing Department issued a "Defer Opinion Letter" to BCSI, with a copy to its outside counsel, requesting further information about the proposed offering. NASD required a response to that letter, including the requested information, before the offering could commence. BCSI, however, continued the offering and sold approximately \$60 million in certificates without obtaining the required NASD clearance.

NASD also found that, in connection with a 2002 public offering of limited partnership interests, BCSI received approximately \$700,000 more in underwriting compensation than permitted under NASD rules. The firm failed to disclose its true compensation in the pre-offering filing it submitted to NASD's Corporate Financing Department and in the prospectus distributed to investors.

In addition, NASD found that BCSI lacked an adequate supervisory system and written procedures relating to the firm's underwriting of public securities offerings. The firm failed to provide for adequate follow-up and review to ensure that the public offerings received the necessary regulatory approvals, that the firm complied with underwriting compensation limitations and that there was accurate and complete prospectus disclosure.

BCSI's system for forecasting and accounting for underwriting expenses was also found to be inadequate. Throughout the relevant period, BCSI and its affiliates shared common operating and accounting procedures and systems. The firm's procedures were not reasonably designed to ensure that its wholesaling and related expenses/reimbursements for each offering were recorded separately from those of the issuer. As a result, BCSI improperly allocated certain underwriting expenses as issuer costs.

In concluding this settlement, BCSI neither admitted nor denied the charges, but consented to the entry of NASD's findings.