

MAY 2006

# Notice to Members

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## Disciplinary and Other NASD Actions



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# Notice to Members

MAY 2006

## SUGGESTED ROUTING

Executive Representatives  
Institutional  
Internal Audit  
Legal & Compliance  
Registered Representatives  
Senior Management

## KEY TOPICS

Charitable Giving  
Charitable Solicitation

## GUIDANCE

### Charitable Contributions

NASD and NYSE Issue Joint Guidance on Charitable Contributions

#### Executive Summary

The solicitation of substantial charitable contributions by employees or agents of a customer acting in a fiduciary capacity raises potential conflicts of interest that deserve careful consideration by member firms. NASD and NYSE have jointly issued this *Notice* to suggest some of the policies and procedures that firms should consider adopting to address these conflicts. As discussed below, the joint guidance provided in this *Notice* does not address customary charitable giving initiated by member firms or their foundations, solicitations received directly from charitable organizations, nor charitable giving by persons in their individual capacities.

#### Questions/Further Information

Questions concerning this *Notice* should be directed to Gary L. Goldsholle, Vice President and Associate General Counsel, Office of General Counsel (OGC), Regulatory Policy and Oversight (RPO), at (202) 728-8104; or Brant K. Brown, Assistant General Counsel, OGC, RPO, at (202) 728-6927.

#### Discussion

The solicitation of substantial charitable contributions by employees or agents of a customer acting in a fiduciary capacity raises potential conflicts of interest that deserve careful consideration by members.<sup>1</sup> This Joint Memorandum is intended to suggest some of the policies and procedures that firms should consider adopting to address these conflicts.<sup>2</sup> This guidance does not address charitable giving by persons in their individual capacities.<sup>3</sup>

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Many of the same concerns that led to the adoption of NYSE Rule 350 (Gifts and Gratuities) and NASD Rule 3060 (Influencing or Rewarding Employees of Others), and the proposal of NYSE Rule 350A<sup>4</sup> (Business Entertainment) and NASD IM-3060<sup>5</sup> (Entertainment of the Employees of Persons who are Customers of a Member) are present when employees of a customer acting in a fiduciary capacity (e.g., employees of an investment company, pension fund or investment manager) solicit substantial charitable contributions<sup>6</sup> from members with whom they conduct or intend to conduct business. Making substantial charitable contributions in response to these types of solicitations raises potential conflicts of interest that require members to act carefully, and in a manner consistent with the best interests of the customer.

To address these conflicts, we encourage members to establish written procedures concerning their charitable giving. The written procedures should take into account a firm's structure and its manner of charitable giving. For example, certain procedures that may be appropriate for firms with a practice of decentralized charitable giving may not be necessary for firms in which all charitable giving is centralized (e.g., approved by the CEO).

In many cases, a member's procedures could require appropriate approval for charitable contributions that exceed specific dollar thresholds or certain intervals of frequency or that are made by a member's associated person on behalf of the firm. These thresholds could distinguish customary and minor charitable contributions from substantial contributions that could, by their size or frequency, create potential conflicts of interest. Any dollar thresholds established by a member should take into account the nature of the firm's business and its customary practice of charitable giving. Under no circumstances should the threshold for charitable contributions be based upon the level of actual or anticipated business done by the customer soliciting the charitable contribution since that customer is acting in a fiduciary capacity.<sup>7</sup>

Members may find that establishing a dollar threshold for charitable contributions resolves many of the potential conflicts raised by charitable solicitations from employees of a customer. However, for requests that exceed the specified thresholds, firms may wish to implement additional procedures, including obtaining specific approval from an appropriate representative of the customer (*i.e.*, a person who is not involved in soliciting the charitable contribution or in conducting business with the member firm), and reviewing the business received from the customer employing the person soliciting the charitable contribution. After being alerted to the request, the customer will be in a position to take necessary steps to ensure that any charitable contribution made by the member in response to the request does not cause the person who made the solicitation to act in a manner contrary to the interests of his or her employer. Such procedures should also recognize the greater potential for a conflict of interest arising from solicitations for contributions on behalf of charities that are closely aligned with the employee making the request (e.g., an organization in which the employee serves as an officer, or a charity sponsored by the employee) rather than those aligned with the ultimate client for whom the employee works.

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## Endnotes

- 1 Members, in this context, are NASD member firms and NYSE member organizations.
- 2 This guidance does not address customary charitable giving initiated by members or their foundations (provided such giving does not raise the conflicts addressed below and is not intended to circumvent a firm's procedures in addressing these conflicts), nor does it address direct solicitations from charitable organizations.
- 3 However, NASD and NYSE remind firms that they must not seek to circumvent this guidance by making charitable contributions through their employees (or other personnel) in their personal capacity, nor should an employee's (or other personnel's) personal charitable contributions be indirect contributions by the firm.
- 4 See SR-NYSE-2006-6.
- 5 See SR-NASD-2006-044.
- 6 For these purposes, a "charitable contribution" refers to a donation to an organization exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code.
- 7 No such issue is raised, of course, where a retail customer investing his or her own funds solicits a charitable contribution.

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# Notice to Members

MAY 2006

## SUGGESTED ROUTING

Suggested Routing  
Corporate Finance  
Legal and Compliance  
Operations  
Senior Management  
Technology  
Trading and Market Making  
Training

## KEY TOPICS

Debt Securities  
Operations  
Rule 6200 Series  
TRACE Rules  
Transaction Reporting

## GUIDANCE

### Corporate Debt Securities

NASD Requests Comment on Publicly Disseminating in TRACE Information on Whether a Transaction was an Inter-Dealer or a Dealer-Customer Transaction and, in Dealer-Customer Transactions, Whether the Broker-Dealer was a Buyer or Seller; **Comment Period Expires June 15, 2006**

#### Executive Summary

Currently, NASD members that are parties to a transaction in a TRACE-eligible security report several types of information to the Trade Reporting and Compliance Engine (TRACE) system. Among other things, for each transaction, the member reports that it is a buyer (Buyer) or a seller (Seller) (Buy/Sell information) and the member's counterparty is another broker-dealer (Dealer) or a customer (Customer) (Customer/Dealer information). The Buy/Sell and Customer/Dealer information is not currently disseminated. NASD requests comment on publicly disseminating the Buy/Sell information and the Customer/Dealer information.

#### Action Requested

NASD encourages all interested parties to comment on this proposal. Comments must be received by June 15, 2006. Members and interested persons can submit their comments using the following methods:

- ♦ Mail comments in hard copy to the address on the address below; or
- ♦ Email written comments to [pubcom@nasd.com](mailto:pubcom@nasd.com).

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

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

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

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

## Questions/Further Information

As noted above, hard-copy comment should be mailed to Barbara Z. Sweeney. Questions regarding this *Notice* may be directed to Elliot Levine, Chief Counsel, Transparency Services, Markets, Services and Information (MSI), at (202) 728-8405; David H. Lefferts, Vice President, Transparency Services, MSI, at (212) 858-4389; or Sharon K. Zackula, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8985.

## Background and Discussion

Currently, NASD publicly disseminates the following information for each transaction in a TRACE-eligible security that is required to be disseminated under TRACE Rule 6250: the bond identifier (e.g., the TRACE symbol), the price inclusive of any mark-up, mark-down or commission, the quantity (expressed as the total par value),<sup>3</sup> the yield, the time of execution and, if the transaction was executed on a day other than when the information is being disseminated, the actual day of execution of the transaction. For inter-dealer (Dealer) trades, NASD receives a TRACE report from each member, but disseminates the sell side only; for dealer-customer (Customer) trades, NASD receives only one TRACE report (from the member) and disseminates information from that TRACE report, which may be either of a dealer's buy from a customer (Buy) or a dealer's sale to a customer (Sell).

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NASD is proposing that the Buy/Sell information and Customer/Dealer information (but not the MPID or identity of the dealer) be disseminated publicly for each transaction because dealers and investors need it to compare prices. Investors also need it to request better, lower prices (*i.e.*, prices including mark-ups (or mark-downs) and commissions). In addition, dealers require it to aid them in complying with a dealer's best execution obligations under Rule 2320 and the fair and reasonable mark-up/mark-down requirements under Rule 2440 and other provisions of the federal securities laws.<sup>4</sup>

Under current law and NASD's proposed debt mark-up interpretation (Proposed Debt Mark-Up Interpretation or Proposal),<sup>5</sup> when a dealer is pricing, or determining mark-ups (or markdowns) by referring to last-sale transaction prices other than the dealer's own price, a dealer must be able to determine if the trade was an inter-dealer trade representing an arms-length negotiation between two market professionals, or a trade between a dealer and a customer, and to identify which side the dealer price reflected when engaging in a Customer or a Dealer transaction.<sup>6</sup> Disseminating the Buy/Sell and Customer/Dealer information would allow dealers to more accurately identify the type of pricing information disseminated by TRACE, and would permit them to use the information for mark-up (or mark-down) and best execution determinations.

Currently, the TRACE price disseminated is an "all-in" price that includes, if it is a principal trade with a customer, a mark-up (or a mark-down) and, if it is an agency trade with a customer, a commission. As noted above, a TRACE data user cannot readily identify those transactions reflecting *inter-dealer prices* (generally considered the most reliable measure of the prevailing market price of a security after dealer's contemporaneous cost) for mark-up (or mark-down) purposes, because inter-dealer prices are intermingled with dealer-customer prices. Adding the Customer/Dealer information would solve this problem and make inter-dealer pricing clearly identifiable for mark-up (or mark-down) and best execution purposes.

In addition, given the limited frequency of transactions in certain sectors of the debt markets, including the corporate debt sector, the need to understand whether each of the prices that is available reflects Dealer or Customer prices and which side of the market the dealer stood on the trade is even more crucial. The Buy/Sell information, combined with the Customer information, makes clear that the disseminated price includes a mark-down or a commission (*i.e.*, the dealer was a buyer or facilitating finding a buyer) or the disseminated price includes a mark-up or a commission (*i.e.*, the dealer was a seller or facilitating finding a seller). Given both Customer/Dealer and Buy/Sell information, TRACE data users, whether dealers or customers, will be able to knowledgeably assess and compare the disseminated "all-in price" of their purchases and sales with other customer transactions. In addition, dealers will be able to determine approximate levels of inter-dealer pricing by "backing out" of a disseminated all-in price clearly labeled as a Customer transaction, a mark-up (or mark-down) or commission amount if inter-dealer pricing is not available in TRACE for both mark-up and best execution purposes.

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The MSRB determined that disseminating the Buy/Sell and Customer/Dealer information was an important part of providing transparency in the municipal securities market. The MSRB currently disseminates both Buy/Sell and Customer/Dealer information real-time together with other price, quantity and yield information per transaction.<sup>7</sup>

In April 2005, a commenter on the Proposed Debt Mark-Up Interpretation highlighted the deficiencies in TRACE, noting that TRACE data does not differentiate between Customer and Dealer transactions, thus making the identification of inter-dealer pricing difficult.<sup>8</sup> (In the absence of applicable contemporaneous transactions, inter-dealer pricing is a highly reliable indicator of the prevailing market price of a security.) In October 2005, in NASD's response to the comments on the Proposal, NASD indicated that NASD was "evaluating enhancing the quality of disseminated TRACE information to show, for each trade, whether the trade is inter-dealer or customer, as is now indicated in real-time disseminated municipal securities transaction data."<sup>9</sup>

Over a two-and-one-half-year period, NASD staff has received many comments from dealers requesting that indicators distinguishing Customer and Dealer and Buy and Sell transactions be added to the publicly disseminated TRACE data to assist firms in their pricing and their mark-up analyses. In many instances, these comments arose in the context of NASD seminars for members on debt mark-ups. In addition, at public events and industry conferences, both NASD staff and SEC staff have indicated that debt mark-ups are an area of regulatory concern and focus. In this regard, in 2005, member firm personnel attending NASD debt mark-up seminars expressed concern that NASD was *delaying* the implementation of the dissemination of Customer/Dealer and Buy/Sell information beyond 2005, given NASD's and SEC's regulatory focus on debt securities pricing and debt mark-ups.

In contrast, NASD recently received comments from The Bond Market Association on behalf of various dealers and members of its Asset Managers' Forum stating that the dissemination of the Buy/Sell and Customer/Dealer information raises concerns among large dealers and some large institutional customers. They believe that such dissemination may permit market participants to identify and reverse-engineer their trading strategies, especially in illiquid TRACE-eligible securities.

NASD seeks input from members, other market participants and the public regarding the efficiencies, benefits and costs to the market, market participants and all TRACE data users of adding the Customer/Dealer and Buy/Sell information; the regulatory costs and benefits of adding such information for all members subject to regulatory review for fair debt mark-ups and best execution; and all other benefits and costs to members, non-members and the public.

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## Endnotes

- 1 See *Notice to Members 03-73* (November 2003) (NASD Announces Online Availability of Comments). Personal identifying information, such as names or email addresses, will not be edited from submissions. Submit only information that you wish to make publicly available.
- 2 Section 19 of the Securities Exchange Act of 1934 (Exchange Act) permits certain limited types of proposed rule changes to take effect upon filing with the SEC. The SEC has the authority to summarily abrogate these types of rule changes within 60 days of filing. See Exchange Act Section 19 and the rules thereunder.
- 3 If a transaction in a TRACE-eligible security is Investment Grade and exceeds \$5 million, or is Non-Investment Grade and exceeds \$1 million, the quantities disseminated are, respectively, \$5 million and \$1 million, followed by an "E," indicating that the volume figure is estimated.
- 4 An excessive or unreasonable mark-up/mark-down is a violation of Rule 2110, Rule 2440, IM-2440 (except in connection with municipal securities) and, in some cases, Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 10b-5 thereunder. For transactions in municipal securities, mark-ups (or mark-downs) and other fair pricing issues are analyzed under Municipal Securities Rulemaking Board (MSRB) Rule G-30, Rule G-18 and Rule G-17, and, in some cases, Section 10(b) of the Exchange Act and Rule 10b-5.
- 5 See File No. SR-NASD-2003-141, filed September 17, 2003, and amendments thereto.
- 6 Under current law and the pending Proposal, a dealer must mark-up a transaction from the prevailing market price. The dealer's contemporaneous cost is presumed to be the most reliable indicator of the prevailing market price unless the dealer has no contemporaneous transaction(s) or can show that the dealer's contemporaneous cost is not indicative of the prevailing market price.

When the dealer has no such costs or certain events have occurred, the Proposal lists several categories of information containing pricing information (factors) that the dealer must consider to identify prevailing market price and to calculate the dealer's mark-up (or mark-down). TRACE is the source of most or all of the last-sale pricing information available for corporate bonds, and when a dealer looks to pricing information other than the dealer's own, TRACE should be the richest source of reliable data. When reviewing the TRACE data, it is important for the dealer to be able to identify Buy/Sell and Customer/Dealer information as part of the analytical process of determining if the dealer's cost remains contemporaneous or is stale, and to judge the applicability of the following factors containing reference prices or yields:

- (1) Inter-dealer prices – Customer/Dealer information is needed to identify Dealer transactions in TRACE (under current law, dealers are required to analyze this type of pricing information when the dealer's contemporaneous cost is not considered to be indicative of prevailing market price);
- (2) Prices of contemporaneous dealer purchases (sales) in the security in question from (to) certain institutional accounts as defined in the Proposal – Customer/Dealer and Buy/Sell information would assist significantly in identifying these trades and side of market;
- (3) Prices of contemporaneous inter-dealer transactions in similar securities as described in the Proposal – Customer/ Dealer information is required (under current law, it may be necessary for dealers to analyze this type of pricing information in certain instances);

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- (4) Prices of contemporaneous dealer purchase (sale) transactions in similar securities with certain institutional accounts – Customer/Dealer and Buy/Sell information is required;
  - (5) Yield calculated from prices of contemporaneous inter-dealer transactions in similar securities – Customer/Dealer information is required; and
  - (6) Yield calculated from prices of contemporaneous dealer purchase (sale) transactions in similar securities with certain institutional accounts – Customer/Dealer and Buy/Sell information is required.

In addition, in many cases under the Proposal and in current practice, a dealer refers to transactions in similar securities, and, under the Proposal, a dealer must know side of market (Buy/Sell information) to determine the relative comparability of a transaction in a similar security to the transaction that is being marked.

- 7 Disseminated municipal securities transaction prices, like TRACE-disseminated prices, are “all-in prices.”
- 8 Letter from The Bond Market Association (regarding File No. SR-NASD-2003-141), to Jonathon G. Katz, Secretary, SEC, dated April 5, 2005, p. 13 (“[T]he NASD’s TRACE system does not differentiate between inter-dealer trades and customer trades in its disseminated reports, making the identification of an inter-dealer trade difficult.”).
- 9 Response to Comments on Additional Mark-Up Policy for Transactions in Debt Securities (regarding File No. SR-NASD-2003-141), to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated October 4, 2005, p. 13.

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# Notice to Members

MAY 2006

## SUGGESTED ROUTING

Legal & Compliance  
Regulatory  
Senior Management

## KEY TOPICS

Financial and Operations Principal (FINOPs)  
NASD Rule 1022  
SEC Rule 15c3-1 (Net Capital Rule)

## GUIDANCE

### Financial and Operations Principals (FINOPs)

NASD Reminds FINOPs of their Obligations under NASD Rule 1022 and Issues Guidance to FINOPS who Work Part-Time, Work Off-Site or Hold Multiple Registrations

#### Executive Summary

NASD is issuing this *Notice to Members* to remind member firms and registered financial and operations principals (FINOPs) of a FINOP's duties and responsibilities under Rule 1022 (Categories of Principal Registration). These duties are applicable to all FINOPs, regardless of whether they are employed full-time or part-time, perform such duties on-site or off-site of the member firm or hold registrations with more than one firm. This *Notice* also provides additional guidance to assist FINOPs who are employed part-time, operate off-site or hold multiple registrations in fulfilling their duties. Additionally, NASD reminds members and FINOPs that their failure to meet their responsibilities can result in disciplinary actions against both the FINOP and the member firm employing the FINOP.

#### Questions/Further Information

Questions concerning this *Notice* may be directed to Susan M. DeMando, Associate Vice President, Financial Operations, Department of Member Regulation, at (202) 728-8411; or Daniel M. Sibears, Executive Vice President & Deputy, Department of Member Regulation, at (202) 728-6911.

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## Background

Rule 1022 requires each member to designate a qualified financial and operational principal (FINOP). Depending upon a member's net capital requirement, the FINOP will be registered pursuant to either Rule 1022(b) (Limited Principal – Financial and Operations)<sup>1</sup> or Rule 1022(c) (Limited Principal – Introducing Broker/Dealer Financial and Operations).<sup>2</sup> The FINOP plays an important role in ensuring investor protection by being responsible for the firm's compliance with applicable net capital, recordkeeping and other financial and operational rules. Rule 1022 outlines the specific duties a FINOP must perform to discharge this responsibility:<sup>3</sup>

- ◆ Final approval and responsibility for the accuracy of financial reports submitted to any duly established securities industry regulatory body;
- ◆ Final preparation of such reports;
- ◆ Supervision of individuals who assist in the preparation of such reports;
- ◆ Supervision of and responsibility for individuals who are involved in the actual maintenance of the member's books and records from which such reports are derived;
- ◆ Supervision and/or performance of the member's responsibilities under all financial responsibility rules promulgated pursuant to the provisions of the Securities Exchange Act of 1934 (Exchange Act);
- ◆ Overall supervision of and responsibility for the individuals who are involved in the administration and maintenance of the member's back office operations; and
- ◆ Any other matter involving the financial and operational management of the member.

In 1999, NASD advised members that all FINOPs are fully responsible for each of the above-mentioned duties and that FINOPs are not relieved of these responsibilities because they are employed off-site, work only part-time or hold multiple registrations with different member firms.<sup>4</sup> NASD also advised members employing a part-time FINOP to establish procedures that describe the FINOP's duties, thoroughly outline the part-time FINOP's responsibilities so that the firm will properly and timely maintain its financial books and records, and make sure that the part-time FINOP understands and remains current with the federal and state laws and regulations and self-regulatory organization (SRO) rules relating to financial and operational responsibility.<sup>5</sup>

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## Discussion

During the intervening years since NASD has issued that referenced guidance, members have continued to use part-time FINOPs.<sup>6</sup> However, the results of recent Securities and Exchange Commission (SEC) examinations of 36 broker-dealers employing part-time FINOPs reflect that not all members and their part-time FINOPs have been successfully implementing that guidance. Specifically, the SEC's examinations, which focused on compliance with the books and records and financial responsibility rules of the Exchange Act, as well as applicable SRO rules, revealed material net capital deficiencies in several firms, as well as net capital computation inaccuracies in firms' books and records at 18 of the 36 firms (50 percent) reviewed. SEC staff observed that these inaccuracies occurred because many of the FINOPs had no role in the supervision or creation, or the maintenance, of the firms' books and records, as required by Rule 1022. The SEC staff also concluded that some of the firms' FINOPs could be over-extended, as at least six of the FINOPs were registered at 16 or more firms. In addition to the SEC's findings in their examination of these 36 firms referenced above, NASD has also found similar regulatory issues during its routine and special financial examinations of firms using the services of part-time FINOPs.

Based on these findings, examinations will continue to focus on the types of deficiencies detected during the examinations referenced above. This is not to say that any *per se* violations or deficiencies derive from the use of part-time FINOPs. Moreover, given the continued use of part-time FINOPs and recent regulatory findings, NASD believes that it is appropriate to remind members of the existing guidance mentioned above regarding the use of part-time FINOPs and to urge members to examine their practices to ensure that they are following those guidelines. NASD is also taking this opportunity to remind FINOPs working part-time or off-site, or holding registrations with more than one firm, that their status does not relieve them of their responsibility to comply with all of the duties set forth in Rule 1022.

In addition, NASD is providing the following supplemental guidance to members that employ FINOPs who work part-time, work off-site, or hold multiple registrations. This guidance is designed to help these members assist their FINOPs in fulfilling Rule 1022's requirements.

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## Guidance Applicable to Part-Time, Off-Site or Multiply Registered FINOPs

### *On-Site Visits*

Registered FINOPs working part-time, off-site or holding multiple registrations should conduct a minimum number of on-site firm visits each calendar year to review the firm's books and records; that minimum number should be set by the FINOP in consultation with the firm. Some or all of these visits should be on a surprise basis. Additionally, as most firms utilizing the services of a part-time, off-site or multiply registered FINOP file quarterly FOCUS reports, the FINOP should consider making the visits in off-reporting months to ensure compliance with the SEC's Net Capital Rule (Net Capital Rule).<sup>7</sup> In addition to a review of the financial accounts and relevant supporting documentation, the FINOP should inquire about and review the following when conducting examinations on site:

- ◆ Contracts entered into by the member;
- ◆ Contracts entered into by an affiliate or parent of the member that may impact the firm (e.g., the parent company enters into a contract, but the assets of the member are pledged as collateral to ensure the parent's performance of its contractual obligations);
- ◆ Any ongoing liabilities that may impact the member's balance sheet, including for example settlements and/or arbitration awards;
- ◆ Any contingent liabilities that may impact the firm's aggregate indebtedness calculation;
- ◆ The nature and timing of capital contributions and capital withdrawals;
- ◆ The proper treatment/handling of Expense Sharing Agreements;<sup>8</sup> and
- ◆ A firm's activities to ensure that the proper net capital requirement, based on those activities, is being reported accurately on the firm's financial reports.<sup>9</sup>

### *On-Site Visit Documentation*

A FINOP should evidence each on-site review by initialing the books and records reviewed or, if impractical, creating a detailed log as to which records were reviewed. In addition, the FINOP should reduce the review to a written report to be submitted to the firm's senior management.

### *Access to Books and Records*

A member using a part-time, off-site or multiply registered FINOP should provide that person complete access to all of the firm's books and records. A member may not provide less access to a part-time, off-site or multiply registered FINOP than it would to a full-time, on-site FINOP.

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### ***Establish Procedures Regarding FINOP's Duties***

Members using part-time, off-site or multiply registered FINOPs are urged to establish procedures that describe the FINOP's duties and thoroughly outline the FINOP's responsibilities. A FINOP's responsibilities include understanding and remaining current with the applicable federal and state securities laws and regulations, and SRO rules relating to financial and operational responsibility. One way in which members can assist FINOPs in fulfilling this responsibility is to require that their FINOPs review *NASD Notices to Members* and other publications relating to their financial and operational work.

### ***Ongoing Capabilities Assessments***

A member using a part-time, off-site or multiply registered FINOP should conduct ongoing assessments of its FINOP's ability to perform his or her duties. Factors a member may need to take into consideration include whether the FINOP has adequate resources to perform all of the required duties (e.g., financial software, access to applicable current federal laws and regulations, and SRO rules, or ability to meet continuing education requirements), whether a FINOP has any other duties that may make it difficult to perform all of the required duties or whether changes to a firm, such as significant growth in the firm's financial and business operations, would make it difficult for anyone other than a full-time, on-site FINOP to perform the required duties.

### **NASD Disciplinary Actions against Firms and FINOPs for Violations of the Net Capital Rule**

Finally, NASD reminds members that it may take disciplinary action against both the FINOP and the member firm employing the FINOP when it finds violations of the Net Capital Rule, other federal securities or regulations, or any SRO rules relating to financial and operational responsibility.<sup>10</sup> The Sanction Guidelines for violations of the Net Capital Rule recommend a fine of \$1,000 to \$50,000 against the firm, the FINOP, or both. The Sanction Guidelines also recommend suspending the firm with respect to any or all activities or functions for up to 30 business days, and suspending the FINOP in any or all capacities for up to 30 business days. In egregious cases, a firm could receive a lengthier suspension of up to two years or expulsion, and the FINOP could receive a suspension of up to two years or a bar.

Finally, a disciplinary action against a FINOP for misconduct at one firm could have serious consequences for other firms that engage the same FINOP, particularly if the FINOP is barred, suspended or required to re-qualify by examination.<sup>11</sup>

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## Endnotes

- 1 A person holding this registration category must have taken and passed the Series 27 Financial and Operations Principal Qualification Examination.
- 2 A person holding this registration category must have taken and passed the Series 28 Introducing Broker/Dealer Financial and Operations Principal Qualification Examination.
- 3 See Rule 1022(b)(2)(A) through (G) and (c)(2)(A) through (G).
- 4 NASD Regulatory & Compliance Alert, Volume 13, Number 4, Winter 1999 (pages 15-16).
- 5 *Id.*
- 6 Approximately 11 percent of NASD designated firms use the services of a part-time FINOP.
- 7 SEC Rule 15c3-1.
- 8 See NASD *Notice to Members 03-63* (SEC Issues Guidance in the Recording of Expenses and Liabilities by Broker/Dealers) and the attached letter from Michael A. Macchiaroli, Associate Director, Division of Market Regulation, SEC, to Elaine Michitsch, NYSE, and Susan DeMando, NASD (July 11, 2003).
- 9 For example, a firm with a net capital requirement of \$50,000 may receive customer securities, but must promptly forward those securities or be subject to a net capital requirement of \$250,000. See SEC Rule 15c3-1(a)(2)(i) and (iv). An introducing firm otherwise subject to a net capital requirement of only \$5,000 that routinely accepts checks in its own name would be subject to a \$250,000 net capital requirement. See SEC Rule 15c3-1(a)(2)(i) and (vi).
- 10 See *Fox & Co., Inv.*, Exchange Act Release No. 52697, 2005 SEC LEXIS 2822 (Oct. 28, 2005) (SEC sustained NASD disciplinary action against a firm and the person who was the firm's primary owner, president and FINOP and upheld the bar against the person from associating with any member firm as a FINOP) at [www.sec.gov/litigation/opinions/34-52697.pdf](http://www.sec.gov/litigation/opinions/34-52697.pdf). FINOPs and firms that violate the Net Capital Rule also may face SEC disciplinary action. See *Harrison Sec. Inc.*, Exchange Act Release No. 50614, 2004 SEC LEXIS 2477 (Oct. 29, 2004) (SEC administrative proceeding against a firm, the firm's CEO and the firm's FINOP for violations of the Exchange Act's net capital, books and records and reporting provisions) at [www.sec.gov/litigation/ljdecl/id256jtk.htm](http://www.sec.gov/litigation/ljdecl/id256jtk.htm).
- 11 NASD Sanctions Guidelines (online edition available at [www.nasd.com/sanctionguidelines](http://www.nasd.com/sanctionguidelines)).

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# Special Notice to Members

MAY 23, 2006

## SUGGESTED ROUTING

Executive Representatives  
Legal & Compliance  
Operations  
Registration  
Senior Management

## KEY TOPICS

District Elections

## GUIDANCE

### District Elections

NASD Informs Members of Upcoming District Committee and District Nominating Committee Elections

#### Executive Summary

The purpose of this *Special Notice to Members* is to inform members of the upcoming nomination and election process to fill forthcoming vacancies on NASD District Committees and District Nominating Committees.

Information on District Committee and District Nominating Committee members currently serving through 2007, 2008 and 2009 is included in Attachment A. Information on District Election Procedures is included in Attachment B. A blank candidate profile sheet is also included (Attachment C).

#### Background

The NASD District Committees serve an important role within NASD by supporting NASD's mission to regulate securities markets for the ultimate benefit and protection of investors. Among other things, District Committee members:

- ◆ Alert staff to industry trends that could be a potential regulatory concern.
- ◆ Consult with NASD staff on proposed policies and rule changes brought to a District Committee for its views.
- ◆ Serve on Disciplinary Panels in accordance with NASD Rules.
- ◆ Promote NASD's mission and stated positions.

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Committee members must have the experience, ability and commitment to fulfill these responsibilities, including:

- ◆ Understanding the issues facing the securities industry and possessing the ability to apply knowledge and expertise to these issues to develop solutions.
- ◆ Fostering member interest and participation in NASD.
- ◆ Educating members in their District on the work of NASD.
- ◆ Attending regularly and participating professionally, effectively, and in a collegial manner in District Committee meetings.
- ◆ Remaining objective and unbiased in the performance of District Committee matters.

Committee members must also adhere to certain prohibitions and restrictions. These include:

- ◆ Refraining from serving as an expert witness in NASD disciplinary hearings or arbitrations.
- ◆ Being sensitive to conflicts, and refraining from participating in a particular matter when a conflict exists.
- ◆ Refraining from using membership on the District Committee for commercial purposes, or otherwise suggesting special access to NASD.
- ◆ Keeping sensitive, non-public, or propriety information confidential.

## Nomination Process

Individuals from member firms of all sizes and segments of the industry are encouraged to submit names for consideration for membership on the 11 District Committees and District Nominating Committees. In this election, each District Committee will have three vacancies to fill, with the exception of District 10, which will have four.<sup>1</sup> The term of office for District Committee members is three years. Each District Nominating Committee will have five vacancies to fill for a one-year term. Persons who are interested in serving on the District Committee or the District Nominating Committee within their district must complete a candidate profile sheet (Attachment C) and submit it by hand delivery, courier service, mail or facsimile to the District Director. Completed candidate profile sheets must be received by the District Director on or before June 23, 2006. Persons who submit candidate profile sheets after this date will not be considered. NASD encourages current and former committee members to assist NASD by soliciting candidates for both committees.

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Article VIII, Sections 8.2 and 8.9 of the NASD Regulation By-Laws establish formal eligibility requirements for members of the District Committee and District Nominating Committee. They provide that such members:

- 1) Be registered with an NASD member eligible to vote in the district for District Committee elections; and
- 2) Work primarily from such NASD member's principal office or a branch office that is located within the district where the member serves on a District Committee or District Nominating Committee.

Completed nomination forms that are received by June 23, 2006, will be provided to all members of the appropriate District Nominating Committee for review. It is anticipated that on or before July 28, 2006, each District Director, acting on behalf of the District Nominating Committee, will notify the Secretary of NASD of each candidate nominated by the District Nominating Committee and the committee to which the candidate is nominated.

Members are reminded of the importance to accurately maintain their Executive Representative name and email address information, as well as their firm's main postal address. This will ensure that member mailings, such as election information, will be properly directed. Failure to keep this information accurate may jeopardize the member's ability to participate in District elections as well as other member votes. To update the Executive Representative name and email address, firms should access the NASD Contact System, located on NASD's Web site at [www.nasd.com/ncs](http://www.nasd.com/ncs).

To update postal address information, the firm must file a Form BD Amendment via the Web CRD system. For assistance updating either of these systems, you may contact our Call Center at (301) 590-6500.

## Questions/Further Information

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

## Endnote

- 1 In some cases, a District Committee may have additional vacancies to fill if a member of the District Committee has resigned since the last election, as indicated in Attachment A.

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## ATTACHMENT A

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### District 1

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

525 Market Street, Suite 300, San Francisco, CA 94105-2711

(415) 882-1201

(415) 546-6991 fax

#### **District Committee for District 1—Chair: William A. Evans**

Committee members to be elected to terms expiring January 2010: 3

##### **Committee Members to Serve Until January 2007**

William A. Evans	Stone & Youngberg, LLC	San Francisco, CA
Mansoor Kisat	Citigroup Global Markets, Inc.	Santa Rosa, CA
Arthur E. Raitano	Hoefler & Arnett, Inc.	San Francisco, CA

##### **Committee Members to Serve Until January 2008**

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

##### **Committee Members to Serve Until January 2009**

Christopher D. Charles	Wulff, Hansen & Co.	San Francisco, CA
Kevin T. Kitchin	Wachovia Securities, LLC	San Francisco, CA
Edward M. Stephens	FSC Securities Corporation	Santa Rosa, CA

#### **District Nominating Committee for District 1—Chair: Nicholas C. Cochran**

Committee members to be elected to terms expiring January 2008: 5

##### **Committee Members to Serve Until January 2007**

S. Katherine Campbell	Protected Investors of America	Berkeley, CA
Nicholas C. Cochran	American Investors Company	San Ramon, CA
Gerard P. Gloisten	GBS Financial Corporation	Santa Rosa, CA
Robert A. Muh	Sutter Securities, Inc.	San Francisco, CA
Francis X. Roches II	RBC Dain Rauscher, Inc.	San Francisco, CA

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## District 2

### **Lani M. Sen Woltmann, District Director**

300 South Grand Avenue, Suite 1600, Los Angeles, CA 90071-3126 (213) 613-2601  
(213) 617-3156 fax

### **District Committee for District 2—Chair: Stephen B. Benton**

Committee members to be elected to terms expiring January 2010: 3

#### **Committee Members to Serve Until January 2007**

Stephen B. Benton	Financial Network Investment Corporation	El Segundo, CA
James M. S. Dillahunty	Fixed Income Securities, LP	San Diego, CA
J. Derek Lewis	JDL Securities Corp.	Newport Beach, CA

#### **Committee Members to Serve Until January 2008**

Kenneth R. Hyman	Partnervest Securities, Inc.	Santa Barbara, CA
Bryan R. Plank	Merrill Lynch	San Diego, CA
Valorie Seyfert, Vice Chair	CUSO Financial Services, L.P.	San Diego, CA

#### **Committee Members to Serve Until January 2009**

Steven K. Klein	Farmers Financial Solutions, LLC	Simi Valley, CA
Ishmael Manzanares, Jr.	Madison Avenue Securities, Inc.	San Diego, CA
Gary A. Martino	brokerXpress, LLC	Thousand Oaks, CA

### **District Nominating Committee for District 2—Chair: Don Dalis**

Committee members to be elected to terms expiring January 2008: 5

#### **Committee Members to Serve Until January 2007**

M. LaRae Bakerink	WBB Securities, LLC	San Diego, CA
James E. Biddle	The Securities Center Incorporated	Chula Vista, CA
Don Dalis	UBS Financial Services, Inc	Newport Beach, CA
Barbara A. Kelley	Pacific Global Investment	Glendale, CA
Joel H. Ravitz	Quincy Cass Associates	Los Angeles, CA

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## District 3

### **Joseph M. McCarthy, District Director**

370 17th Street, Suite 2900

Denver, CO 80202-5629

(303) 446-3100

(303) 620-9450 fax

### **District Committee for District 3—Chair: Arlene M. Wilson**

Committee members to be elected to terms expiring January 2010: 3

#### **Committee Members to Serve Until January 2007**

Curtis J. Hammond	Morgan Stanley Dean Witter, Inc.	Bellevue, WA
J. Keith Kessel	AFS Brokerage, Inc.	Greenwood Village, CO
Arlene M. Wilson	D.A. Davidson & Co.	Great Falls, MT

#### **Committee Members to Serve Until January 2008**

Kathryn M. Dominick	Welton Street Investments LLC	Denver, CO
Craig A. Jackson, Vice Chair	Northwest Consulting, LLC	Roseburg, OR
Harry I. Striplin	Paulson Investment Company, Inc.	Portland, OR

#### **Committee Members to Serve Until January 2009**

David J. Director	McAdams Wright Ragen, Inc.	Seattle, WA
Daniel Lind	Wells Fargo Investments	Tucson, AZ
Steven M. Youhn	M Holdings Securities, Inc.	Portland, OR

### **District Nominating Committee for District 3—Chair: Bridget M. Gaughan**

Committee members to be elected to terms expiring January 2008: 5

#### **Committee Members to Serve Until January 2007**

Gregory R. Anderson	MCL Financial Group, Inc.	Denver, CO
L. Hoyt DeMers	Wells Fargo Investments, LLC	Seattle, WA
Bridget M. Gaughan	AIG Financial Advisors, Inc.	Phoenix, AZ
John W. Goodwin	Goodwin Browning & Luna Securities, Inc.	Albuquerque, NM
C. Frederick Roed	McAdams Wright Ragen, Inc.	Bellevue, WA

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## District 4

### Thomas D. Clough, District Director

120 W. 12th Street, Suite 800, Kansas City, MO 64105

(816) 802-4708  
(816) 421-5029 fax

### District Committee for District 4—Chair: Mark T. Lasswell

Committee members to be elected to terms expiring January 2010: 3

Committee member to be elected to term expiring January 2008: 1

#### Committee Members to Serve Until January 2007

Joseph D. Fleming	RBC Dain Rauscher Inc.	Minneapolis, MN
Mark T. Lasswell	Wells Fargo Brokerage Services, LLC	Minneapolis, MN
Arthur S. Montgomery	Walnut Street Securities, Inc.	St. Louis, MO

#### Committee Members to Serve Until January 2008

Allen J. Moore	SMITH HAYES Financial Services	Lincoln, NE
Minoo Spellerberg	Princor Financial Services Corporation	Des Moines, IA
Vacancy <sup>1</sup>		

#### Committee Members to Serve Until January 2009

Steven F. McWhorter	Securities America, Inc.	Omaha, NE
Brian D. Murphy	Woodbury Financial Services, Inc.	Woodbury, MN
Andrew C. Small	Scotttrade, Inc.	St. Louis, MO

### District Nominating Committee for District 4—Chair: Jeffrey A. Schuh

Committee members to be elected to terms expiring January 2008: 5

#### Committee Members to Serve Until January 2007

Deborah M. Castiglioni	Cutter & Company, Inc.	Chesterfield, MO
Robert M. Chambers	A.G. Edwards & Sons, Inc.	West Des Moines, IA
Frank H. Kirk	Wachovia Securities, LLC	Kansas City, MO
Kevin P. Maas	PrimeVest Financial Services, Inc.	St. Cloud, MN
Jeffrey A. Schuh	Residential Funding Securities Corporation	Minneapolis, MN

<sup>1</sup> This vacancy was created by the resignation of Stephen R. Oliver. The term expires in January 2008.

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## District 5

### **Warren A. Butler, Jr., Regional Director, South Region**

1100 Poydras Street, Energy Centre, Suite 850  
New Orleans, LA 70163-0802

(504) 522-6527  
(504) 522-4077 fax

### **District Committee for District 5—Chair: R. Patrick Shepherd**

Committee members to be elected to terms expiring January 2010: 3

#### **Committee Members to Serve Until January 2007**

Jennifer Carty Scola	Carty & Company, Inc.	Memphis, TN
R. Patrick Shepherd	Avondale Partners, L.L.C.	Nashville, TN
Donald Winton	Crews & Associates, Inc.	Little Rock, AR

#### **Committee Members to Serve Until January 2008**

Philip J. Dorsey, Vice Chair	Dorsey & Company, Inc.	New Orleans, LA
Fred G. Eason	Delta Trust Investments, Inc.	Little Rock, AR
Harold L. Gladney	Vining Sparks IBG, L.P.	Memphis, TN

#### **Committee Members to Serve Until January 2009**

Curtis F. Bradbury, Jr.	Stephens Inc.	Little Rock, AR
William A. Geary	Morgan Keegan & Company, Inc.	Jackson, MS
Jefferson G. Parker	Howard Weil Incorporated	New Orleans, LA

### **District Nominating Committee for District 5—Chair: John J. Dardis**

Committee members to be elected to terms expiring January 2008: 5

#### **Committee Members to Serve Until January 2007**

John J. Dardis	Jack Dardis & Associates, Ltd.	Metairie, LA
Carolyn R. May	Simmons First Investment Group, Inc.	Little Rock, AR
Douglas W. McQueen	The Baker Group, LP	Oklahoma City, OK
LeRoy H. Paris, II	InvestLinc Securities, LLC	Jackson, MS
David W. Wiley, III	Wiley Bros. – Aintree Capital, L.L.C.	Nashville, TN

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## District 6

### Virginia F. M. Jans, District Director

12801 N. Central Expressway, Suite 1050, Dallas, TX 75243

(972) 701-8554  
(972) 716-7646 fax

### District Committee for District 6—Chair: Cynthia E. Besek

Committee members to be elected to terms expiring January 2010: 3

#### Committee Members to Serve Until January 2007

Karen Banks	Frost Brokerage Services, Inc.	San Antonio, TX
Cynthia E. Besek	Maplewood Investment Advisors, Inc.	Dallas, TX
Brent T. Johnson	Multi-Financial Securities Corporation	Houston, TX

#### Committee Members to Serve Until January 2008

Bryan T. Emerson	Starlight Investments, LLC	Houston, TX
William H. Lowell	Lowell & Co., Inc.	Lubbock, TX
Michael A. Pagano, Vice Chair	1st Global Capital Corp.	Dallas, TX

#### Committee Members to Serve Until January 2009

Alan K. Goldfarb	Oakbrook Financial Group, LLC	Dallas, TX
John Christopher Melton	Coastal Securities, L.P.	Houston, TX
Ralph E. Poppell	Stanford Group Company	Houston, TX

### District Nominating Committee for District 6—Chair: V. Keith Roberts

Committee members to be elected to terms expiring January 2008: 5

#### Committee Members to Serve Until January 2007

William D. Felder	Southwest Securities, Inc.	Dallas, TX
Sennett Kirk, III	Kirk Securities Corporation	Denton, TX
Gary V. Murray	Murray Traff Securities	Tyler, TX
John R. Muschalek	First Southwest Company	Dallas, TX
V. Keith Roberts	Stanford Group Company	Houston, TX

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## District 7

### Daniel J. Stefek, District Director

One Securities Centre, Suite 500  
3490 Piedmont Road, NE  
Atlanta, GA 30305  
(404) 239-6128  
(404) 237-9290 fax

### District Committee for District 7—Chair: Susan J. Hechtlinger

Committee members to be elected to terms expiring January 2010: 3

#### Committee Members to Serve Until January 2007

Susan J. Hechtlinger	Banc of America Investment Services, Inc.	Charlotte, NC
Landrum H. Henderson, Jr.	Legg Mason Wood Walker, Inc.	Charlotte, NC
Alan L. Maxwell, Jr.	Wachovia Capital Markets, LLC	Charlotte, NC

#### Committee Members to Serve Until January 2008

Erick R. Holt, Esq.	AMVESCAP	Atlanta, GA
William G. McMaster, Vice Chair	Scott & Stringfellow, Inc.	Columbia, SC
Charles F. O'Kelley	Atlantic Coast Securities Corporation	Tampa, FL

#### Committee Members to Serve Until January 2009

John B. Busacca	North American Clearing, Inc.	Longwood, FL
Marc A. Ellis	GunnAllen Financial, Inc.	Tampa, FL
Ronald J. Kovack	Kovack Securities, Inc.	Ft. Lauderdale, FL

### District Nominating Committee for District 7—Chair: Roark A. Young

Committee members to be elected to terms expiring January 2008: 5

#### Committee Members to Serve Until January 2007

Richard G. Averitt, III	Raymond James Financial Services, Inc.	St. Petersburg, FL
Joseph B. Gruber	FSC Securities Corporation	Atlanta, GA
Dennis S. Kaminski	Mutual Service Corporation	West Palm Beach, FL
James A. Klotz	FMSBonds, Inc.	North Miami Beach, FL
Roark A. Young	Young, Stovall and Company	Miami, FL

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## District 8

### **Carla A. Romano, Regional Director, Midwest Region**

55 West Monroe Street, Suite 2700, Chicago, IL 60603-5052

(312) 899-4324

(312) 899-4399 fax

### **District Committee for District 8—Chair: Michael E. Bosway**

Committee members to be elected to terms expiring January 2010: 3

#### **Committee Members to Serve Until January 2007**

Michael E. Bosway	City Securities Corporation	Indianapolis, IN
Mari Buechner	Coordinated Capital Securities, Inc.	Madison, WI
Robert J. Michelotti	Ferris, Baker Watts Incorporated	Auburn Hills, MI

#### **Committee Members to Serve Until January 2008**

Richard M. Arceci	ValMark Securities, Inc.	Akron, OH
Ronald J. Dieckman	J.J.B. Hilliard, W.L. Lyons, Inc.	Louisville, KY
Julie E. Vander Weele	Mesirow Financial, Inc.	Chicago, IL

#### **Committee Members to Serve Until January 2009**

Stephen F. Anderson	Waterstone Financial Group, Inc.	Itasca, IL
Eric A. Bederman	Bernardi Securities, Inc.	Chicago, IL
Barbara A. Turner	The O.N. Equity Sales Company	Cincinnati, OH

### **District Nominating Committee for District 8—Chair: Carol P. Foley**

Committee members to be elected to terms expiring January 2008: 5

#### **Committee Members to Serve Until January 2007**

George E. Bates	Bates Securities, Inc.	Rockford, IL
Carol P. Foley	Podesta & Company	Chicago, IL
Ruth Hanneberg <sup>2</sup>	Mesirow Financial, Inc.	Chicago, IL
Jill R. Powers	Oberlin Financial Corporation	Bryan, OH
James J. Roth	Pershing LLC A BNY Securities Group	Oak Brook, IL

<sup>2</sup> Ms. Hanneberg was appointed to fill the vacancy created by the resignation of Bernard A. Breton. Ms. Hanneberg's term expires in January 2007.

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## District 9

### **Gary K. Liebowitz, Regional Director, North Region**

581 Main Street, 7th Floor  
Woodbridge, NJ 07095  
(732) 596-2025  
(732) 596-2001 fax

### **District Committee for District 9—Chair: Harold N. Peremel**

Committee members to be elected to terms expiring January 2010: 3

#### **Committee Members to Serve Until January 2007**

Wayne F. Holly	Sage, Rutty & Co., Inc.	Rochester, NY
Peter P. Jenkins	Credit Suisse First Boston LLC	Baltimore, MD
Harold N. Peremel	Mercantile Brokerage Services Inc.	Baltimore, MD

#### **Committee Members to Serve Until January 2008**

Michael T. Corrao	Knight Equity Markets LP	Jersey City, NJ
Scott L. Fagin	The Jeffrey Matthews Financial Group, L.L.C.	Millburn, NJ
Rebecca L. Kohler	Fidelity Investments Tax-Exempt Services Co.	Roanoke, VA

#### **Committee Members to Serve Until January 2009**

John M. Ivan	Janney Montgomery Scott LLC	Philadelphia, PA
Brand F. Meyer	Wachovia Securities, LLC	Richmond, VA
Thomas T. Wallace	Johnston, Lemon & Co. Incorporated	Washington, DC

### **District Nominating Committee for District 9—Chair: Michael B. Row**

Committee members to be elected to terms expiring January 2008: 5

#### **Committee Members to Serve Until January 2007**

Richard Grobman	Oppenheimer & Co. Inc.	Philadelphia, PA
W. Dean Karrash	Burke, Lawton, Brewer & Burke	Spring House, PA
Gregg A. Kidd	Pinnacle Investments Inc.	East Syracuse, NY
Michael S. Mortensen	PNC Investments	Pittsburgh, PA
Michael B. Row	Pershing LLC	Jersey City, NJ

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## District 10

### **Hans L. Reich, Regional Director, New York Region**

One Liberty Plaza, 49th Floor, 165 Broadway, New York, NY 10006 (212) 858-4180  
(212) 858-4078 fax

### **District Committee for District 10—Chair: Howard R. Plotkin**

Committee members to be elected to terms expiring January 2010: 4

#### **Committee Members to Serve Until January 2007**

Richard Berenger	Sky Capital, LLC	New York, NY
Lon T. Dolber	American Portfolios Financial Services, Inc.	Holbrook, NY
George T. Mimura	Nomura Securities International, Inc.	New York, NY
Howard R. Plotkin	Lehman Brothers, Inc.	New York, NY

#### **Committee Members to Serve Until January 2008**

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

#### **Committee Members to Serve Until January 2009**

Barry M. Cash	Citigroup Global Markets Inc.	New York, NY
Joseph DeBellis	Sanford C. Bernstein & Co., LLC	New York, NY
Robyn Jeffrey	Oppenheimer & Co. Inc.	New York, NY
Allen Meyer	Credit Suisse First Boston LLC	New York, NY

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**District Nominating Committee for District 10—Chair: Jennifer A. Connors**

Committee members to be elected to terms expiring January 2008: 5

**Committee Members to Serve Until January 2007**

Margaret M. Caffrey	Schonfeld & Company, LLC	Jericho, NY
Jennifer A. Connors	Lehman Brothers Inc.	New York, NY
Raymond C. Holland, Sr.	Triad Securities Corp.	New York, NY
Richard J. Paley	Carey Financial Corporation	New York, NY
Mark W. Ronda	Oppenheimer & Co. Inc.	New York, NY

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## District 11

### **Frederick F. McDonald, Jr., District Director**

99 High Street, Suite 900, Boston, MA 02110

(617) 532-3401

(617) 451-3524 fax

### **District Committee for District 11—Chair: David K. Booth**

Committee members to be elected to terms expiring January 2010: 3

#### **Committee Members to Serve Until January 2007**

David K. Booth	Jefferson Pilot Securities Corp.	Concord, NH
Thomas F. Hollenbeck	J.P. Morgan Invest, LLC	Boston, MA
Curtis L. Snyder, Jr.	American Technology Research, Inc.	Greenwich, CT

#### **Committee Members to Serve Until January 2008**

Frank L. Chandler	Boston Capital Services, Inc.	Boston, MA
Joseph Gritzer	USI Securities, Inc.	Glastonbury, CT
Moira Lowe	Sun Life Financial	Wellesley Hills, MA

#### **Committee Members to Serve Until January 2009**

Martin W. Courage	Bank of America Investment Services	Boston, MA
Todd A. O'Connor	Investors Securities Services LLC	Boston, MA
Robert J. Reilly	Piper Jaffray & Co.	Boston, MA

### **District Nominating Committee for District 11—Chair: Mark R. Hansen**

Committee members to be elected to terms expiring January 2008: 5

#### **Committee Members to Serve Until January 2007**

Michael C. Braun	Moors & Cabot, Inc.	Boston, MA
Andrew F. Detwiler	Virtua Research An affiliate of Vandham Securities Corp.	Boston, MA
Mark R. Hansen	Alta Capital Group, LLC	Boston, MA
Lee G. Kuckro	Advest, Inc.	Hartford, CT
Wilson G. Saville	Barrett & Company	Providence, RI

# Notice to Members

MAY 2006

## SUGGESTED ROUTING

Legal & Compliance  
Registration  
Senior Management

## KEY TOPICS

Branch Office Registration Fee  
Branch Office System Processing Fee  
Fees  
Schedule A to NASD By-Laws

## GUIDANCE

### Branch Office System Processing Fee

Establishment of Branch Office System Processing Fee and Waiver of Branch Office System Processing Fee and Annual Branch Office Registration Fee For One Branch Office Per Member Per Year; **Effective Date: July 3, 2006**

### Executive Summary

Effective July 3, 2006, NASD members will be assessed an annual \$20 branch office system processing fee. Also effective July 3, 2006, NASD will waive for one branch office per NASD member per year: (1) the annual branch office registration fee for those NASD members who are assessed an annual registration fee pursuant to Section 4(a)(1)(i) of Schedule A to the NASD By-Laws; and (2) the annual branch office system processing fee for all NASD members.

The rule change became effective immediately upon filing with the Securities and Exchange Commission (SEC) on May 23, 2006, and will become operative on July 3, 2006.<sup>1</sup> Attachment A contains the text of the amendments.

### Questions/Further Information

Questions regarding this *Notice* may be directed to Richard E. Pullano, Associate Vice President and Chief Counsel, Registration and Disclosure, at (240) 386-4821; and Chip Jones, Vice President and State Liaison, Registration and Disclosure, at (240) 386-4797.

06-25

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## Background

On September 30, 2005, the SEC approved NASD's proposed Uniform Branch Office Registration Form (Form BR), which became effective on October 31, 2005. The Form BR replaces Schedule E of the Form BD, the New York Stock Exchange, LLC. (NYSE) Branch Office Application Form and certain state branch office forms. The Form BR enables firms to register branch offices electronically with NASD, the NYSE and states that require branch registration or reporting via a single filing through the Central Registration Depository (CRD® or CRD system).

Branch office registration through the CRD system creates efficiencies for firms by, among other things, making it easier for firms to register or report branch offices and to manage their ongoing registration and/or reporting responsibilities with regard to those branch offices. In addition to being able to submit a single filing to fulfill the branch office registration requirements of NASD, the NYSE and states, firms benefit from the centralized fee collection, online work queues, electronic notifications and other features available through the CRD system. Firms are also able to link their registered persons to the physical location from which they work via the Form BR, which not only aids regulators' examination efforts, but helps firms in meeting certain recordkeeping requirements.

## Branch Office System Processing Fee

The purpose of the branch office system processing fee is to recover the cost to NASD of developing and implementing the Form BR, as well as ongoing branch office system maintenance and enhancements. The fee is \$20 upon the registration of a branch office and \$20 annually thereafter per registered branch.

NASD will begin assessing the branch office system processing fee during the third quarter of 2006 for all branch offices in existence as of July 3, 2006. NASD will bill firms for all branch offices in existence as of July 3, 2006 via invoices, rather than through the CRD system. For any branch office that is registered on or after July 3, 2006, NASD will assess and collect the branch office system processing fee through the CRD system at such time as the firm registers that new branch office.<sup>2</sup> Starting in December 2006 (for the calendar year 2007), all firms will be assessed \$20 annually for each existing branch office as part of the CRD renewal program.

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## Annual Waiver of the Branch Office Registration Fee and Branch Office System Processing Fee

NASD is waiving for one branch office per NASD member per year: (1) the annual branch office registration fee for those NASD members who are assessed an annual registration fee pursuant to Section 4(a)(1)(i) of Schedule A to the NASD By-Laws; and (2) the annual branch office system processing fee for all NASD members. This waiver is prospective only, and will take effect for the year 2006 on July 3, 2006. Firms that have already paid their annual \$75 branch office fees for the year 2006 pursuant to Section 4(a)(1)(i) of Schedule A to the NASD By-Laws will receive a \$75 credit for one branch office.

### Endnotes

- 1 See SR-NASD-2006-065 (Establishment of Branch Office System Processing Fee and Waiver of Branch Office System Processing Fee and Annual Branch Office Registration Fee For One Branch Office Per Member Per Year). 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 The CRD system will be available on July 3, 2006 for purposes of registering branch offices, but will not be available on July 4, 2006. Firms will again be able to register branch offices through the CRD system on July 5, 2006.

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## ATTACHMENT A

New language is underlined; deletions are in brackets.

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### SCHEDULE A TO NASD BY-LAWS

\* \* \* \* \*

#### Section 4—Fees

(a) Each member shall be assessed a registration fee of \$75.00 [for] and a branch office system processing fee of \$20.00 upon the registration of each branch office, as defined in the By-Laws. Each member also shall be assessed: (1) an annual registration fee [for each branch office] in an amount equal to the lesser of [(1)] (i) \$75.00 per registered branch, or [(2)] (ii) the product of \$75.00 and the number of registered representatives and registered principals associated with the member at the end of NASD's fiscal year; and (2) an annual branch office system processing fee of \$20.00 per registered branch. As of July 3, 2006, NASD shall waive, for one branch office per member per year, payment of the \$75.00 annual registration fee (where such fee has been assessed pursuant to paragraph (a)(1)(i)) and the \$20.00 annual branch office system processing fee assessed pursuant to paragraph (a)(2).

(b) through (h) No Change.

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# Notice to Members

MAY 2006

## SUGGESTED ROUTING

Legal and Compliance  
Margin  
Options  
Operations  
Senior Management

## KEY TOPICS

Margin Requirements  
Options  
Rule 2520  
Rule 2522

## GUIDANCE

### Margin Requirements

Amendments to Margin Rules to Reflect Additional Complex Option Spread Strategies

#### Executive Summary

On April 3, 2006, NASD filed with the Securities and Exchange Commission (SEC) for immediate effectiveness a rule change to amend NASD Rules 2520 and 2522 that revised the margin requirements to recognize specific additional complex option spread strategies for purposes of determining required margin, and has amended the provisions relating to “permitted offsets” for certain listed option transactions.<sup>1</sup> Rules 2520 and 2522, as amended, are set forth in Attachment A of this *Notice*. The effective date and the implementation date of the amendments was April 3, 2006.

#### Questions/Further Information

Questions regarding this *Notice* may be directed to Susan M. DeMando, Associate Vice President, Financial Operations, at (202) 728-8411; or Kathryn M. Moore, Assistant General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 974-2974.

#### Background and Discussion

NASD has amended Rule 2520 to recognize specific additional complex option spread strategies for purposes of determining required margin, and has amended the provisions relating to “permitted offsets” for certain listed option transactions. In addition, NASD amended Rule 2522 to include definitions relating to the amendments to Rule 2520 and to make certain other conforming changes. The amendments to Rules 2520 and 2522 are consistent with recent margin rule amendments by the New York Stock Exchange (NYSE) and the Chicago Board Options Exchange (CBOE), which were approved by the SEC.<sup>2</sup>

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## Complex Option Spread Strategies

NASD has amended Rule 2520 and the corresponding definitions in Rule 2522 to recognize specific additional complex option spread strategies, and has set margin requirements commensurate with the risk of such spread strategies. These complex option spread strategies are the net result of combining two or more spread strategies that were already recognized in NASD's margin rules. The netting of contracts in option series common to each of the already recognized spreads in an aggregation reduces it to the complex spread strategies noted below. The purpose and benefit of the recent amendments is to set levels of margin that more precisely represent actual net risk of the option positions in the account and enable customers to implement these strategies more efficiently.

To be eligible for the margin requirements set forth below, a complex spread must be consistent with one of the seven patterns specified below. The expiration months and the sequence of the exercise prices must correspond to the same pattern, and the intervals between the exercise prices must be equal.

Members are required to obtain initial and maintenance margin for the subject complex spreads, whether established outright or through netting, of not less than the sum of the margin required on each basic spread in the equivalent aggregation.

The basic requirements are as follows: (a) the complex option spreads must be carried in a margin account; and (b) European-style options<sup>3</sup> are prohibited for complex spread combinations having a long option series that expires after the other option series (i.e., those that involve a time spread such as items 5, 6, and 7 below). Only American-style options may be used in these combinations. Additionally, the intervals between exercise prices must be equal, and each complex spread must comprise four option series, with the exception of item 4 below, which must comprise three option series.

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The sum of the margin required on each currently recognized spread in each of the applicable aggregations renders margin requirements for the subject complex spread strategies as stated below. The additional complex option spread strategies and maintenance margin requirements are as follows:

- (1) A Long Condor Spread is comprised of two long Butterfly Spreads. The rule requires initial and maintenance margin of full cash payment of the net debit incurred when this spread strategy is established. Full payment of the net debit incurred will cover any potential risk to the carrying broker-dealer.
- (2) A Short Iron Butterfly Spread is comprised of one long Butterfly Spread and one short Box Spread. The establishment of a long Butterfly Spread results in a margin requirement equal to the net debit incurred. The establishment of a short Box Spread requires margin equal to the aggregate difference between the exercise prices. The net proceeds from the sale of short option components may be applied to the margin requirement. Accordingly, to cover the risk to the carrying broker-dealer, the rule requires a deposit of the aggregate exercise price differential. The net credit received may be applied to the deposit required.
- (3) A Short Iron Condor Spread is comprised of two long Butterfly Spreads and one short Box Spread. The establishment of long Butterfly Spreads results in a margin requirement equal to the net debit incurred. The establishment of a short Box Spread requires margin equal to the difference in the strike price. Accordingly, to cover the risk to the carrying broker-dealer, the rule requires a deposit of the aggregate exercise price differential. The net credit received may be applied to the deposit required.
- (4) A Long Calendar Butterfly Spread is comprised of one long Calendar Spread and one long Butterfly Spread. The rule requires initial and maintenance margin of full cash payment of the net debit incurred when this spread strategy is established. Full payment of the net debit incurred will cover any potential risk to the carrying broker-dealer.
- (5) A Long Calendar Condor Spread is comprised of one long Calendar Spread and two long Butterfly Spreads. The rule requires initial and maintenance margin of full cash payment of the net debit incurred when this spread strategy is established. Full payment of the net debit incurred will cover any potential risk to the carrying broker-dealer.
- (6) A Short Calendar Iron Butterfly Spread is comprised of one long Calendar Spread plus one long Butterfly Spread and one short Box Spread. To cover the risk to the carrying broker-dealer, the rule requires a deposit of the aggregate exercise price differential. The net credit received may be applied to the deposit required.
- (7) A Short Calendar Iron Condor Spread is comprised of one Long Calendar Spread plus two long Butterfly Spreads and one short Box Spread. To cover the risk to the carrying broker-dealer, the rule requires a deposit of the aggregate exercise price differential. The net credit received may be applied to the deposit required.

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## Permitted Offsets

Rule 2520(f)(2)(J) addresses margin requirements for members that clear and carry the listed options transactions of registered specialists, registered market makers or registered traders in options, and recognizes certain offset positions in establishing the margin requirements. Prior to the recent amendments, the rule limited permitted offsets for these parties to options series that are “in or at the money,” which was defined to mean “the current market price of the underlying security is not more than two standard exercise intervals below (with respect to a call option) or above (with respect to a put option) the exercise price of the option.”

Recently, various option exchanges have provided for the listing of options with one-dollar strike intervals in a number of classes. As a result, the use of securities to hedge options series that have one-dollar strike intervals has unintentionally become more restrictive. The recent amendments eliminated the definition of “in or at the money,” thereby eliminating the two standard exercise interval limitation for listed options. In addition, the amended rule requires permitted offset transactions to be effected for specialist or market-making purposes such as hedging, risk reduction, rebalancing of positions, liquidation or accommodation of customer orders, or other similar specialist or market-making purposes.

The amendments to Rules 2520 and 2522 became effective April 3, 2006.

## Endnotes

- 1 See Exchange Act Release No. 53743 (April 28, 2006), 71 FR 26797 (May 8, 2006) (File No. SR-NASD-2006-045). 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 Exchange Act Release No. 52951 (December 14, 2005), 70 FR 75523 (December 20, 2005) (SR-NYSE-2004-39); Exchange Act Release No. 52950 (December 14, 2005), 70 FR 75512 (December 20, 2005) (SR-CBOE-2004-53).
- 3 A European-style option is an option contract that can be exercised only on its expiration date.
- 4 An American-style option is an option contract that can be exercised at any time between the date of purchase and its expiration date.

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## ATTACHMENT A

New language is underlined; deletions are in brackets.

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### 2520. Margin Requirements

(a) through (e) No Change.

**(f) Other Provisions**

(1) No Change.

**(2) Puts, Calls and Other Options, Currency Warrants, Currency Index Warrants and Stock Index Warrants**

(A) through (B) No Change.

(C) For purposes of this subparagraph (f)(2), obligations issued by the United States Government shall be referred to as United States Government obligations. Mortgage pass-through obligations guaranteed as to timely payment of principal and interest by the Government National Mortgage Association shall be referred to as GNMA obligations.

In the case of any put, call, currency warrant, currency index warrant, or stock index warrant carried "long" in a customer's account that expires in nine months or less, initial margin must be deposited and maintained equal to at least 100% of the purchase price of the option or warrant.

**Long Listed Option or Warrant With An Expiration Exceeding Nine Months.** In the case of a put, call, index stock group option, or stock index warrant that is issued by a registered clearing agency, margin must be deposited and maintained equal to at least 75% of the current market value of the option or warrant; provided that the option or warrant has a remaining period to expiration exceeding nine months.

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**Long OTC Option or Warrant With An Expiration Exceeding Nine Months.** In the case of a[n OTC] put, [or ]call, index stock group option,[ on a stock or stock index, and a] or stock index warrant,[,] carried long that is not issued by a registered clearing agency[ with an expiration exceeding 9 months], margin must be deposited and maintained equal to at least 75% of the option's or warrant's "in-the-money" amount plus 100% of the amount, if any, by which the current market value of the option or warrant exceeds its "in-the-money" amount provided the option or warrant:[. Options or warrants margined pursuant to this paragraph must:]

(i) [be valued at all times for margin purposes at an amount not to exceed, the in-the-money amount,]

[(ii) be]s guaranteed by the carrying broker-dealer, [and]

(ii) [(iii) have]has an American-style exercise provision, and

(iii) has a remaining period to expiration exceeding nine months.

(D) through (F) No Change.

(G) (i) through (iv) No Change.

(v) The following requirements set forth the minimum amount of margin that must be maintained in margin accounts of customers having positions in components underlying options, and stock index warrants, when such components are held in conjunction with certain positions in the overlying option or warrant. The option or warrant must be issued by a registered clearing agency or guaranteed by the carrying broker/dealer. In the case of a call or warrant carried in a short position, a related long position in the underlying component shall be valued at no more than the call/warrant exercise price for margin equity purposes.

a. Long Option or Warrant Offset. When a component underlying an option or warrant is carried long (short) in an account in which there is also carried a long put (call) or warrant specifying equivalent units of the underlying component, the minimum amount of margin that must be maintained on the underlying component is 10% of the [aggregate] option/warrant exercise price plus the "out-of-the-money" amount, not to exceed the minimum maintenance required pursuant to paragraph (c) of this Rule.

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b. Conversions. When a call or warrant carried in a short position is covered by a long position in equivalent units of the underlying component and [there] is also carried with a long put or warrant specifying equivalent units of the same underlying component and having the same exercise price and expiration date as the short call or warrant, the minimum amount of margin that must be maintained for the underlying component shall be 10% of the [aggregate] exercise price.

c. Reverse Conversions. When a put or warrant carried in a short position is covered by a short position in equivalent units of the underlying component and is also carried with a long call or warrant specifying equivalent units of the same underlying component and having the same exercise price and expiration date as the short put or warrant, the minimum amount of margin that must be maintained for the underlying component shall be 10% of the [aggregate] exercise price plus the amount by which the exercise price of the put exceeds the current market value of the underlying, if any.

d. Collars. When a call or warrant carried in a short position is covered by a long position in equivalent units of the underlying component and is also carried with a long put or warrant specifying equivalent units of the same underlying component and having a lower exercise price and the same expiration date as the short call/warrant, the minimum amount of margin that must be maintained for the underlying component shall be the lesser of 10% of the [aggregate] exercise price of the put plus the put "out-of-the-money" amount or 25% of the call aggregate exercise price.

e. Butterfly Spread. This subparagraph applies to a butterfly spread as defined in Rule 2522 where all option positions are issued by a registered clearing agency or guaranteed by the carrying broker/dealer.

1. No Change.

2. With respect to a short butterfly spread as defined in Rule 2522, margin must be deposited and maintained equal to at least the amount of the [aggregate] difference between the two lowest exercise prices with respect to short butterfly spreads comprised of calls or the [aggregate] difference between the two highest exercise prices with respect to short butterfly spreads comprised of puts. The net proceeds from the sale of short option components may be applied to the requirement.

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f. **Box Spread.** This subparagraph applies to box spreads as defined in Rule 2522, where all option positions are issued by a registered clearing agency or guaranteed by the carrying broker/dealer.

1. With respect to a long box spread as defined in Rule 2522, the net debit must be paid in full.

2. With respect to a short box spread as defined in Rule 2522, margin must be deposited and maintained equal to at least the amount of the [aggregate] difference between the exercise prices. The net proceeds from the sale of the short option components may be applied to the requirement.

g. **Long Box Spread in European-Style Options.** With respect to a long box spread as defined in Rule 2522, in which all component options have a European-style exercise provision and are issued by a registered clearing agency or guaranteed by the carrying broker/dealer, margin must be deposited and maintained equal to at least 50% of the [aggregate] difference in the exercise prices. The net proceeds from the sale of short option components may be applied to the requirement. For margin purposes, the long box spread may be valued at an amount not to exceed 100% of the [aggregate] difference in the exercise prices.

h. Long Condor Spread. This subparagraph applies to a long condor spread as defined in Rule 2522 where all option positions are issued by a registered clearing agency or guaranteed by the carrying broker/dealer. With respect to a long condor spread as defined in Rule 2522, the net debit must be paid in full.

i. Short Iron Butterfly Spread. This subparagraph applies to a short iron butterfly spread as defined in Rule 2522 where all option positions are issued by a registered clearing agency or guaranteed by the carrying broker/dealer. With respect to a short iron butterfly spread as defined in Rule 2522, margin must be deposited and maintained equal to at least the amount of the exercise price interval. The net proceeds from the sale of short option components may be applied to the requirement.

j. Short Iron Condor Spread. This subparagraph applies to a short iron condor spread as defined in Rule 2522 where all option positions are issued by a registered clearing agency or guaranteed by the carrying broker/dealer. With respect to a short iron condor spread as defined in Rule 2522, margin must be deposited and maintained equal to at least the amount of the exercise price interval. The net proceeds from the sale of short option components may be applied to the requirement.

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k. Long Calendar Butterfly Spread. This subparagraph applies to a long calendar butterfly spread as defined in Rule 2522 where all option positions are issued by a registered clearing agency or guaranteed by the carrying broker/dealer. With respect to a long calendar butterfly spread as defined in Rule 2522, the net debit must be paid in full.

l. Long Calendar Condor Spread. This subparagraph applies to a long calendar condor spread as defined in Rule 2522 where all option positions are issued by a registered clearing agency or guaranteed by the carrying broker/dealer. With respect to a long calendar condor spread as defined in Rule 2522, the net debit must be paid in full.

m. Short Calendar Iron Butterfly Spread. This subparagraph applies to a short calendar iron butterfly spread as defined in Rule 2522 where all option positions are issued by a registered clearing agency or guaranteed by the carrying broker/dealer. With respect to a short calendar iron butterfly spread as defined in Rule 2522, margin must be deposited and maintained equal to at least the amount of the exercise price interval. The net proceeds from the sale of short option components may be applied to the requirement.

n. Short Calendar Iron Condor Spread. This subparagraph applies to a short calendar iron condor spread as defined in Rule 2522 where all option positions are issued by a registered clearing agency or guaranteed by the carrying broker/dealer. With respect to a short calendar iron condor spread as defined in Rule 2522, margin must be deposited and maintained equal to at least the amount of the exercise price interval. The net proceeds from the sale of short option components may be applied to the requirement.

(H) through (I) No Change.

(J) (i) Registered specialists, market makers or traders — Notwithstanding the other provisions of this subparagraph (f)(2), a member may clear and carry the listed option transactions of one or more registered specialists, registered market makers or registered traders in options (whereby[which] registered traders are deemed specialists for all purposes under the Act, pursuant to the rules of a national securities exchange) (hereinafter referred to as “specialist(s)”), upon a “Good Faith” margin basis satisfactory to the concerned parties, provided the “Good Faith” margin requirement[s] is not less than the Net Capital haircut deduction of the member [organization] carrying the transaction pursuant to SEC Rule 15c3-1 under the Act. In lieu of collecting the “Good Faith” margin requirement, a carrying member [organization] may elect to deduct in computing its Net Capital the amount of any deficiency between the equity maintained in the account and the “Good Faith” margin required.

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For purposes of this paragraph (f)(2)(J), a permitted offset position means, in the case of an option in which a specialist or market maker makes a market, a position in the underlying asset or other related assets, and in the case of other securities in which a specialist or market maker makes a market, a position in options overlying the securities in which a specialist or market maker makes a market. Accordingly, a specialist or market maker in options may establish, on a share-for-share basis, a long or short position in the securities underlying the options in which the specialist or market maker makes a market, and a specialist or market maker in securities other than options may purchase or write options overlying the securities in which the specialist or market maker makes a market, if the account holds the following permitted offset positions:

- a. A short option position which[ is “in or at the money” and] is not offset by a long or short option position for an equal or greater number of shares of the same underlying security which is “in the money”;
- b. A long option position which[ is “in or at the money” and] is not offset by a long or short option position for an equal or greater number of shares of the same underlying security which is “in the money”;
- c. A short option position against which an exercise notice was tendered;
- d. A long option position which was exercised;
- e. A net long position in a security (other than an option) in which a specialist or market maker makes a market;
- f. A net short position in a security (other than an option) in which the specialist or market maker makes a market; or
- g. A specified portfolio type as referred to in SEC Rule 15c3-1, including its appendices, or any applicable SEC staff interpretation or no-action position.

Permitted offset transactions must be effected for specialist or market making purposes such as hedging, risk reduction, rebalancing of positions, liquidation, or accommodation[s] of customer orders, or other similar [market making]specialist or market maker purpose. The specialist or market maker must be able to demonstrate compliance with this provision.

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For purposes of this paragraph (f)(2)(J), [ the term “in or at the money” means the current market price of the underlying security is not more than two standard exercise intervals below (with respect to a call option) or above (with respect to a put option) the exercise price of the option;] the term “in the money” means the current market price of the underlying asset or index is not below (with respect to a call option) or above (with respect to a put option) the exercise price of the option; and, the term “overlying option” means a put option purchased or a call option written against a long position in an underlying asset; or a call option purchased or a put option written against a short position in an underlying asset.

(ii) Securities, including options, in such accounts shall be valued conservatively in the light of current market prices and the amount which might be realized upon liquidation. Substantial additional margin must be required or excess [n]Net [c]Capital maintained in all cases where the securities carried:

a. through b. No Change.

c. in one or more or all accounts, including proprietary accounts combined, are such that they cannot be liquidated promptly or represent undue concentration of risk in view of the carrying member’s [n]Net [c]Capital and its overall exposure to material loss.

(K) through (L) No Change.

(M) Cash account transactions — A member may make option transactions in a customer’s cash account, provided that:

(i) No Change.

(ii) Spreads. A European-style cash-settled index stock group option or stock index warrant carried in a short position is deemed a covered position, and eligible for the cash account, provided a long position in a European-style cash-settled stock group index option, or stock index warrant having the same underlying component or index that is based on the same aggregate current underlying value, is held in or purchased for the account on the same day, provided that:

a. through b. No Change.

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c. there is held in the account at the time the positions are established, or received into the account promptly thereafter:

1. cash or cash equivalents of not less than any amount by which the [aggregate] exercise price of the long call or call warrant (short put or put warrant) exceeds the [aggregate] exercise price of the short call or call warrant (long put or put warrant), to which [requirement of] net proceeds from the sale of the short position may be applied, or

2. an escrow agreement.

The escrow agreement must certify that the bank holds for the account of the customer as security for the agreement i. cash, ii. cash equivalents, or iii. a combination thereof having an aggregate market value at the time the positions are established of not less than any amount by which the [aggregate] exercise price of the long call or call warrant (short put or put warrant) exceeds the [aggregate] exercise price of a short call or call warrant (long put or put warrant) and that the bank will promptly pay the member such amount in the event the account is assigned an exercise notice or that the bank will promptly pay the member funds sufficient to purchase a warrant sold short in the event of a buy-in.

d. No Change.

(iii) Long Butterfly Spreads, Short Butterfly Spreads, Long Condor Spreads, Short Iron Butterfly Spreads, or Short Iron Condor Spreads. Put or call options carried in a short position are deemed covered positions and eligible for the cash account provided that the account contains long positions of the same type which in conjunction with the short options, constitute a long butterfly spread, short butterfly spread, long condor spread, short iron butterfly spread, or short iron condor spread as defined in Rule 2522 and provided that:

a. through d. No Change.

e. all components options expire concurrently;

[e]f. with respect to a long butterfly spread or long condor spread as defined in Rule 2522, the net debit is paid in full; and

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[f]g. with respect to a short butterfly spread, short iron butterfly spread or short iron condor spread as defined in Rule 2522, there is held in the account at the time the positions are established or received into the account promptly thereafter:

1. cash or cash equivalents of not less than the amount of the [aggregate] difference between the two lowest exercise prices with respect to short butterfly spreads comprised of call options or the [aggregate] difference between the two highest exercise prices with respect to short butterfly spreads comprised [or] of put options, to which [requirement] the net proceeds from the sale of short option components may be applied; or

2. an escrow agreement.

The escrow agreement must certify that the bank holds for the account of the customer as security for the agreement i. cash, ii. cash equivalents or iii. a combination thereof having an aggregate market value at the time the positions are established of not less than the amount of the [aggregate] difference between the two lowest exercise prices with respect to short butterfly spreads comprised of calls or the [aggregate] difference between the two highest exercise prices with respect to short butterfly spreads comprised of puts and that the bank will promptly pay the member such amount in the event the account is assigned an exercise notice on the call (put) with the lowest (highest) exercise price.

(iv) **Box Spreads.** Puts and calls carried in a short position are deemed covered positions and eligible for the cash account provided that the account contains long positions which in conjunction with the short options constitute a box spread as defined in Rule 2522 provided that:

a. through d. No Change.

e. all component options expire concurrently;

[e]f. with respect to a long box spread as defined in Rule 2522, the net debit is paid in full; and

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[f]g. with respect to a short box spread as defined in Rule 2522, there is held in the account at the time the positions are established, or received into the account promptly thereafter:

1. cash or cash equivalents of not less than the amount of the [aggregate] difference between the exercise prices, to which [requirement] the net proceeds from the sale of short option components may be applied; or
2. an escrow agreement.

The escrow agreement must certify that the bank holds for the account of the customer as security for the agreement i. cash, ii. cash equivalents or iii. a combination thereof having an aggregate market value at the time the positions are established of not less than the amount of the [aggregate] difference between the exercise prices and that the bank will promptly pay the member such amount in the event the account is assigned an exercise notice on either short option.

(3) through (11) No Change.

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## 2522. Definitions Related to Options, Currency Warrants, Currency Index Warrants and Stock Index Warrants Transactions.

(a) The following definitions shall apply to the margin requirements for options, currency warrants, currency index warrants and stock index warrants transactions:

(1) through (5) No Change.

### **(6) Box Spread**

The term “box spread” means an aggregation of positions in a long call and short put with the same exercise price (“buy side”) coupled with a long put and short call with the same exercise price (“sell side”) [all of which have the same underlying component or index and time of expirations, and are based on the same aggregate current underlying value, and are] structured as[;]; (A) a “long box spread” in which the sell side exercise price exceeds the buy side exercise price or (B) a “short box spread” in which the buy side exercise price exceeds the sell side exercise price[.], all of which have the same contract size, underlying component or index and time of expiration, and are based on the same aggregate current underlying value.

(7) through (8) No Change.

### **(9) Butterfly Spread**

The term “butterfly spread” means an aggregation of positions in three series of either puts or calls, [all having the same underlying component or index, and time of expiration, and based on the same aggregate current underlying value, where the interval between the exercise price of each series is equal, which positions are] structured as either: (A) a “long butterfly spread” in which two short options in the same series are offset by one long option with a higher exercise price and one long option with a lower exercise price or (B) a “short butterfly spread” in which two long options in the same series offset one short option with a higher exercise price and one short option with a lower exercise price[.], all of which have the same contract size, underlying component or index and time of expiration, are based on the same aggregate current underlying value, where the interval between the exercise price of each series is equal, and the exercise prices are in ascending order.

### **(10) Calendar Spread**

The term “calendar spread” or “time spread” means the sale of one option and the simultaneous purchase of another option of the same type, both specifying the same underlying component with the same exercise price or different exercise prices, where the “long” option expires after the “short” option.

(10) through (22) renumbered as (11) through (23).

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**[(23)](24) Escrow Agreement**

The term “escrow agreement,” when used in connection with cash settled calls, puts, currency warrants, currency index warrants, or stock index warrants carried short, means any agreement issued in a form acceptable to [the Association]NASD under which a bank holding cash, cash equivalents, one or more qualified equity securities or a combination thereof in the case of a call [option] or warrant or cash, cash equivalents or a combination thereof in the case of a put [option] or warrant is obligated (in the case of an option) to pay the creditor the exercise settlement amount in the event an option is assigned an exercise notice or, (in the case of a warrant) the funds sufficient to purchase a warrant sold short in the event of a buy-in.

[The term “escrow agreement” when used in connection with non cash settled call or put options carried short, means any agreement issued in a form acceptable to the Association under which a bank holding the underlying security (in the case of a call option) or required cash or cash equivalents or a combination thereof (in the case of a put option) is obligated to deliver to the creditor (in the case of a call option) or accept from the creditor (in the case of a put option) the underlying security against payment of the exercise price in the event of the call or put is assigned an exercise notice.]

(24) through (40) renumbered as (25) through (41).

**(42) Long Calendar Butterfly Spread**

The term “long calendar butterfly spread” means an aggregation of positions in three series of either puts or calls, structured as two short options with the same exercise price, offset by a long option with a lower exercise price and a long option with a higher exercise price, all of which have the same contract size, underlying component or index, are based on the same aggregate current underlying value, where the interval between the exercise price of each series is equal, the exercise prices are in consecutive order, and one long option expires after the other three options expire concurrently. However, a long calendar butterfly spread cannot be composed of cash-settled, European-style index options. This strategy can also be considered a combination of one long calendar spread and one long butterfly spread, as defined in this rule.

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#### **(43) Long Calendar Condor Spread**

The term “long calendar condor spread” means an aggregation of positions in four series of either puts or calls, structured as a long option with the lowest exercise price, two short options with the next two consecutively higher exercise prices and a long option with the highest exercise price, all of which have the same contract size, underlying component or index, are based on the same aggregate current underlying value, where the interval between the exercise price of each series is equal, the exercise prices are in consecutive order, and one long option expires after the other three options expire concurrently. However, a long calendar condor spread cannot be composed of cash-settled, European-style index options. This strategy can also be considered a combination of one long calendar spread and two long butterfly spreads, as defined in this rule.

#### **(44) Long Condor Spread**

The term “long condor spread” means an aggregation of positions in four series of either puts or calls, structured as a long option with the lowest exercise price, two short options with the next two consecutively higher exercise prices and a long option with the highest exercise price, all of which have the same contract size, underlying component or index and time of expiration, are based on the same aggregate current underlying value, where the interval between the exercise price of each series is equal, and the exercise prices are in consecutive order. This strategy can also be considered a combination of two long butterfly spreads, as defined in this rule.

(41) through (60) renumbered as (45) through (64).

#### **(65) Short Calendar Iron Butterfly Spread**

The term “short calendar iron butterfly spread” means an aggregation of positions in two series of puts and two series of calls, structured as a short put and a short call with the same exercise price, offset by a long put with a lower exercise price and a long call with a higher exercise price, all of which have the same contract size, underlying component or index, are based on the same aggregate current underlying value, where the interval between the exercise price of each series is equal, the exercise prices are in consecutive order, and one long option expires after the other three options expire concurrently. However, a short calendar iron butterfly spread cannot be composed of cash-settled, European-style index options. This strategy can also be considered a combination of one long calendar spread, one long butterfly spread, and one short box spread, as defined in this rule.

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#### **(66) Short Calendar Iron Condor Spread**

The term “short calendar iron condor spread” means an aggregation of positions in two series of puts and two series of calls, structured as a long put with the lowest exercise price, a short put and a short call with the next two consecutively higher exercise prices and a long call with the highest exercise price, all of which have the same contract size, underlying component or index, are based on the same aggregate current underlying value, where the interval between the exercise price of each series is equal, the exercise prices are in consecutive order, and one long option expires after the other three options expire concurrently. However, a short calendar iron condor spread cannot be composed of cash-settled, European-style index options. This strategy can also be considered a combination of one long calendar spread, two long butterfly spreads, and one short box spread, as defined in this rule

#### **(67) Short Iron Butterfly Spread**

The term “short iron butterfly spread” means an aggregation of positions in two series of puts and two series of calls, structured as a short put and a short call with the same exercise price, offset by a long put with a lower exercise price and a long call with a higher exercise price, all of which have the same contract size, underlying component or index and time of expiration, are based on the same aggregate current underlying value, where the interval between the exercise price of each series is equal, and the exercise prices are in consecutive order. This strategy can also be considered a combination of one long butterfly spread and one short box spread, as defined in this rule.

#### **(68) Short Iron Condor Spread**

The term “short iron condor spread” means an aggregation of positions in two series of puts and two series of calls, structured as a long put with the lowest exercise price, a short put and a short call with the next two consecutively higher exercise prices, and a long call with the highest exercise price, all of which have the same contract size, underlying component or index and time of expiration, are based on the same aggregate current underlying value, where the interval between the exercise price of each series is equal, and the exercise prices are in consecutive order. This strategy can also be considered a combination of two long butterfly spreads and one short box spread, as defined in this rule.

(61) through (77) renumbered as (69) through (85).

# Notice to Members

MAY 2006

## SUGGESTED ROUTING

Internal Audit  
Legal & Compliance  
Operations  
Registered Representatives  
Senior Management  
Trading

## KEY TOPICS

Form 211  
Rule 6740  
SEC Rule 15c2-11

## GUIDANCE

### Amendments to Rule 6740

SEC Approves Amendments to Rule 6740 Relating to Submission of SEC Rule 15c2-11 Information to NASD;  
**Effective Date: June 29, 2006**

#### Executive Summary

On March 27, 2006, the Securities and Exchange Commission (SEC) approved amendments to NASD Rule 6740 relating to submission of SEC Rule 15c2-11 information to NASD prior to quotation of non-NASDAQ securities.<sup>1</sup> The rule change relieves members of their obligation to file with NASD copies of information that is electronically accessible through the SEC's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system. In addition, the rule change creates an exclusion from the requirements of Rule 6740 for quotation activity for which the SEC has granted an exemption under SEC Rule 15c2-11(h).

The amended rule language is set forth in Attachment A of this *Notice*. The amendments become effective on June 29, 2006. As of that date, members will be required to use a revised Form 211 to demonstrate compliance with Rule 6740 and SEC Rule 15c2-11. A copy of the revised Form 211 is included as Attachment B of this *Notice*. It will also be available at [www.otcbb.com](http://www.otcbb.com).

#### 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 compliance questions regarding Form 211, please contact Ken Worm, Associate Director, Market Regulation, at (240) 386-5121.

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## Background and Discussion

NASD Rule 6740 prohibits a member from initiating or resuming the quotation of a non-NASDAQ security<sup>2</sup> in a quotation medium unless the member has demonstrated compliance with the requirements of SEC Rule 15c2-11 pertaining to the review and maintenance of information about the security and its issuer. Generally, SEC Rule 15c2-11 requires that a broker-dealer review and maintain in its records specified information about a security and issuer (e.g., prospectuses, offering circulars and annual reports) prior to publishing a quotation for a security in any quotation medium. In addition, SEC Rule 15c2-11 requires that upon reviewing the specified information, a broker-dealer must have a reasonable basis to believe that the information is accurate in all material respects and the sources of such information are reliable.

To demonstrate compliance with both Rule 6740 and SEC Rule 15c2-11, a member must file with NASD a Form 211, together with the information required under SEC Rule 15c2-11(a), at least three business days before the quotation is published or displayed.

## Submission of Information Available through SEC's EDGAR System

Much of the information that is required under SEC Rule 15c2-11(a) for reporting issuers is publicly available through the SEC's EDGAR system. As amended, Rule 6740(b) relieves members of the obligation to file with NASD copies of information that is accessible through EDGAR and thus, eliminates the administrative burden and cost imposed on members in furnishing such information to NASD. Although members are no longer required to file copies of EDGAR information with NASD, they nonetheless remain obligated to review and maintain information as required by SEC Rule 15c2-11.

In addition, members currently are required to identify on Form 211 the type and date of each report or statement that is submitted to NASD.<sup>3</sup> The rule change does not relieve members of this obligation. Thus, where copies of documents are not submitted to NASD because they are available through EDGAR, members must identify on Form 211 the type and date of each report or statement that the member relied upon in satisfying its information review obligations under Rule 6740 and SEC Rule 15c2-11(a). In addition, members must provide the date the report or statement became available through EDGAR, as well as the requisite identifying information for any subsequent amendments to the report or statement. Finally, members also must provide the 10-digit Central Index Key (CIK) number for issuers that are EDGAR filers.<sup>4</sup>

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## Exemptions under SEC Rule 15c2-11(h)

Rule 6740(a) currently tracks the exceptions to the information review and maintenance requirements of SEC Rule 15c2-11(f), including, for example, an exception for quotations of NASDAQ securities or securities admitted to trading on a national securities exchange. Rule 6740(a), however, does not contain an exclusion for those quotations with respect to which the SEC has granted an exemption, upon request or its own motion, under SEC Rule 15c2-11(h).

As amended, Rule 6740(a) relieves members of their obligations under Rule 6740 in the event that the SEC has granted an exemption for a quotation pursuant to SEC Rule 15c2-11(h). Thus, members will not be required to review, maintain and file information under the NASD rule if there is no similar obligation under the SEC rule. To the extent that the SEC's exemptive relief applies any terms and conditions to such relief, those same terms and conditions would apply to the exclusion under Rule 6740.

## Endnotes

- 1 See Securities Exchange Act Release No. 53556 (March 27, 2006), 71 FR 16603 (April 3, 2006) (File No. SR-NASD-2005-098).
- 2 For purposes of this rule, "non-NASDAQ security" is defined in Rule 6710(c) as "any equity security that is neither included in The NASDAQ Stock Market nor traded on any national securities exchange."
- 3 Under Rule 6740(b), members must also identify on the Form 211 the issuer, the issuer's predecessor in the event of a merger or reorganization within the previous 12 months, the type of non-NASDAQ security to be quoted (e.g., ADR, warrant, unit, or common stock), the quotation medium to be used, the member's initial or resumed quotation, and the particular subsection of SEC Rule 15c2-11 with which the member is demonstrating compliance.
- 4 The CIK is a unique identifier assigned by the SEC to all persons and entities that file disclosure documents through EDGAR.

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## ATTACHMENT A

New language is underlined; deletions are in brackets.

### 6740. Submission of Rule 15c2-11 Information on Non-Nasdaq Securities

(a) Except as provided in SEC Rule 15c2-11(f)(1), (2), (3), and (5) and 15c2-11(h) under the Act, no member shall initiate or resume the quotation of a non-Nasdaq security in any quotation medium unless the member has demonstrated compliance with this rule and the applicable requirements for information maintenance under Rule 15c2-11. A member shall demonstrate compliance by making a filing with, and in the form required by, [the Association] NASD, which filing must be received at least three business days before the member's quotation is published or displayed in the quotation medium.

(b) The information to be filed shall contain one copy of all information required to be maintained under SEC Rule 15c2-11(a)(1), (2), (3)(iii), (4)(ii), or (5), including any information that may be required by future amendments thereto. Members are not required to file with NASD copies of any information that is available through the SEC's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system; provided, however, that the filing with NASD shall contain identifying information for each issuer report or statement available through EDGAR that was relied upon in satisfying the member's obligations under this Rule and SEC Rule 15c2-11(a), including the type of report, report date and any other information as may be requested by NASD. In addition, this filing shall identify the issuer, the issuer's predecessor in the event of a merger or reorganization within the previous 12 months, the type of non-Nasdaq security to be quoted (e.g., ADR, warrant, unit, or common stock), the quotation medium to be used, the member's initial or resumed quotation, and the particular subsection of Rule 15c2-11 with which the member is demonstrating compliance. Additionally, if a member is initiating or resuming quotation of a non-Nasdaq security with a priced entry, the member's filing must specify the basis upon which that priced entry was determined and the factors considered in making that determination.

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## ATTACHMENT B—FORM 211

### General Instructions

Complete this form to initiate or resume quotations in the OTC Bulletin Board, the Pink Sheets, or any other comparable quotation medium. By completing this form, your firm is representing that it has satisfied all applicable requirements of Securities and Exchange Commission (SEC) Rule 15c2-11 and the filing and information requirements of NASD Rule 6740. **It is not necessary to file this application if a member qualifies for an exception or exemption provided by paragraphs (f)(1)-(5) or (h) of Rule 15c2-11.**

Send the completed form, a photocopy of the completed form, and two copies of the required Issuer information to NASD, OTC Compliance Unit, 9509 Key West Avenue, Rockville, MD 20850-3329. **If you have any questions, call the OTC Compliance Unit at (240) 386-5100.**

Check the applicable quotation medium(s):

OTC Bulletin Board       Pink Sheets       Other (name of quotation medium)

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## Part 1 – Issuer and Security Information

Provide the information requested below:

- 1 Exact name of Issuer and predecessor (if any) \_\_\_\_\_
- 2 Address of principal executive offices \_\_\_\_\_
- 3 Telephone number of principal executive offices \_\_\_\_\_
- 4 Type of security (check one)  Domestic Security  ADR  Foreign Security  DPP
- 5 State of incorporation \_\_\_\_\_ Country of incorporation \_\_\_\_\_
- 6 Complete title and class of security to be quoted \_\_\_\_\_
- 7 Symbol of security (if assigned) \_\_\_\_\_ CUSIP (if assigned) \_\_\_\_\_
- 8 Par or stated value of security \_\_\_\_\_
- 9 Total securities outstanding at the end of the Issuer's most recent fiscal year \_\_\_\_\_
- 10 Name and address of transfer agent \_\_\_\_\_
- 11 List any restrictions on the transfer of the security \_\_\_\_\_
- 12 Price of initial quotation entry Bid \_\_\_\_\_ Ask \_\_\_\_\_  No price at this time

If you are requesting to enter a bid and/or ask price, you must also provide a clear statement of the following information:

The basis upon which the priced entry was determined: \_\_\_\_\_

The factors considered in making that determination: \_\_\_\_\_

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## Part 2 – Required Issuer Information

Check the applicable box (select only one) that corresponds to the category of Issuer information accompanying this application. To determine the applicable category, carefully review paragraphs (a)(1)-(5) of Rule 15c2-11 under the Securities Exchange Act of 1934 (1934 Act) and paragraph (g), which defines “reasonably current” information for purposes of paragraph (a)(5).

Provide two copies of all required information (except for EDGAR documents) along with this completed form.

### RECENT OFFERINGS

- (a)(1)** Provide the prospectus which became effective less than 90 calendar days prior to filing this Form 211, as specified by Section 10(a) of the Securities Act of 1933 (1933 Act).

SEC Effective Date: \_\_\_\_\_ Date Security(ies) Issued: \_\_\_\_\_

- (a)(2)** Provide the offering circular which became effective less than 40 calendar days prior to filing this Form 211, as provided for under Regulation A under the 1933 Act.

SEC Effective Date: \_\_\_\_\_ Date Security(ies) Issued: \_\_\_\_\_

- (a)(3) REPORTING COMPANIES List:**

The Issuer’s most recent annual report filed pursuant to Section 13 or 15(d) of the 1934 Act or the annual statement referred to in Section 12(g)(2)(G)(i) of the 1934 Act. Quarterly and other current reports filed after the Issuer’s most recent annual report or statement. List below each report or statement and applicable amendments filed by the Issuer through EDGAR that your firm has in its possession that meets the requirements of this section.

Name of Report or Statement	Report or Statement Date	EDGAR Filed Date
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**(a)(4) FOREIGN PRIVATE ISSUERS**

Provide information furnished to the Securities and Exchange Commission pursuant to Rule 12g3-2(b) of the 1934 Act since the beginning of the Issuer's last fiscal year. List below the information supplied with this form.

Name of Report or Statement	Report or Statement Date	SEC Filed Date
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**(a)(5) NON-REPORTING AND ALL OTHER COMPANIES**

The applicant must make the Issuer information filed in conjunction with section (a)(5) of this form available upon request to any person expressing an interest in a proposed transaction with the subject security filed. Provide the Issuer's most recent balance sheet, profit and loss and retained earnings statements, equivalent financial information for the two prior fiscal years for the Issuer or any predecessor company, and the documents that support the information provided in this form.

- a. Describe the Issuer's business. \_\_\_\_\_
- b. Describe the products or services offered by the Issuer. \_\_\_\_\_
- c. Describe the Issuer's facilities. \_\_\_\_\_
- d. List the name(s) of the current Chief Executive Officer(s) and members of the Board of Directors of the Issuer. \_\_\_\_\_
- e. Is the member firm submitting this form, or any person associated with it, affiliated directly or indirectly with the Issuer?  Yes  No If yes, what is the affiliation? \_\_\_\_\_
- f. Is the quotation being published or submitted on behalf of any other broker-dealer?  Yes  No If yes, what is the name of the broker or dealer? \_\_\_\_\_
- g. Is the quotation being published or submitted directly or indirectly on behalf of the Issuer or any director, officer or any person who is directly or indirectly the beneficial owner of more than 10% of the outstanding units or shares of any equity security of the Issuer?  Yes  No If yes, what is the name of the person, and what is the basis for any exemption under the federal securities laws for any sales of such securities on behalf of this person? \_\_\_\_\_

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### Part 3 – Supplemental Information

**Please review paragraphs (b)(1)-(3) of Rule 15c2-11 and provide the information requested below.**

**(b)(1)** Describe the circumstances surrounding the submission of this application. Include the identity of any person(s) for whom the quotation is being submitted and any information provided to your firm by such person(s). \_\_\_\_\_

**(b)(2)** Has the Issuer or its predecessor (if any) been subject to a trading suspension order issued by the SEC during the past 12 months? If a trading suspension order has been issued, provide two copies of the order or of the SEC's public release announcing the trading suspension order.

Check the appropriate box:  Trading suspension order or release enclosed.  Not applicable.

**(b)(3)** Provide any material information, including adverse information, regarding the Issuer, that your firm is aware of or has in its possession (Do not list information already provided in Part 2). If your firm does not possess such information, state "None" below.

Identify any applicable information by name and date. \_\_\_\_\_

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**Part 4 – (Complete for OTC Bulletin Board quotation requests only)**

Fiscal Year End Date (MM/DD) \_\_\_\_\_

Date of Incorporation (MM/DD/YYYY) \_\_\_\_\_

Standard Industrial Classification (SIC) Code \_\_\_\_\_

**(a) Complete if the Issuer files periodic reports through the SEC’s EDGAR system.**

- Provide the 10-digit Central Index Key (CIK) number. \_\_\_\_\_  
(The CIK is a unique identifier assigned by the SEC to all companies and people who file disclosure documents through EDGAR with the SEC)

**(b) Complete if the Issuer does not file periodic reports through the SEC’s EDGAR system.**

- Name of regulatory authority where the Issuer files periodic financial reports. \_\_\_\_\_
- Telephone number of the regulatory authority. \_\_\_\_\_
- The Issuer’s filing cycle. (Check one)
  - Quarterly
  - Semi-annually
  - Annually
  - Other (Describe the filing cycle) \_\_\_\_\_
- List the required reports filed by the Issuer for the current fiscal year.

Name of Report	Due Date of Report	Date of Report
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

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## Part 5 – Certification

The undersigned must have a reasonable basis for believing that the information accompanying this form is accurate in all material respects and that the sources of the information are reliable.

By signing this document, I acknowledge and certify that my member firm has a reasonable basis for believing that the information accompanying this form (including required EDGAR filed documents not provided) is accurate in all material respects and that the sources of the information are reliable (“affirmative review obligation”) as required by Rule 15c2-11 under the 1934 Act and NASD Rule 6740. I understand and acknowledge that this affirmative review obligation applies to all subsequent submissions made in connection with this Form 211 application. Further, I certify that I have examined this form and, to the best of my knowledge and belief, it is true, correct, and complete. I understand and acknowledge that copies of this form, accompanying documents, and subsequent submissions made in connection with this Form 211 application may be provided to the Securities and Exchange Commission, or other regulatory agencies, Pink Sheets LLC, and to the public upon request through the Pink Sheets LLC.

Name, title and signature of member firm employee to contact regarding information contained in this Form 211 application.

Name	Title
Signature	Date
Phone	Fax

Name, title, and signature of the registered principal of the member firm responsible for this Form 211 application, and all subsequent submissions made in connection with this application.

Name	Title
Signature	Date
Firm Name	

(Member firm must be a Pink Sheets LLC subscriber if application is for the Pink Sheets.)

Address		
City	State	Zip
Member firm CRD#	Market Participant Identifier	

## Disciplinary and Other NASD Actions

### REPORTED FOR MAY

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 April 2006.

#### Firm Expelled

**RichMark Capital Corporation (CRD #43162, Irving, Texas)** was expelled from NASD membership. The sanction was based on findings that the firm manipulated the market and the price of a common stock by permitting a registered representative to buy and sell shares of the stock in his personal accounts to mislead the investing public and market participants, and to give the false appearance of market interest in the stock at the arbitrary price created. The findings stated that the firm made unsuitable recommendations and intentionally or recklessly made material misrepresentations and omissions to public customers in connection with the securities sale. The findings also stated that the firm permitted an unregistered person to associate with the firm and to trade the firm's proprietary account, and prior to letting the person engage in securities business, failed to determine that he had a significant disciplinary history and was subject to statutory disqualification. The findings also included that the firm failed to establish an adequate supervisory system, failed to establish and implement adequate written supervisory procedures, and failed to enforce written supervisory procedures that would comply with securities laws and regulations to prevent the manipulation, unsuitable recommendations and registration violations that occurred at the firm. (NASD Case #CMS040048)

#### Firms Suspended, Individuals Sanctioned

**Franklin Ross, Inc. (CRD #43610, Red Bank, New Jersey)** and **Mark Gerald Ross, Jr. (CRD #1287721, Registered Principal, Scarsdale, New York)** submitted a Letter of Acceptance, Waiver and Consent in which they were censured and fined \$20,000, jointly and severally. The firm was also suspended from engaging in any offering of securities on behalf of the firm or any of its affiliates for one year, and Ross was suspended from association with any NASD member in any principal capacity for 10 business 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 Ross, failed to disclose material facts in a private placement memorandum (PPM) to investors.

The firm's suspension began on April 17, 2006, and will conclude at the close of business on April 16, 2007. Ross' suspension began on April 17, 2006, and concluded at the close of business on April 28, 2006. (NASD Case #E072004001501)

### **Firms Fined, Individuals Sanctioned**

**Fox & Company Investments, Inc. (CRD #18517, Phoenix, Arizona) and James Wilfred Moldermaker (CRD #858894, Registered Principal, Scottsdale, Arizona)** submitted an Offer of Settlement in which the firm was censured and fined \$20,000, jointly and severally with Moldermaker. Moldermaker was also barred from association with any NASD member in any principal capacity, and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Moldermaker obtained \$300,000 by drawing down a personal line of credit at a bank, and caused a funds transfer to an account in the member firm's name at the same bank. At a later time, he caused the bank to transfer the funds from the firm's account to the line of credit account, reducing the firm's line of credit balance to zero. The findings stated that Moldermaker, acting on behalf of his member firm, made and maintained, caused to be made and maintained, or failed to prevent others from making and maintaining, materially inaccurate entries on the firm's books and records with respect to the \$300,000 line of credit transactions. The findings also stated that Moldermaker, acting on behalf of his member firm, submitted materially inaccurate FOCUS reports, resulting from the failure to reflect the \$300,000 transfer from the firm's account to the line of credit account. NASD found that the firm, acting through Moldermaker, submitted late and inaccurate Uniform Termination Notice for Securities Industry Registration (Form U5) amendments.

Moldermaker's suspension began on May 1, 2006, and will conclude at the close of business on June 29, 2006. (NASD Case #E3A2003003201)

### **Firms and Individuals Fined**

**Salman Partners (USA) Inc. (CRD #43842, Vancouver, Canada) and Ian D. Todd (CRD #2940041, Registered Principal, North Vancouver, Canada)** submitted a Letter of Acceptance, Waiver and Consent in which the firm and Todd 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, as part of its AML program, the firm, acting through Todd, failed to implement its customer identification procedures. (NASD Case #E3B2004004501)

**Synergy Investment Group, LLC (CRD #46035, Kannapolis, North Carolina) and Jeffrey Dean Jones (CRD #4188324, Registered Principal, Concord, North Carolina)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$25,000, jointly and severally with Jones, and required to revise the firm's written supervisory procedures and training regarding its online and "deep discount" business. Jones was also suspended from association with any NASD member in any principal capacity for 10 business 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 Jones, failed to establish, maintain and enforce a supervisory system reasonably designed to achieve compliance with applicable laws, rules and regulations with respect to its online and "deep discount" business.

Jones' suspension began on May 1, 2006, and concluded at the close of business on May 12, 2006. (NASD Case #E3A20040356-03)

### **Firms Fined**

**Cullum & Burks Securities, Inc. (CRD #46600, Dallas, Texas)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000, jointly and severally, with two individuals. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that, acting through individuals, it engaged in a securities business without having sufficient net capital, filed an inaccurate FOCUS report with NASD, and failed to prepare and maintain accurate financial

books and records. The findings stated that the firm, acting through an individual, designated a person to be the firm's FINOP without the benefit of a FINOP registration. **(NASD Case #E062004019101)**

**Desjardins Securities International, Inc. (CRD #112417, Montreal, Canada)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$130,000, and required to revise its procedures with respect to applicable securities laws and regulations, and NASD rules concerning the preservation of electronic communications. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it did not maintain and preserve all email and instant messaging communications, as required by SEC rule 17a-4. The findings stated that the firm failed to complete an annual training needs analysis and to develop and implement its written training plan to achieve compliance with the Firm Element of the Continuing Education Rule. **(NASD Case #E112004005401)**

**Dynamex Trading, LLC (CRD #127434, San Francisco, California)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$22,500. 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 eligible and Consolidated Quotation System (CQS) securities through NASDAQ, and failed to designate some of the last sale reports as late. The findings stated that the firm incorrectly designated last sale reports of transactions in eligible securities reported to NASDAQ as ".SLD" within 90 seconds of execution. The findings also stated that the firm failed to report the correct symbol to NASDAQ indicating whether the firm executed transactions in eligible securities in a principal or agency capacity, and to report the correct symbol indicating whether the transactions were "buy," "sell," "sell short," "sell short exempt" or "cross." NASD found that the firm failed to report the execution time, or the correct execution time for transactions in CQS securities through NASDAQ. NASD also found that the firm failed to show the time, or the correct time, of execution or entry on brokerage order memoranda. In addition, NASD determined that the firm failed to show the correct execution price on brokerage order memoranda. Moreover, 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 trade reporting—Automated Confirmation Transaction Service (ACT) compliance, sales transactions—reporting accurate short sale indicators, and books and records. **(NASD Case #20050021702-03)**

**Gabelli & Company, Inc. (CRD #7353, Rye, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$17,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it reported Trade Reporting and Compliance Engine (TRACE)-eligible securities transactions late, and did not report the yield or capacity. The findings stated that the firm failed to establish, maintain and enforce a supervisory system and written procedures reasonably designed to achieve compliance with applicable securities laws and regulations, and NASD rules concerning trading TRACE-eligible securities. **(NASD Case #E9B2004004801)**

**Jane Street Markets, LLC (CRD #104485, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it transmitted reports to the Order Audit Trail System (OATS) through a reporting agent that contained inaccurate, incomplete or improperly formatted data in that the reports failed to match the related orders in SuperMontage. The findings stated that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable laws, regulations and NASD rules concerning OATS reporting. **(NASD Case #20050000112-02)**

**Lehman Brothers Inc. (CRD #7506, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$70,000, and required to revise its written supervisory procedures regarding NASD Conduct Rule 2110 (90 Second Rule) relating to reporting transactions in CQS securities and Marketplace Rule 6130(b) (20 Minute Rule). Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance

with applicable securities laws and regulations—specifically NASD Conduct Rule 2110 (90 Second Rule), relating to reporting transactions in CQS securities, and Marketplace Rule 6130(b) (20 Minute Rule). The findings stated that the firm failed, within 90 seconds after execution, to transmit last sale reports of transactions in CQS and OTC Equity securities through the ACT, failed to designate last sale reports of transactions in CQS and OTC Equity securities through ACT, and to designate such last sale reports as late. The findings also stated that the firm incorrectly designated last sale reports of transactions in CQS securities reported to ACT as “.SLD” within 90 seconds of execution. The findings also included that the firm incorrectly designated transactions in OTC Equity securities executed during normal market hours through ACT as “.T.” NASD found that the firm failed to accept or decline transactions in which the firm reported as the Order Entry Firm within 20 minutes after execution. (NASD Case #20042000050-01)

**Maxim Group LLC (CRD #120708, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it 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 minimis* change in relation to the size associated with the firm’s bid or offer in each such security. The findings stated that the firm failed to report execution reports for Reportable Order Events (ROEs) to OATS. The findings also stated that the firm failed to report the protected customer limit price for ROEs to OATS. (NASD Case #20042000066-01)

**Merrill Lynch, Pierce, Fenner & Smith, Incorporated (CRD #7691, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$45,000, and required to revise its supervisory procedures regarding registration of associated persons, frontrunning of orders in CQS securities, SEC Rules 11Ac1-5 and 11Ac1-6, and NASD’s three quote rule. Without admitting or denying the findings, the firm consented to the described sanctions

and to the entry of findings that it failed to submit, for the offsetting “riskless” portion of transactions in NASDAQ National Market securities (NNM), either a clearing-only report with a capacity indicator of “riskless principal,” or a non-tape, non-clearing report with a capacity indicator of “riskless principal.” The findings stated that the firm incorrectly designated last sale reports of transactions in NNM securities as “.PRP” through ACT, and failed to report the correct execution time of, and last sale reports of, transactions in eligible securities for which the firm has recording and reporting obligations under NASD Marketplace Rules 6954 and 6955. The findings also stated that the firm failed to report the correct symbol indicating whether the firm executed transactions in eligible securities as principal, riskless principal or agent, and failed to report the correct symbol to ACT indicating whether transactions in eligible securities were “buy,” “sell,” “sell short,” “sell short exempt,” or “cross.”

The findings also included that the firm failed, within 90 seconds after execution, to transmit last sale reports of transactions in CQS securities through ACT, failed to designate last sale reports as late through ACT, and failed to report the correct price in a last sale report of a transaction in a CQS security through ACT. NASD found that the firm made a report on the covered orders in national market system securities that it received for execution from any person available, and it included incomplete information as to the cumulative number of shares of covered orders prior to execution, or the inclusion of “not held” orders. NASD also found that the firm failed to provide written notification disclosing its correct capacity to the transaction and the correct reported price to its customer.

In addition, NASD determined that the firm failed to show the correct time of receipt, execution and the terms and conditions on brokerage order memorandums. Moreover, NASD found that the firm’s supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable laws, regulations and NASD rules concerning associated persons, frontrunning orders in CQS securities, SEC Rules 11Ac1-5 and 11Ac1-6, and NASD’s three quote rule. (NASD Case #20042000136-01)

**S.W. Bach & Company (CRD #43522, Port Washington, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$40,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to establish and maintain a supervisory system reasonably designed to achieve compliance with applicable securities laws and regulations, and NASD rules to detect and prevent excessive trading. The findings stated that the firm permitted an associated person to effect transactions in government securities on its behalf while not being properly registered with NASD. The findings further stated that the firm permitted misleading advertisements and sales literature to be disseminated to the investing public by its former branch office. The findings also included that the firm permitted registered representatives to utilize a name that was not a bona fide division of the firm, and permitted the branch office to post a sign with the same name that incorrectly indicated that it was a division of the firm when, in fact, there was no bona fide business distinction to form the basis for the divisional classification. NASD found that the firm conducted a securities business while failing to maintain its minimum required net capital. **(NASD Case #ELI2003002601)**

**UBS Capital Markets, L.P. (CRD #2692, Stamford, Connecticut)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$52,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that, as an Intermarket Trading System/Computer Assisted Execution System (ITS/CAES) market maker, it purchased or sold ITS/CAES securities, whether in a principal capacity or as an agent, at a lower price than the bid or higher than the offer displayed from an ITS Participant Exchange or its ITS/CAES market maker. The findings stated that the firm failed to immediately display customer limit orders in NASDAQ securities in its public quotation, when each such order was at a price that would have improved the firm's bid or offer in each such security, or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each such security, and the size of the order represented more than a *de minimis* change in relation to the size associated with the firm's bid or offer in each such security. The findings also

stated that the firm transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data, and failed to submit required information to OATS. 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 the Limit Order Display Rule. **(NASD Case #20050000530-01)**

**UBS Securities LLC (CRD #7654, Stamford, Connecticut)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$22,000. 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 quotations, when each such order was at a price that would have improved the firm's bid or offer in each such security, or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each such security, and the size of the order represented more than a *de minimis* change in relation to the size associated with the firm's bid or offer in each security. The findings stated that the firm failed to report an execution report for reportable items to OATS. The findings also stated that the firm failed to preserve, for a period of not less than three years, the first two in an accessible place, brokerage order memorandums. **(NASD Case #20042000062-01)**

**Wedbush Morgan Securities, Inc. (CRD #877, Los Angeles, California)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$27,500, and ordered to pay \$742.22, plus interest, in restitution to investors. 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 NNM and NASDAQ Small Cap (SC) securities through ACT, and failed to designate some of the last NNM sale reports as late. The findings stated that the firm incorrectly designated last sale reports of transactions in NNM and SC securities executed during normal market hours as ".T." The findings also stated that the firm incorrectly designated last sale reports of transactions in NNM and SC securities reported to ACT as ".SLD" within 90 seconds of execution. NASD found that the firm failed to use

reasonable diligence, in transactions for or with a public customer, to ascertain the best inter-dealer market, and failed to buy or sell in such market so that the resultant price to its customer was as favorable as possible under prevailing market conditions. (NASD Case #20042000086-02)

## Individuals Barred or Suspended

**Maurice Wayne Abney (CRD #2733649, Registered Principal, Owensboro, 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, Abney consented to the described sanction and to the entry of findings that, while suspended in any capacity from NASD association with a member firm, he continued to solicit an individual to become a customer. The findings stated that Abney refused to appear at NASD and give testimony. (NASD Case #E8A2004089101)

**Imran Ahmad (CRD #3035891, Registered Representative, Staten Island, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$20,000, suspended from association with any NASD member in any capacity for two months, and required to pay \$1,372, plus interest, in restitution to market makers. Without admitting or denying the findings, Ahmad consented to the described sanctions and to the entry of findings that he knowingly and intentionally entered small-lot orders through his own customer account into NASDAQ's SuperMontage to sell (buy) NASDAQ securities to NASDAQ market makers at the inside bid (offer) when the market participant was quoting 100 shares at the NASDAQ Best Bid and Offer (QBBO) and received executions for the orders. The findings stated that Ahmad was aware that after his small-lot orders were executed, the relevant market makers utilized automatic quoting systems designed to keep a consistent spread between their bid and offer, and that this activity created a new QBBO with quotes more favorable to Ahmad. The findings also stated that by knowingly and intentionally engaging in this course of conduct, Ahmad was able to sell (buy) shares of securities at prices that were higher/lower than he would have been able to obtain, but for his entry and execution of the small-lot orders.

Ahmad's suspension began on April 17, 2006, and will conclude at the close of business on June 16, 2006. (NASD Case #20050000415-01)

**Lawrence Neil Bensman (CRD #722759, Registered Supervisor, Milwaukee, Wisconsin)** submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for nine months. Without admitting or denying the allegations, Bensman consented to the described sanctions and to the entry of findings that he intentionally falsified the holding period and surrender charges on his member firm's 1035 Exchange/Transfer Transmittal Form that the firm used to review exchanges from one fixed annuity to another.

Bensman's suspension began on May 1, 2006, and will conclude at the close of business on January 31, 2007. (NASD Case #E8A2004074201)

**Russell James Bjerke (CRD #3178233, Registered Representative, Ashland, Oregon)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Bjerke received \$6,187 from a public customer for investment purposes and, instead, deposited the funds in a bank account under his control without the customer's knowledge, authorization or consent, thereby converting the funds for his own use and benefit. NASD found that Bjerke failed to respond to NASD requests for information. (NASD Case #C3B050015/E3B20040062)

**John A. B. Black (CRD #2131246, Registered Representative, Wenatchee, Washington)** 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, Black consented to the described sanction and to the entry of findings that he recommended and executed securities transactions in public customers' accounts without having reasonable grounds to believe that the recommendations and resultant transactions were suitable for them based upon their other securities holdings, financial situations and needs. The findings stated that Black falsified the information regarding customers on variable annuity applications and variable life insurance policies by falsely stating that the customers had previously purchased investment products that had the "highest" risk tolerance, were "extremely willing" to risk a potential decline in value

for the potential of a higher return, and that customers' investment objectives were "aggressive growth."  
(NASD Case #E3B2004013301)

**Gregory Thomas Boston (CRD #2064738, Registered Representative, Washington Courthouse, Ohio)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Boston served as a public customer's treasurer and financial representative and wrote checks totaling \$23,000 payable to another individual and himself on the customer's account without the customer's authorization, thereby converting the funds for his own use. The findings stated that Boston failed to respond to NASD requests for information. (NASD Case #E8A2004107701)

**Michael Allen Butler (CRD #3057650, Registered Representative, Santee, California)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 18 months. The fine must be paid before Butler reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Butler consented to the described sanctions and to the entry of findings that he received a \$20,000 cashier's check from public customers and a completed application to open a mutual fund account on their behalf, but failed to notify them that the mutual fund did not receive the check, and had no record of any accounts for the customers. Instead, he created a fictitious account statement and sent it to them.

Butler's suspension began on April 17, 2006, and will conclude at the close of business on October 16, 2007.  
(NASD Case #20050015357-01)

**Daniel Castro (CRD #4671318, 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, Castro consented to the described sanction and to the entry of findings that he withdrew and converted \$47,000 from deceased public customers' accounts. The findings stated that Castro failed to respond to NASD requests for an on-the-record interview. (NASD Case #2005001982501)

**Ron Davis (CRD #4311644, Registered Representative, Rochester Hills, Michigan)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Davis consented to the described sanction and to the entry of findings that he executed transfers totaling \$65,000 from a public customer's investment account to bank accounts Davis and his wife owned and controlled, without the customer's knowledge, consent or authorization. The findings stated that Davis borrowed \$102,500 from public customers in contravention of his firm's written procedures prohibiting registered persons from borrowing money from customers. The findings also stated that Davis failed to respond to NASD requests for information. (NASD Case #20050004447-01)

**Anthony Lucas DeBenedictis (CRD #2326689, Registered Representative, White Plains, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000, ordered to pay \$23,000 in restitution to a public customer and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the findings, DeBenedictis consented to the described sanctions and to the entry of findings that he exercised control over a public customer's account and effected numerous and excessive unsuitable securities transactions using margin.

DeBenedictis' suspension began on April 17, 2006, and will conclude at the close of business on June 15, 2006.  
(NASD Case #E9B2004042801)

**Michael Frank Dispenza (CRD #1921030, Registered Representative, Treasure Island, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the findings, Dispenza consented to the described sanctions and to the entry of findings that he purchased municipal securities from public customers at prices that were not fair and reasonable, resulting in losses for the customers. The findings stated that Dispenza accepted reimbursement for one of the losses from the broker's broker for a portion of the price differential without his member firm knowledge or approval.

Dispenza's began on April 17, 2006, and will conclude at the close of business on April 28, 2006. (NASD Case #E052004030201)

**Thomas Joseph Downs (CRD #4297709, Registered Representative, Pleasantville, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000, suspended from association with any NASD member in any capacity for 20 business days, and ordered to pay a public customer \$3,900 in restitution. Without admitting or denying the findings, Downs consented to the described sanctions and to the entry of findings that he purchased securities for public customers' accounts without their consent or authorization.

Downs' suspension began on April 3, 2006, and concluded at the close of business on May 1, 2006. (NASD Case #E9B2004043401)

**David Dean Dugas (CRD #2876786, Registered Representative, Lafayette, Louisiana)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Dugas reassociates with any NASD member following the suspension, or prior to requesting relief from any statutory disqualification. Without admitting or denying the findings, Dugas consented to the described sanctions and to the entry of findings that he forged a public customer's initials on a Variable Annuity Customer Acknowledgement Form.

Dugas' suspension began on April 3, 2006, and will conclude at the close of business on October 2, 2006. (NASD Case #2005001922301)

**Peter Christian Dunne (CRD #2538317, Registered Representative, Bayport, New York)** submitted an Offer of Settlement in which he was fined \$15,000 and suspended from association with any NASD member in any capacity for 90 days. Without admitting or denying the allegations, Dunne consented to the described sanctions and to the entry of findings that he effected, or caused to be effected, transactions in public customers' accounts without their prior knowledge, authorization or consent. The findings stated that Dunne failed to amend his Uniform Application for Securities Registration or Transfer (Form U4) in a timely manner.

Dunne's suspension began on April 17, 2006, and will conclude on July 15, 2006. (NASD Case #ELI20040097/CLI050004)

**Terry Lee Feibus (CRD# 2923404, Registered Principal, Boca Raton, Florida)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Feibus consented to the described sanction and to the entry of findings that he engaged in the unregistered offer and sale of securities owned by a registered representative. The findings stated that Feibus made material misrepresentations and failed to disclose material facts to public customers in connection with the unregistered offer and sale of securities. (NASD Case #E072003092501)

**David Ferst (CRD #206921, Registered Representative, Palatine, Illinois)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the findings, Ferst consented to the described sanctions and to the entry of findings that he received checks totaling \$9,376.80 from public customers to invest in College America 529 accounts or purchase insurance policies, but failed to follow the customers' instructions and held the checks and account applications until a later date or his member firm processed them after his termination.

Ferst's suspension began on May 1, 2006, and will conclude at the close of business on April 30, 2007. (NASD Case #E8A2004075201)

**Thomas Mitchell Forbes (CRD #4093425, Registered Representative, Debary, Florida)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Forbes consented to the described sanction and to the entry of findings that he willfully failed to disclose material information on his Form U4. The findings stated that Forbes failed to respond to an NASD request for information. (NASD Case #2005001829202)

**Alvin Waino Gebhart, Jr. (CRD #1005905, Registered Principal, Fallbrook, California) and Donna Traina Gebhart (CRD #2708528, Registered Principal, Fallbrook, California)** Alvin Gebhart 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 must requalify by exam in all capacities. The SEC sustained the sanctions following appeal of a National Adjudicatory Council decision.

The sanctions were based on findings that the respondents sold unregistered securities that were not exempt from registration, and recklessly misrepresented and omitted material facts in connection with the sale of securities. NASD found that the respondents participated in private securities transactions without providing their member firm with prior written notification describing, in detail, each proposed transaction, their role therein and whether they had received, or might receive, selling compensation.

This action has been appealed to the United States Court of Appeals for the Ninth Circuit, and all sanctions, except for the bar, are not in effect pending consideration of the appeal. (NASD Case #C02020057/E0220010625)

**Kenneth Joseph Gilmore (CRD #1047301, Registered Principal, Long Hill, New Jersey)** submitted an Offer of Settlement in which he was fined \$40,000, suspended from association with any NASD member in any capacity for six months, barred from association with any NASD member in any principal or supervisory capacity, and required to sell his ownership interest in his member firm within six months. Without admitting or denying the allegations, Gilmore consented to the described sanctions and to the entry of findings that he violated an NASD suspension order to not engage in securities activities during his suspension by performing work-related duties on the firm's premises, communicating with employees regarding work-related matters, providing instruction to the firm's employees, meeting with public customers and soliciting business from customers. The findings stated that Gilmore also attempted to conceal his active role at the firm from NASD in violation of the suspension order.

Gilmore's suspension began on May 1, 2006, and will conclude at the close of business on October 31, 2006. (NASD Case #C9B20050022/E102003130805)

**Roy Golladay, Jr. (CRD #1856856, Registered Representative, Mesa, Arizona)** 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, Golladay consented to the described sanction and to the entry of findings that he participated in private securities transactions and failed to provide his member firm with prior written notification of his participation in these transactions describing them in detail, his proposed role therein, whether he had received, or might receive, selling compensation in connection with the transactions. The findings stated that Golladay engaged in outside business activities without providing prompt written notice to his member firm. NASD found that Golladay solicited \$2,000,000 from public customers to fund mortgages, but failed to maintain documentation evidencing what he did with these funds, did not use all the money collected for the stated purpose and transferred portions of the money into other business accounts he controlled, thereby commingling customer funds with the funds of other businesses. The findings also stated that Golladay failed to fully respond to NASD requests for documents and information. (NASD Case #2005001378601)

**John Henry Groth (CRD #231092, Registered Principal, Bethesda, Maryland)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000, jointly and severally, and suspended from association with any NASD member as a FINOP for 30 days. Without admitting or denying the findings, Groth consented to the described sanctions and to the entry of findings that a member firm, acting through Groth, used the means or instrumentalities of interstate commerce or the mails to effect transactions in non-exempt securities while failing to maintain the minimum required net capital. The findings stated that a member firm, acting through Groth, filed FOCUS reports that were materially inaccurate in that they failed to include amounts in the firm's liabilities relating to an outstanding loan balance with a bank.

Groth's suspension began on April 17, 2006, and will conclude at the close of business on May 16, 2006. (NASD Case #E9A2004056101)

**Thomas Mark Hunt (CRD #4517916, Registered Representative, Oklahoma City, Oklahoma)** was barred from association with any NASD member in any

capacity. The sanction was based on findings that Hunt received \$1,770 from a public customer for insurance payments, issued the customer an official receipt, but did not apply the payment to the insurance policy. He instead converted the funds for his own personal use and benefit. The findings stated that Hunt failed to respond to NASD requests for information. **(NASD Case #E052004032901)**

**Jerry Harold Jones (CRD #718084, Registered Representative, Rockton, Illinois)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 20 business days. The fine must be paid before Jones reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Jones consented to the described sanctions and to the entry of findings that he failed to timely amend his Form U4 to disclose material information.

Jones' suspension began on May 1, 2006, and will conclude at the close of business on May 26, 2006. **(NASD Case #20050017269-01)**

**Ashok Jayantilal Kapadia (CRD #1932646, Registered Representative, Warren, Ohio)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Kapadia reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Kapadia consented to the described sanctions and to the entry of findings that he forged a public customer's signature on life insurance applications and on money orders that were purchased to pay the premiums for the life insurance applications.

Kapadia's suspension began on April 17, 2006, and will conclude at the close of business on October 16, 2006. **(NASD Case #E8A20041030-01)**

**Tyler McClintock Kerrigan (CRD #2970266, Registered Representative, New Orleans, Louisiana)** submitted an Offer of Settlement in which he was fined \$10,000, which includes disgorgement of \$1,912 in financial benefit, and suspended from association with any NASD member in any capacity for 15 business days.

Without admitting or denying the allegations, Kerrigan consented to the described sanctions and to the entry of findings that he recommended and effected securities transactions to public customers without having reasonable basis for believing the transactions were suitable based upon the customers' investment objectives, financial situations and needs. The findings stated that Kerrigan used sales literature without obtaining prior approval from a registered principal, and failed to maintain a copy of the literature for his files.

Kerrigan's suspension began on May 15, 2006, and will conclude at the close of business on June 5, 2006. **(NASD Case #C05050008/E052003035504)**

**Jayne Ann Kleven (CRD #1310727, Registered Representative, Mequon, Wisconsin)** 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, Kleven consented to the described sanction and to the entry of findings that she failed to respond to NASD requests for information. **(NASD Case #20050025618-01)**

**James Bernard L'Esperance (CRD #4150205, Registered Representative, Oxford, Michigan)** submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for 10 business days and, in light of his financial status, fined \$2,500. The fine must be paid before L'Esperance reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, L'Esperance consented to the described sanctions and to the entry of findings that he engaged in outside business activities for compensation without providing his member firm with prompt prior notice.

L'Esperance's suspension began on April 3, 2006, and concluded at the close of business on April 17, 2006. **(NASD Case #E8A2002124001)**

**Theresa L. Logan (CRD #4614539, Registered Representative, Alvada, Ohio)** 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, Logan consented to the described sanction and to the entry of findings that she forged public customers'

signatures on documents related to insurance applications and premiums, and failed to respond to NASD requests for information. (NASD Case #E8A20040943-01)

**Edith Lourdes Mechling (CRD #1391048, Registered Representative, Alexandria, Virginia)** 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 three months. Without admitting or denying the findings, Mechling consented to the described sanctions and to the entry of findings that, without prior written authorization from her member firm, she improperly shared in the public customers' losses when she deposited funds totaling \$1,462.50 into the customers' account to cover losses sustained in connection with a bond that had defaulted on an interest payment. The findings stated that she misrepresented that the payment was not taxable due to the bond's default status.

Mechling's suspension began on April 3, 2006, and will conclude on July 2, 2006. (NASD Case #2005002630001)

**Philip Benjamin Melnick (CRD #2930299, Registered Representative, Staten Island, New York)** was barred from association with any NASD member in any capacity and ordered to reimburse the entity he defrauded \$3,086.44, plus interest. The sanctions were based on findings that Melnick engaged in a series of transactions designed to improve the national best bid or offer quote for NASDAQ securities to enable him to trade in those securities at more favorable prices. The findings stated that, by engaging in this conduct, Melnick caused a communication to be published or circulated that purported to report a transaction, bid price or asked price as bona fide when it was not. (NASD Case #2004200003801)

**Elliott Nadel (CRD #812711, Registered Principal, Bayside, New York)** was barred from association with any NASD member in any capacity, and ordered to pay a public customer \$46,760.08, plus interest, in restitution. The sanctions were based on findings that Nadel transferred approximately \$80,000 from a public customer's account to a second account without the customer's knowledge, authorization or consent. The findings stated that \$46,760.08 was transferred from the second account to a third account Nadel managed and controlled, and a \$59,000 check payable to Nadel

was drawn from this account. The findings also stated that Nadel failed to respond to NASD requests for information. (NASD Case #ELI2004039602)

**Laurence Scott Newman (CRD #735472, Registered Representative, Mt. Tabor, New Jersey)** submitted a letter of Acceptance, Waiver and Consent in which he was suspended from association with any NASD member in any capacity for three months. In light of Newman's financial status, no monetary sanction has been imposed. Without admitting or denying the findings, Newman consented to the described sanction and to the entry of findings that he willfully failed to disclose a material fact on his Form U4.

Newman's suspension began on April 3, 2006, and will conclude on July 2, 2006. (NASD Case #2005000480401)

**Patrick Orvil Nugent (CRD #1498083, Registered Principal, Sunnyvale, 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 Nugent participated in private securities transactions for compensation without providing prior written notice to, and receiving written approval from, his member firm. (NASD Case #C01040010/E0120020498)

**Nike Harriet Oruche (CRD #2160533, Registered Representative, Bensenville, Illinois)** submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any NASD member in any capacity. The sanction was based on findings that Oruche affixed public customers' signatures on withdrawal forms without their knowledge and consents, withdrew a total of \$30,500 from their bank accounts, and used the funds for some purpose other than the customers' benefit. (NASD Case #2005001415401)

**Sanjay Chatur Patel (CRD #4667819, Registered Representative, Columbus, Ohio)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. The fine must be paid before Patel reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Patel consented to

the described sanctions and to the entry of findings that he completed and affixed public customers' signatures, with their knowledge and consents, on Financial Planning Services Agreements and Financial Planning Services Agreement Special Redemption Request forms, even though his member firm's written supervisory procedures stated that representatives should not sign clients' names to any document—even pursuant to the clients' request.

Patel's suspension began on May 1, 2006, and will conclude at the close of business on June 29, 2006. (NASD Case #E8A2004102001)

**Jonathan Charles Raney (CRD #1269317, Registered Principal, Akron, Ohio)** 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, Raney consented to the described sanction and to the entry of findings that he induced public customers who received rebate checks from his member firm to send checks payable to Raney, claiming he was owed 10% of the rebate for lost commissions, or that the funds were needed to pay for attorney fees incurred as a result of obtaining the rebates. The findings stated that Raney induced customers to send him checks by falsely claiming that fees were owed for compliance with the "Privacy Act," the "Patriot Act," or that new annual fees were due for various administrative reasons. The findings also stated that Raney made the claims knowing them to be false, cashed the checks, and converted \$4,370 for his personal benefit. (NASD Case #20050013624-01)

**Maryann Gehringer Roeglin (CRD #2126129, Registered Representative, Rochester Hills, Michigan)** submitted an Offer of Settlement in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Roeglin consented to the described sanction and to the entry of findings that she improperly used a public customer's funds by withdrawing \$77,000 from the public customer's brokerage accounts without the customer's knowledge and approval. The findings stated that Roeglin failed to respond to requests to appear for an NASD on-the-record interview. (NASD Case #E8A20040613-02)

**Glen Lee Roundy (CRD #1192329, Registered Principal, Sandy, Utah)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Roundy consented to the described sanction and to the entry of findings that he failed to completely respond to an NASD request for information. (NASD Case #2005001182701)

**Thomas Alan Sachs (CRD #1013988, Registered Supervisor, Minneapolis, Minnesota)** 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 Sachs reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Sachs consented to the described sanctions and to the entry of findings that, pursuant to verbal authority, he exercised discretion in public customers' accounts without obtaining their written authorization and prior written acceptance of the accounts as discretionary from his member firm.

Sachs' suspension began on April 17, 2006, and concluded at the close of business on April 28, 2006. (NASD Case #20050015449-01)

**Rooney A Sahai (CRD #1551326, Registered Representative, Ridgewood, New Jersey)** was barred from association with any NASD member in any capacity. The NAC imposed the sanction following appeal of an OHO decision. The sanction was based on findings that Sahai forged or public customers' signatures on documents, purchased a variable annuity on behalf of a public customer without her prior knowledge, authorization, and consent, and failed to respond to NASD requests for information. On appeal to the SEC, the SEC set aside the NAC's finding of forgery, sustained the NAC's findings that Sahai purchased a variable annuity without the customer's prior knowledge, authorization and consent, sustained the NAC's finding that Sahai failed to respond to NASD requests for information, and remanded the case to the NAC to consider appropriate sanctions.

On remand, the NAC found that a bar in all capacities is an appropriate sanction for Sahai's failure to respond to NASD's requests for information. Sahai has appealed, and this bar is in effect pending consideration of the appeal to the SEC. (NASD Case #C9B020032)

**David Joseph Sanducci (CRD #2370405, Registered Principal, Brooklyn, New York) and Brian Che Featherstone (CRD #3064465, Registered Representative, Irvington, New York)** submitted Offers of Settlement in which they were barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sanducci and Featherstone consented to the described sanction and to the entry of findings that, acting individually and as members of a sales group, they participated in a fraudulent scheme to sell shares of a security to public customers, utilizing classic, boiler-room techniques to induce customers to purchase the security and to dissuade them from selling it. The findings stated that Sanducci and Featherstone used high-pressure sales pitches, material misrepresentations, omissions of fact and unauthorized transactions in customer accounts. The findings also stated that Sanducci and Featherstone failed to provide customers with disclosures concerning the risks associated with investing in penny stocks. NASD found that Sanducci provided false and misleading sworn testimony denying his role at the member firm. (NASD Case #CMS040165/2005000631101)

**Raghavan Sathianathan (CRD #1743692, Registered Representative, Montclair, New Jersey)** was barred from association with any NASD member in any capacity. The NAC imposed the sanction following appeal of an OHO decision. The sanction was based on findings that Sathianathan recommended and effected transactions in public customers' accounts without having reasonable grounds for believing that such transactions were suitable in view of the nature of the recommended transactions, and in light of the customers' financial situations, investment objectives, circumstances and needs. The findings also stated that pursuant to verbal authority, Sathianathan exercised discretion in a public customer's account without having obtained his prior written authorization.

This action has been appealed to the SEC, and the bar is in effect pending consideration of the appeal. (NASD Case #C9B20030076)

**Angelisa Michelle Savage (CRD #3232125, Registered Representative Savannah, Georgia)** submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$10,000, suspended from association with any NASD member in any capacity for six months and ordered to disgorge \$1,769.64 in commissions as partial restitution. The fine and disgorgement must be paid before Savage reassociates with any NASD member following the suspension, or before she requests relief from any statutory disqualification. Without admitting or denying the findings, Savage consented to the described sanctions and to the entry of findings that she negligently misrepresented to a public customer that a variable annuity switch would be at no cost, and altered a switch form by adding additional information after the customer signed it.

Savage's suspension began on March 20, 2006, and will conclude at the close of business on September 19, 2006. (NASD Case #E072004064201)

**Andrew Sirico (CRD #1848034, Registered Principal, Bayport, 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 seven months. Without admitting or denying the allegations, Sirico consented to the described sanctions and to the entry of findings that he failed to disclose material information on his Form U4, and failed to timely respond to NASD requests for information.

Sirico's suspension began on April 3, 2006, and will conclude at the close of business on November 2, 2006. (NASD Case #ELI2003056602)

**John Joseph Stapleton (CRD #2791194, Registered Representative, Atlantic Beach, New York)** submitted an Offer of Settlement in which he was fined \$10,000, ordered to pay \$104,073.05 in restitution to a public customer, and suspended from association with any NASD member in any capacity for 60 business days. As a precondition to his reassociation with a member firm, Stapleton must be current with his restitution payments at the time of his application for reassociation. Moreover, Stapleton must remain current with his restitution payments while associated with a member firm. Without admitting or denying the allegations, Stapleton consented to the described sanctions and to the entry of findings that, while exercising control over a public customer's account, he

effected excessive transactions in the account. The findings stated that, in connection with the purchase or sale of securities, directly or indirectly, by the use of the means or instrumentalities of interstate commerce or of the mails, or of any facility of any national securities exchange, he knowingly or recklessly employed devices, schemes or artifices to defraud, made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made not misleading, engaged in acts, practices or courses of business which operated, or would operate, as a fraud or deceit upon any person, or effected transactions in, or induced the purchase or sale of any security by means of any manipulative, deceptive or other fraudulent device or contrivance. The findings also stated that Stapleton recommended securities transactions to public customers without having reasonable grounds for believing such transactions were suitable for the customers in view of the size and frequency of the transactions, the nature of the account and the customers' financial situation, investment objectives and needs.

Stapleton's suspension began on April 17, 2006, and will conclude at the close of business on July 11, 2006. (NASD Case #E9B2003033501)

**Peter David Swiencicki (CRD #2361141, Registered Representative, Westland, Michigan)** submitted a Letter of Acceptance, Waiver and Consent in which he was suspended from association with any NASD member in any capacity for two months. In light of Swiencicki's financial status, no monetary sanctions were imposed. Without admitting or denying the findings, Swiencicki consented to the described sanction and to the entry of findings that he affixed a public customer's signature, without her knowledge or consent, to a form to change the servicing representative for the fixed annuity account the customer held at an insurance company.

Swiencicki's suspension began on May 1, 2006, and will conclude at the close of business on June 30, 2006. (NASD Case #2005001468101)

**Dennis James Vanbuskirk (CRD #2772340, Registered Representative, Palm Springs, California)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for

60 days. The fine must be paid before Vanbuskirk reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Vanbuskirk consented to the described sanctions and to the entry of findings that he engaged in outside business activities for compensation and failed to provide prompt written notice to his member firm. The findings stated that Vanbuskirk failed to fully and promptly respond to NASD requests for information.

Vanbuskirk's suspension began on April 17, 2006, and will conclude at the close of business on June 15, 2006. (NASD Case #20050013644-01)

**Thomas Robert Van Tassel (CRD #2115748, Registered Representative, Sparta, Wisconsin)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the findings, Van Tassel consented to the described sanctions and to the entry of findings that he affixed a public customer's signature to a letter removing the customer's deceased husband from an account, and submitted the document even though Van Tassel's member firm had written supervisory procedures stating that registered representatives were not permitted to sign documents on behalf of clients, even if the clients instructed them to do so, as was the case in this instance. The findings stated that Van Tassel, in spite of firm policy to the contrary, at the request of public customers, affixed their signatures on a Third Party Check Request form and an Authorization to Change form and submitted the documents to his member firm. The findings also stated that Van Tassel affixed a public customer's signature at her request, and submitted the document to his member firm although the firm's supervisory procedures required that all client signatures be original.

Van Tassel's suspension began on April 17, 2006, and will conclude at the close of business on June 15, 2006. (NASD Case #E8A2004085001)

**Otto Keith Vaughan, Jr. (CRD #453757, Registered Representative, Aurora, Colorado)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity and ordered to pay public customers \$129,348 in restitution.

Satisfactory proof of the restitution payment must be made before Vaughan reassociates with any NASD member. Without admitting or denying the allegations, Vaughan consented to the described sanctions and to the entry of findings that, while acting as trustee for a trust, he purchased a condominium for himself using \$75,000 that he borrowed from one of the trust's accounts, and did not disclose this loan to the trust's beneficiaries. The findings stated that Vaughan withdrew an additional \$247,000 from the trust's bank accounts and used the funds to pay for personal expenses, and failed to keep any records or documents detailing such withdrawals. The findings also stated that Vaughan failed to provide the beneficiaries with an account containing details of all disbursements from the trust assets, and kept no records detailing the amount of fees he paid to himself. (NASD Case #E3A2003052101)

**Kai Richardson Walker (CRD #4094767, Registered Representative, Winter Park, Florida)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Walker changed the address of record on the account of the estate of a deceased public customer to an address under his control, and issued a debit card and checks to this new address. The findings stated that, using the fraudulently obtained debit card and checks, Walker made purchases totaling \$9,689.11, thereby, converting the funds for his own use and benefit. NASD found that Walker converted funds belonging to his member firm by depositing checks totaling \$1,092.30 into his own personal account. NASD found that Walker failed to respond to NASD requests for information. (NASD Case #2005000688601)

**James Michael Wessel (CRD #3273979, Registered Principal, Fishers, Indiana)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the findings, Wessel consented to the described sanctions and to the entry of findings that he received \$18,145 from a public customer to use the funds to make a supplemental deposit to the customer's annuity contract, but failed to timely forward the funds. The findings stated that Wessel resolved a customer complaint by depositing \$2,796.18 into the customer's account without informing his member firm.

Wessel's suspension began on April 17, 2006, and will conclude at the close of business on May 16, 2006. (NASD Case #E8A2003097801)

## Individual Fined

**Carl Edward Lindros (CRD #310012, Registered Principal, Santa Barbara, California)** submitted a Letter of Acceptance, Waiver and Consent in which he was censured and fined \$10,000. Without admitting or denying the findings, Lindros consented to the described sanctions and to the entry of findings that a member firm, acting through Lindros, failed to properly escrow investor funds in accordance with SEC Rule 15c2-4. (NASD Case #E022004004502)

## Decisions Issued

The following decision has been issued by the Office of Hearing Officers and has been appealed to or called for review by the NAC as of April 7, 2006. The findings and sanctions imposed in the decisions may be increased, decreased, modified or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notice to Members*.

**Dennis Paul Cooper (CRD #2250395, Registered Principal, Ballwin, Missouri)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Cooper forged his manager's signature on public customer documents.

This decision has been appealed to the NAC, and the sanction is not in effect pending consideration of the appeal. (NASD Case #C0420050014/E0420040339)

**Dana Niles Frankfort (CRD #2243930, Registered Representative, Marina del Rey, California)** was barred from association with any NASD member in any capacity. The sanction was based on findings that, in connection with the purchase or sale of securities, Frankfort, directly or indirectly, by the use of means or instrumentalities of interstate commerce or the mails, employed artifices, devices or schemes to defraud, made untrue statements of material facts 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, engaged in acts, practices or courses of business that operated or

would operate as a fraud or deceit, and/or effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive, or other fraudulent devices or contrivances. The findings stated that Frankfort recommended and effected securities transactions in public customers' accounts without having reasonable grounds for believing the recommendations and resultant transactions were suitable for them based on their financial situation and needs. NASD found that Frankfort participated in private securities transactions without providing prior written notification to, and receiving written approval or acknowledgment from, his member firm.

This decision has been appealed to the NAC, and the sanction is not in effect pending consideration of the appeal. (NASD Case #C02040032/E0220020728)

**John David Kaweske (CRD #2309807, Registered Principal, Miami, Florida)** was barred from association with any NASD member firm in any capacity and ordered to pay \$140,000, plus interest, in restitution to public customers. The sanctions were based on findings that Kaweske failed to promptly return investor funds after an offering closed without meeting its sales contingency, failed to establish an escrow account for the contingency offering, made fraudulent misrepresentations in the sale of preferred stock, and willfully failed to disclose material information on his Form U4.

This decision has been appealed to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C07040042)

**Kenneth Christopher Shelley (CRD #4478307, Registered Representative, Thomasville, Alabama)** was barred from association with any NASD member in any capacity. The sanction was based on the finding that Shelley attempted to cheat on the Series 24 examination and failed to comply with the rules of conduct relating to securities examination.

This decision has been appealed to the NAC, and the sanction is not in effect pending consideration of the appeal. (NASD Case #C3A050003)

**Michael Frederick Siegel (CRD #1001893, Registered Representative, Beverly Hills, California)**. On April 19, 2004, a hearing panel fined Siegel \$30,000 and suspended him from association with any NASD member in any capacity for six months. The sanction

was based on findings that Siegel recommended and effected securities transactions in public customers' accounts without having reasonable grounds for believing that the recommendation and resultant transactions were suitable for them. The findings also stated that Siegel participated in private securities transactions and failed to provide prior written notice to, and approval from, his member firm.

Siegel appealed the hearing panel's decision to the NAC, and Enforcement cross-appealed. The NAC remanded the proceeding and directed the hearing panel to make credibility determinations and related factual findings concerning a narrow set of issues. Pursuant to these instructions, on March 16, 2006, the hearing panel issued supplemental findings of fact.

This matter is currently pending with the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C05020055/E0520020055)

**Robert Eugene Strong (CRD #3079588, Registered Principal, New York, New York)** was fined \$15,000 and suspended from association with any NASD member in any supervisory capacity for nine months. The sanctions were based on findings that Strong failed to reasonably supervise an employee who made unapproved trades. The findings stated that Strong failed to make certain disclosures in an employee's research reports in that the reports omitted that the employee had a financial interest in the company, a definition of the term "strong buy," an adequate price chart, and the evaluation methods used to set the price target and that the firm made a market in the stock. The findings also stated that Strong's improper supervision allowed the representative to forward a draft report to companies that included a research summary and price target in violation of NASD Rule 2711(c). NASD found that Strong untimely filed the firm's attestation regarding supervisory procedures reasonably designed to ensure that the firm and its employees comply with NASD Rule 2711.

This decision has been appealed to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C04050005)

## Complaints Filed

The following complaints were issued by NASD. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by NASD in which findings as to the allegations in the complaint have not been made, and does not represent a decision as to any of the allegations contained in the complaint. Because these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

**Jeffrey Leonard Adell (CRD #2638760, Registered Representative, Fishers, Indiana)** was named as a respondent in an NASD complaint alleging that he created fake instruction letters purportedly created and signed by a public customer that instructed Adell's member firm to liquidate funds from the customer's account and send the proceeds to Adell's home address. The complaint also alleges that Adell forged the customer's signature on the documents, without the customer's or his estate's permission or knowledge, and falsely certified to his member firm that the forged signatures were authentic. The complaint further alleges that Adell converted \$29,461.43 from the customer's account without the customer's knowledge or consent, deposited the funds into his personal account, and used the funds for his personal expenses and not for the customer's benefit. In addition, the complaint alleges that Adell failed to respond to NASD requests for information. (NASD Case #2005000386701)

**Humberto Daniel Advincula (CRD #4158129, Registered Representative, Midvale, Utah)** was named as a respondent in an NASD complaint alleging that he received \$20,000 from public customers with the intention that the funds would be invested for the customers' benefit, but failed to invest the customers' funds through their member firm or its subsidiaries and to return the funds to the customers, thereby making improper use of their funds. The complaint alleges that Advincula engaged in an undisclosed outside business activity without providing prompt written notice to his member firm. The complaint also alleges that Advincula failed to respond to NASD requests for information. (NASD Case #20050011788)

**Andrew Joseph Hardin (CRD #4534287, Registered Representative, Greenville, South Carolina)** was named as a respondent in an NASD complaint alleging

that, pursuant to verbal authority, he exercised discretion in a public customer's account without the customer's written authorization and his member firm's written acceptance of the account as a discretionary account. The complaint alleges that Hardin knowingly and intentionally purchased and parked Certificates of Deposits (CDs) in a customer's account with the intent to resell them to other customers, and instead requested that the original purchases be corrected and reassigned to another customer to whom he had sold the respective CD, therefore misrepresenting to his member firm that the original purchase was mistakenly put in the customer's account. (NASD Case #E072004072501)

**Intercoastal Financial Services Corp. (CRD #45557, Jupiter, Florida)** was named in an NASD complaint alleging that the firm failed to implement and enforce an AML program reasonably designed to achieve and monitor the firm's compliance with the requirements of the Bank Secrecy Act and the implementing regulations promulgated thereunder by the Department of the Treasury. The complaint alleges that the firm accepted orders from third parties without the customer's prior signed written authorization. The complaint also alleges that the firm failed to maintain accurate books and records relating to, among other things, their business, financial statements, indebtedness, bills and communications regarding its business. The complaint further alleges that the firm sold unregistered shares of a stock that were not entitled to any registration exemption. In addition, the complaint alleges that the firm's supervisory system was not reasonably designed to achieve compliance with applicable securities laws and regulations and with NASD rules in that the firm's written procedures provided that a "registered representative will not accept any order from a third party without prior written authorization signed by the customer," but the firm's supervisory personnel failed to detect widespread, long-term, third party trading without written authorization. (NASD Case #EAF0300770001)

**David John Leyshon (CRD #1146050, Registered Representative, Peoria, Arizona)** was named as a respondent in an NASD complaint alleging that he recommended and executed unauthorized and excessive securities transactions in a public customer's account without having a reasonable basis for believing the recommendations and resultant transactions were

suitable based upon the customer's objectives, financial situation and needs. The complaint alleges that Leyshon, directly or indirectly, by the use of means or instrumentalities of interstate commerce or the mails, knowingly or recklessly used or employed, in connection with the purchase or sale of securities, manipulative or deceptive devices or contrivances, and knowingly or recklessly effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive or other fraudulent devices or contrivances. The complaint also alleges that Leyshon executed unauthorized transactions in an online account using a password that was intended for a public customer's exclusive use. NASD alleges that Leyshon submitted falsified documents to his member firm and caused the firm's records to be inaccurate and misleading. In addition, the complaint alleges that Leyshon failed to respond to NASD requests for information. **(NASD Case #E3A20040356-01)**

**Feltus Barrow McKowen (CRD #1231747, Registered Representative, Baton Rouge, Louisiana)** was named as a respondent in an NASD complaint alleging that he effected securities transactions in a public customer's account and received commissions totaling \$25,248 without the customer's prior knowledge or consent. **(NASD Case #E052003017101)**

**Thomas Garth Nauman (CRD #1732240, Registered Principal, Kamuela, Hawaii)** was named as a respondent in an NASD complaint alleging that he effected, or caused to be effected, excessive securities transactions in public customers' accounts without having a reasonable basis for believing that these recommendations were suitable in light of the customers' investment objectives, financial situations and needs. The complaint alleges that Nauman, directly or indirectly, by the use of the means or instrumentalities of interstate commerce or of the mails, knowingly or recklessly used or employed, in connection with securities transactions, manipulative or deceptive devices or contrivances, and knowingly or recklessly effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive or other fraudulent devices or contrivances. The complaint also alleges that Nauman executed unauthorized securities transactions in public customers' accounts. **(NASD Case #E012002049101)**

**David John Palen (CRD #2321162, Registered Representative, Scottsdale, Arizona)** was named as a respondent in an NASD complaint alleging that he withdrew \$203,464 from public customers' accounts to pay for financial planning fees that the customers had not authorized or approved, and failed to provide the customers with the financial plans. The complaint alleges that Palen lied to the customers regarding an unauthorized withdrawal by assuring them that the money had been moved from one investment to another without the loss of money. The complaint also alleges that Palen signed a public customer's name to an Advisory Service Agreement without the customer's authorization or consent, and submitted it to his member firm to withdraw funds to pay for a financial plan he did not authorize. In addition, the complaint alleges that Palen failed to appear for an NASD on-the-record interview. **(NASD Case #E3A2004036501)**

**Mark Jeffrey Sheehy (CRD #2224709, Registered Representative, Scottsdale, Arizona)** was named as a respondent in an NASD complaint alleging that he received \$97,500 from a public customer for investment purposes, deposited the funds into his bank account and executed numerous transactions in the customer's account without the customer's prior authorization and consent. The complaint alleges that Sheehy caused the funds transfer from the customer's securities account for the purpose of causing the customer to believe that the funds represented returns on an investment. The complaint also alleges that Sheehy failed to respond to NASD requests for information. **(NASD Case #20050005544-01)**

**David Parker Smithey (CRD #4137601, Associated Person, Foothill Ranch, California)** was named as a respondent in an NASD complaint alleging that he directly or indirectly, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce or the mails, or of a facility of a national security exchange, employed devices, schemes or artifices to defraud, made untrue statements of material facts 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 other persons. The complaint alleges that Smithey participated in private securities transactions and failed to provide prior written notice

to, and receive written approval from, his member firm. The complaint also alleges that Smithey failed to respond to NASD requests for information.  
(NASD Case #E022004050201)

**Individuals Barred Pursuant to NASD Rule 9552(h)**

**John Delgado (a.k.a Yonatan Delgado)**  
Staten Island, New York  
(April 18, 2006)

**Ronni Lee Fine-Abramowitz**  
Roselle, Illinois  
(April 17, 2006)

**Michael Ross Turner**  
Manteca, California  
(April 4, 2006)

**Saleem Zamindar**  
San Francisco, California  
(April 4, 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.)

**Joseph John Bieniek**  
Chicago, Illinois  
(April 3, 2006)

**Stephane Jacques Coupleux**  
New York, New York  
(April 3, 2006)

**Coleman James Flaherty, III**  
South Boston, Massachusetts  
(April 24, 2006)

**Anthony Graham Gilchrist**  
Providence, Rhode Island  
(April 12, 2006)

**Angel Ann Huzarski**  
Center Line, Michigan  
(April 10, 2006)

**Peter Anthony Mazzara**  
Chicago, Illinois  
(April 19, 2006)

**Maria D. Roldan**  
Coconut Creek, Florida  
(April 25, 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.)

**John Delacruz Barcarse**  
San Diego, California  
(April 27, 2006)

**Michael Samuel Bell**  
Boca Roton, Florida  
(April 18, 2006)

**Randy Lee Beltramea**  
Mt. Vernon, Iowa  
(April 25, 2006)

**Kathy Ann Bowling**  
Midland, Texas  
(April 17, 2006)

**Charles Keith Byington**  
Oldsmar, Florida  
(April 10, 2006)

**Christopher Edward Chen**  
Phoenix, Arizona  
(April 26, 2006)

**Luther Carl Cooper**  
New York, New York  
(April 18, 2006)

**Patrick T. Egan**  
Tinley Park, Illinois  
(April 26, 2006)

**Scott Joseph Egan**  
Coconut Creek, Florida  
(April 27, 2006)

**Thomas William Fox**  
Greensboro, Pennsylvania  
(April 4, 2006)

**Thomas Anthony Gallo**

Shrewsbury, New Jersey  
(April 11, 2006)

**Victor David Greco**

Hoffman Estates, Illinois & Houston, Texas  
(April 26, 2006)

**James Dale Green, Jr.**

San Diego, California  
(April 27, 2006)

**William Henry Harris, Jr.**

Phoenix, Arizona  
(March 30, 2006 to April 4, 2006)

**John Wade Howard, III**

Smyrna, Georgia  
(April 18, 2006)

**Chad James Johnson**

Dallas, Texas  
(April 26, 2006)

**David Aaron Jones**

Chandler, Arizona  
(April 18, 2006 to April 25, 2006)

**Jay Moore Kim**

Las Vegas, Nevada  
(April 18, 2006)

**John William Laurienti**

Rancho Santa Fe, California  
(April 27, 2006)

**Carla Susan Mannes**

Mesa, Arizona  
(April 19, 2006)

**Bryan Christopher Marion**

Dallas, Texas  
(April 26, 2006)

**Scott Jonathan McKay Wolas aka Allen Lee Hengst**

Orlando, Florida  
(April 26, 2006)

**Anssy Akhabue Okoebor**

Ladera Ranch, California  
(April 18, 2006)

**Mauro Jose Padilla**

San Antonio, Texas  
(March 21, 2006)

**Stan Paul Parks**

Batavia, Illinois  
(April 26, 2006)

**Scott Allen Rackley**

Plano, Texas  
(April 26, 2006)

**Mark Charles Scharbo**

New York, New York  
(April 27, 2006)

**Robert F Tassinari, Jr.**

Oldfield, New York  
(April 17, 2006)

**Michael Edward Tierney**

New York, New York  
(April 20, 2006 to April 25, 2006, NASD Arbitration  
Case #02-02300)  
(April 20, 2006 to April 25, 2006, NASD Arbitration  
Case #03-01092)

**Gregory Dubois Walker**

San Diego, California  
(April 27, 2006)

**NASD Fines AIG Affiliate American General Securities, Inc. over \$1.1 Million for Directed Brokerage Violations**

NASD has fined American General Securities, Inc. (AGSI), a member company of American International Group, Inc. (AIG) in Houston, TX, more than \$1.1 million in connection with its receipt of directed brokerage in return for providing preferential treatment to certain mutual fund companies and for other violations.

The action involves violations of NASD's Anti-Reciprocal Rule, which prohibits firms from favoring the sale of shares of particular mutual funds on the basis of brokerage commissions received by the firm. Among other things, the rule prohibits a firm from recommending funds or establishing preferred lists of funds in exchange for receipt of directed brokerage.

"NASD remains committed to ensuring that firms comply with our rules in connection with the marketing and sale of mutual fund shares," said NASD Executive Vice President and Head of Enforcement James Shorris. "The Anti-Reciprocal Rule is designed to ensure that firms recommend mutual funds on their merits and not because of the receipt of brokerage commissions, which are assets of the mutual fund shareholders and should not be used for marketing purposes."

NASD found that from January 2002 through September 2003, AGSI operated a shelf space (or revenue sharing) program in which participating mutual fund companies paid a fee in return for preferential treatment by AGSI. That treatment included enhanced access to AGSI's sales force, including being identified as a "Preferred Product Sponsor" on AGSI's internal Web site, being featured in AGSI internal marketing publications distributed to its sales force, and participating in AGSI's "top producer" or training meetings.

The benefits provided by the shelf space program were offered to only 12 mutual fund complexes during the relevant period. These fund companies paid extra fees for the preferential treatment they received. Three of the 12 fund complexes paid their fees for participating in the shelf space program by directing approximately \$2.7 million in mutual fund portfolio brokerage commissions to AGSI. This use of directed brokerage allowed the fund complexes to use assets of the mutual funds instead of their own money to meet their revenue sharing obligations. The remaining nine fund complexes paid their fees in cash for participation in the program.

NASD also found that from July 2003 through September 2003, AGSI failed to promptly forward more than 2,100 customer checks that it had received in connection with certain mutual fund and variable annuity transactions; that from November 2001 through September 2003, AGSI failed to maintain electronic communications in violation of the books and records provisions of the federal securities laws and NASD rules; and, that it failed to establish and maintain a supervisory system and procedures that were reasonably designed to detect and prevent these violations.

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

NASD has brought 30 previous actions for similar violations, including actions against six firms that are wholly owned subsidiaries of AIG Advisor Group, Inc, also an AIG-owned company.

### **NASD Charges A.B. Watley and Former Brokers With Facilitating Mutual Fund Late Trading and Market Timing for Hedge Funds**

#### **Firm's President and Executive Vice President Charged with Supervisory Failures**

NASD has filed a complaint against A.B. Watley Direct, Inc. (ABW Direct) of New York, and its former registered representatives, Robert Conway and Kenneth Ng, charging them with facilitating late trading and improper market timing of mutual funds on behalf of hedge fund clients.

NASD also charged ABW Direct's President, Robert Malin, and Executive Vice President, Linus Nwaigwe, with supervisory lapses. Conway and Ng were brokers registered with both ABW Direct and A.B. Watley, Inc. (ABW Inc.). ABW Inc. is an affiliated entity that was formerly a registered broker-dealer, but was expelled by NASD in 2004 for failure to pay fines levied in prior disciplinary actions. Both ABW Direct and ABW Inc. are subsidiaries of A.B. Watley Group, Inc. (ABW Group), a publicly traded company.

"Market timing in violation of a mutual fund's limitations and late trading of fund shares are both unethical and harmful to fund shareholders," said James S. Shorris, NASD Executive Vice President and Head of Enforcement. "Firms cannot enrich a few favored customers at the expense of a fund's long-term shareholders."

In its complaint, NASD charged that from approximately July 2002 until September 2003, Conway and his assistant Ng facilitated late trading. Late trading is the unlawful practice of placing mutual fund orders after the fund has calculated its daily net asset value (NAV)—typically at 4 p.m. EST—but receiving the price based upon that earlier, 4 p.m. calculation. Firms accepting mutual fund orders after the 4 p.m. NAV calculation are supposed to execute them at the following day's NAV in accordance with the Securities and Exchange Commission's "forward pricing rule."

The complaint alleges that Conway and Ng utilized a computerized trading platform that enabled them to enter orders on behalf of ABW Direct and ABW Inc. clients for at least an hour after the 4 p.m. market close without observing the forward pricing requirements. The brokers' hedge fund customers would send emails or faxes containing "indications of interest" in proposed mutual fund transactions that the hedge funds might or might not execute that day. The "indications of interest," however were not the customers' actual orders. Subsequent to sending the "indication of interest," the customers would telephone Conway and Ng and verbally instruct them which of the "indications of interest" to enter as actual orders. In at least 243 transactions at ABW Direct and ABW Inc., Conway and Ng entered transactions after 4 p.m. where emails show that the "indications of interest" were also not received until after 4 p.m., after the funds' NAVs had been calculated.

The complaint further charges that ABW Direct and ABW Inc. failed to maintain required books and records for mutual fund transactions. The firms did not record the time that they received customer orders for the transactions, thus leaving open the possibility that Conway and Ng engaged in late trading in thousands of additional transactions where records showed that Conway and Ng entered orders after 4 p.m.

In addition to the problems regarding late trading, the complaint alleges that during the period of July 2002 to September 2003, Conway and Ng also helped their clients engage in deceptive market timing. Conway and Ng systematically disregarded "block letters" and other directives from mutual fund companies (and from the clearing firm for ABW Direct and ABW Inc.) that restricted the hedge fund clients' market timing trades. NASD charged that in at least 405 instances, Conway and Ng submitted transactions through accounts at ABW Direct and ABW Inc. where they either knew or should have known that the transactions were in violation of funds' restrictions on market timing.

To facilitate the impermissible market timing, the complaint alleges that Conway and Ng helped clients set up multiple accounts, utilizing different names and even different branch codes in an effort to conceal the clients' efforts to evade market timing restrictions; opened multiple accounts for one client at both ABW Direct and ABW Inc. in an effort to conceal the client's

identity; and ignored a directive from ABW Direct's and ABW Inc.'s clearing firm that the firms cease trading in international mutual funds until they had provided a written commitment to the clearing firm that they would abide by mutual fund prospectus trading limitations.

NASD charged that Conway and Ng's misconduct could not have occurred without the supervisory lapses by Nwaigwe and Malin. Nwaigwe is the Chief of Compliance of ABW Direct and also held that position at ABW Inc. Nwaigwe is charged with having failed to perform supervisory duties delegated to him that should have led him to discover the wrongful activity. For example, Nwaigwe did not review Conway's and Ng's incoming and outgoing correspondence and emails and, as a result, never saw the communications from the mutual fund companies and the firms' clearing firm complaining about impermissible market timing. Nwaigwe was also the person with responsibility for updating ABW Direct's and ABW Inc.'s written procedures, and NASD charged that he failed to include procedures designed to prevent late trading and impermissible market timing.

Malin is the President of ABW Direct and held that position at ABW Inc. He is charged with having failed to take reasonable steps to ensure that Nwaigwe was performing supervisory functions assigned to him.

**NASD Hearing Panel Suspends, Fines Former GunnAllen Broker for Threatening Public Company Broker Intimidated Company by Threatening to Drive Down Stock Price**

An NASD hearing panel has suspended former stock-broker Shawn Aaron for two years and fined him \$50,000 for threatening and intimidating Optelecom-NKF, Inc. (OPTC), a NASDAQ SmallCap company, while he was registered with GunnAllen Financial, Inc., of Tampa, FL. NASD charged that Aaron engaged in a scheme to defraud and extort OPTC by threatening to drive down the price of its stock from \$13 to \$6 per share unless it provided him with confidential business information.

The hearing panel found that Aaron purchased 5,180 shares of OPTC for his own account and another 134,540 shares for 54 of his customers in early April 2004. By mid-April, Aaron and his clients together held 139,720 shares, or about 4 percent of OPTC's outstanding shares. On April 16, 2004, Aaron left a voicemail with OPTC's Chairman and CEO stating that he owned 10 percent of the company's stock and that he wanted to talk to him about taking the stock to "the next level."

On April 19, 2004, Aaron talked to OPTC's investor liaison consultant. Aaron again claimed that he owned 10 percent of the company, or about 300,000 shares. Aaron asked OPTC's investor liaison consultant for reasons to keep buying OPTC. Otherwise, Aaron stated, he "could drive the stock down to six bucks if I dumped 300,000 shares on the market, unless you have institutions lined up." Aaron boasted that he was GunnAllen's top producer and claimed to have a special relationship with its president, with whom he shared his "best ideas" about promoting stocks. Aaron also claimed he was instrumental in increasing the stock prices of at least two other publicly traded companies.

The hearing panel concluded that Aaron made material misrepresentations and threatened OPTC, and that these "misrepresentations, threats, and intimidation plainly overstepped the bounds" of permissible behavior, violating NASD rules requiring brokers to observe high standards of commercial honor and just and equitable principles of trade. In arriving at its sanctions, the hearing panel noted that Aaron's conduct was intentional, was for the purpose of some monetary

or other gain, and that he did not take responsibility for his actions. It also noted that in 1999, Aaron agreed to withdraw his registration in Massachusetts and not re-apply for 25 years to resolve the state regulator's charges that he "used high pressure sales tactics, did not disclose material facts and made false and misleading statements" to investors to sell speculative stocks.

Optelecom-NKF is a Germantown, MD-based company that designs and manufactures communications products that transport data, video and audio over the Internet and fiber optic cables.

Because the hearing panel's decision was not appealed, the decision is now final and the sanctions the panel imposed have taken effect. Aaron's two-year suspension will continue through April 18, 2008.