

OCTOBER 2006

# Notice to Members

## Notices

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## Disciplinary and Other NASD Actions



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# Notice to Members

OCTOBER 2006

## SUGGESTED ROUTING

Legal and Compliance  
Operations  
Senior Management

## KEY TOPICS

Business Expansions  
IM-1011-1  
Material Change in Business  
Operations  
Rule 1017  
Safe Harbor

## GUIDANCE

### Business Expansions

SEC Approves Amendments to the Safe Harbor for Business Expansions; **Effective Date: November 3, 2006**

#### Executive Summary

On August 7, 2006, the Securities and Exchange Commission (SEC) approved amendments to Interpretative Material 1011-1 (Safe Harbor for Business Expansions) (IM-1011-1) to limit the types of violations of Rule 2110 (Standards of Commercial Honor and Principles of Trade) that would result in a member being ineligible to use the safe harbor for business expansions and made certain technical changes.<sup>1</sup> IM-1011-1, as amended, is set forth in Attachment A of this *Notice*. The amendments become effective on November 3, 2006.

#### Questions/Further Information

Questions regarding this *Notice* may be directed to Kathryn M. Moore, Assistant General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 974-2974.

#### Background and Discussion

Rule 1017 (Application for Approval of Change in Ownership, Control, or Business Operations) requires that a member submit an application to NASD for approval prior to, among other things, making a "material change in business operations," which is defined in Rule 1011.<sup>2</sup> IM-1011-1 creates a safe harbor for certain types of expansions that are presumed not to be a "material change in business operations" and therefore do not require NASD approval.<sup>3</sup>

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However, the safe harbor in IM-1011-1 is not available to any member that, among other things, has a “disciplinary history” as defined in IM-1011-1.<sup>4</sup> For purposes of IM-1011-1, disciplinary history means a finding of a violation by a member or a principal of the member in the past five years by the SEC, a self-regulatory organization or a foreign financial regulatory authority of one or more specified provisions (or comparable foreign provisions) or rules or regulations thereunder,<sup>5</sup> including Rule 2110.<sup>6</sup>

When a member or individual is charged with violating an NASD rule, NASD frequently charges a violation of Rule 2110 as part of NASD’s action (in both settled and litigated matters).<sup>7</sup> Thus, the inclusion of Rule 2110 in IM-1011-1, without any limitation, often results in members being ineligible to use the safe harbor if they (or any of their principals) have violated any other NASD rule, which was not the intended effect. Rather, the safe harbor specifically included a finite list of rules, the violation of which would preclude the member firm from using the safe harbor, and was not intended to capture violations of all NASD rules.

Accordingly, with respect to violations of Rule 2110, NASD has amended IM-1011-1 to provide that a member is ineligible to use the safe harbor only where the finding of a violation of Rule 2110 by the member or a principal of the member raises significant investor protection issues by involving unauthorized trading, churning, conversion, material misrepresentations or omissions to a customer, front-running, trading ahead of research reports or excessive markups.<sup>8</sup> Therefore, a member will not be eligible to rely on the safe harbor for material changes in business operations if the member or any of its principals have been found, within the past five years, to have violated Rule 2110 in the context of these enumerated activities (or to have violated any of the other rules specified in IM-1011-1).

In addition, NASD made a technical correction to the rule text with respect to the inclusion of Section 15(b)(4)(E) of the Securities Exchange Act of 1934 (Act) in the list of rules the violation of which would preclude a member from relying on the safe harbor under IM-1011-1. The amendment clarifies that a member would be ineligible to use the safe harbor in the event that a member or any of its principals has been found to have engaged in one or more violations of the type specified in Section 15(b)(4)(E) of the Act in the past five years.

The amendments become effective on November 3, 2006.

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## Endnotes

- 1 Exchange Act Release No. 54279 (August 7, 2006), 71 FR 46533 (August 14, 2006) (Approval Order of SR-NASD-2006-070).
- 2 A “material change in business operations” is defined in Rule 1011(i) and includes, but is not limited to: removing or modifying a membership agreement restriction; market making, underwriting or acting as a dealer for the first time; and adding business activities that require a higher minimum net capital under SEC Rule 15c3-1.
- 3 The safe harbor permits, within a one year period, (1) an increase of 10 persons if the firm has 10 or less associated persons in sales, or an increase of 10 persons or a 30 percent increase, whichever is greater, if the firm has 11 or more associated persons in sales; (2) an increase of three offices if the firm has five or less offices, or an increase of three offices or a 30 percent increase, whichever is greater, if the firm has six or more offices; and (3) an increase of 10 markets to be made if the firm makes 10 or less markets, or an increase of 10 markets or a 30 percent increase, whichever is greater, if the firm makes 11 or more markets.  
  
As a reminder, *Notice to Members (NTM) 00-73* (October 2000) states: “If a proposed expansion is outside of the safe harbor provisions, it does not necessarily mean that the expansion is a ‘material change in business operations.’ The safe harbor provisions are meant to provide guidance on what changes will not be considered material.” Please refer to *NTM 00-73* for further guidance on how to assess if a proposed change is material.
- 4 The safe harbor is also generally not available to members with membership agreements that contain certain restrictions on number of personnel, offices and markets that may be made.
- 5 The applicable provisions are Sections 15(b)(4)(E) and 15(c) of the Securities Exchange Act of 1934; Section 17(a) of the Securities Act of 1933; SEC Rules 10b-5 and 15g-1 through 15g-9; NASD Rules 2110, 2120 (Use of Manipulative, Deceptive or Other Fraudulent Devices), 2310 (Recommendations to Customers (Suitability)), 2330 (Customers’ Securities or Funds), 2440 (Fair Prices and Commissions), 3010 (Supervision-failure to supervise only), 3310 (Publication of Transactions and Quotations) and 3330 (Payment Designed to Influence Market Prices, Other than Paid Advertising); and MSRB Rules G-19, G-30 and G-37(b) and (c).
- 6 Rule 2110 requires that “a member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.”
- 7 See *Joseph Abbondante*, Exchange Act Rel. No. 53066 (Jan. 6, 2006), 2006 SEC Lexis 23 at 36 (“It is well settled that a violation of a rule promulgated by the SEC or by NASD also violates Conduct Rule 2110.”).
- 8 The limits on violations of Rule 2110 mirror the limits on Rule 2110 with respect to the public release of disciplinary complaints. See IM-8310-2 (Release of Disciplinary and Other Information Through BrokerCheck) and the related *NTM 97-42* (July 1997).

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## ATTACHMENT A

New language is underlined, deletions are in brackets.

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### IM-1011-1. Safe Harbor[s] for Business Expansions

This interpretive material concerns the types of business expansions that will not require a member to submit a Rule 1017 application to obtain NASD's [Regulation's] approval of the expansion. This safe harbor applies to: (1) firms that do not have a membership agreement, and (2) firms that have a membership agreement that does not contain a restriction on the factors listed below.

The safe harbor is not available to a member that has a membership agreement that contains a specific restriction as to one or more of the factors listed below. In that case, the agreement takes precedence because NASD [Regulation] has determined that a particular restriction should apply as to one or more of the factors, and NASD [Regulation] has issued a decision with a rationale for that restriction. Similarly, the safe harbor also does not apply if the member has a membership agreement that permits expansion beyond the limits set forth below (e.g., an Applicant requests and obtains approval for ten registered representatives in the first six months with an additional ten registered representatives in the next year); in such case, [the Department]NASD has specifically considered the firm's expansion plans and approved them.

The safe harbor is not available to any member that has disciplinary history. For purposes of this Interpretation, "disciplinary history" means a finding of a violation by the member or a principal of the member in the past five years by the Securities and Exchange Commission, a self-regulatory organization, or a foreign financial regulatory authority of one or more of the following provisions (or a comparable foreign provision) or rules or regulations thereunder: violations of the types enumerated in Section[s] 15(b)(4)(E) [and 15(c)] of the Securities Exchange Act of 1934; Section 15(c) of the Securities Exchange Act of 1934; Section 17(a) of the Securities Act of 1933; SEC Rules 10b-5 and 15g-1 through 15g-9; NASD Rules 2110 (only if the finding of a violation is for unauthorized trading, churning, conversion, material misrepresentations or omissions to a customer, front-running, trading ahead of research reports or excessive markups), 2120, 2310, 2330, 2440, 3010 (failure to supervise only), 3310, and 3330; and MSRB Rules G-19, G-30, and G-37(b) & (c).

For those firms to which the safe harbor is available, the following types of expansions are presumed not to be a material change in business operations and therefore do not require a Rule 1017 application. For any expansion beyond these limits, a member should contact its district office prior to implementing the change to determine whether the proposed expansion requires an application under Rule 1017. Expansions in each area are measured on a rolling 12-month basis; members are required to keep records of increases in personnel, offices, and markets to determine whether they are within the safe harbor.

“Associated Persons involved in sales” includes all Associated Persons, whether or not registered, who are involved in sales activities with public customers, including sales assistants and cold callers, but excludes clerical, back office, and trading personnel who are not involved in sales activities.

<i>Number of Associated Persons Involved in Sales Period Without Rule 1017 Application</i>	<i>Safe Harbor – Increase Permitted Within One Year</i>
1-10	10 persons
11 or more	10 persons or a 30 percent increase, whichever is greater
 <i>Number of Offices (registered or unregistered)</i>	
1-5	3 offices
6 or more	3 offices or a 30 percent increase, whichever is greater
 <i>Number of Markets Made</i>	
1-10	10 markets
11 or more	10 markets or a 30 percent increase, whichever is greater

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# Notice to Members

OCTOBER 2006

## SUGGESTED ROUTING

Legal & Compliance  
Operations  
Registered Representatives  
Senior Management  
Trading and Market Making

## KEY TOPICS

Best Execution  
Interpretive Material 2320  
Rule 2320

## GUIDANCE

### Best Execution

SEC Approves Amendments to Rule 2320(a) Regarding Best Execution and New Interpretive Material 2320;  
**Effective Date: November 8, 2006**

#### Executive Summary

On August 21, 2006, the Securities and Exchange Commission (SEC) approved amendments to Rule 2320(a), the Best Execution Rule, to require that a “recipient member,” as that term is defined herein, provide best execution to all transactions for or with a customer of another broker-dealer. NASD also is amending the reasonable diligence factors in Rule 2320(a) and deleting the term “inter-dealer” in order to modernize the text of the Best Execution Rule. Further, NASD is adopting new Interpretive Material 2320 to codify interpretive guidance concerning the applicability of the Best Execution Rule.<sup>1</sup>

The rules, as amended, are set forth in Attachment A. The amendments become effective on November 8, 2006.

#### Questions/Further Information

Questions concerning this *Notice* may be directed to Kathleen A. O’Mara, Associate General Counsel, Office of General Counsel at (202) 728-8071; and Peter D. Santori, Chief Counsel, Market Regulation, Regulatory Policy & Oversight, at (240) 386-5098.

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## Background and Discussion

The Best Execution Rule currently requires a member, in any transaction for or with a customer, to use reasonable diligence to ascertain the best inter-dealer market for a security and to buy or sell in such a market so that the resultant price to the customer is as favorable as possible under prevailing market conditions. NASD has received many questions regarding the application of the term “customer” in the context of best execution. Rule 0120(g) defines “customer” to exclude a broker or dealer, unless the context requires otherwise. For example, prior to these amendments, if a firm that received an order from a customer (“originating broker-dealer”) and routed the order to a member firm (“recipient member”) and the recipient member executed the order in a manner inconsistent with the Best Execution Rule, the recipient member could have argued that it had not violated the Best Execution Rule because the transaction was not “for or with a customer,” but rather for or with a broker-dealer. NASD believes that not applying the Best Execution Rule to recipient members that receive customer orders from other broker-dealers is contrary to the interests of the investing public as well as the general intent of the Best Execution Rule.

As amended, Rule 2320(a) now requires that a recipient member provide best execution to all transactions for or with a customer of another broker-dealer. Specifically, NASD has amended the Best Execution Rule to state that the rule governs “any transaction for or with a customer or a customer of another broker-dealer.” NASD believes this change will better ensure that customer orders receive equivalent best execution protections, irrespective of whether a customer order is executed by the originating broker-dealer or routed to a recipient member. It is important to note, however, that this expansion of the application of the Best Execution Rule to recipient members does not change the obligations of an originating broker-dealer member to examine regularly and rigorously execution quality likely to be obtained from different markets trading a security.<sup>2</sup>

NASD also has modernized the text of the Best Execution Rule. Rule 2320(a) currently requires a member to ascertain the best “inter-dealer” market for a security and to buy or sell in such a market so that the price to the customer is as favorable as possible under the prevailing market conditions. As a result of changes in market structure, NASD has deleted the term “inter-dealer” from Rule 2320(a). This change clarifies that member requirements to ascertain the best market for a security are not limited to “inter-dealer” markets, but may include all markets in which a security is traded.

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Additionally, NASD has amended the reasonable diligence factors to reflect current market structure. To that end, NASD has (1) replaced the diligence factor of “the number of primary markets checked” with “the number of markets checked”; (2) replaced the diligence factor of “location and accessibility to the customer’s broker-dealer of primary markets and quotation sources” with “accessibility of the quotation”; and (3) added an additional diligence factor that takes into account “the terms and conditions of the order which result in the transaction, as communicated to the member and persons associated with the member” to reflect the importance of this consideration in assessing best execution.

### **Interpretive Material 2320**

NASD has adopted new Interpretive Material 2320 (IM-2320) to codify interpretive guidance relating to Rule 2320(a). First, IM-2320 provides that, for purposes of Rule 2320, the term “market” or “markets” should be interpreted broadly to include a variety of different venues, including, but not limited to, market centers that are trading a particular security. Such an expansive interpretation is for the purposes of both informing broker-dealers as to the scope of venues that must be considered in the furtherance of their best execution obligations and promoting fair competition among broker-dealers, exchange markets and markets other than exchange markets, as well as any other trading venues that may emerge. In sum, the purpose of this change is to signal that no trading venues have less relevance than others in the course of best execution.

IM-2320 also clarifies that a member’s duty to provide best execution in any transaction “for or with a customer of another broker-dealer” does not apply in instances when another broker-dealer is simply executing a customer order against the member’s quote. The duty to provide best execution to customer orders received from other broker-dealers arises only when an order is routed from the originating broker-dealer to the recipient member for the purpose of order handling and execution. The duty of best execution does not apply in instances when another broker-dealer is simply executing a customer order against a member’s quote; that circumstance is distinct from those circumstances in which a recipient member is accepting order flow from an originating broker-dealer for the purpose of facilitating the handling and execution of such orders. The duty to provide best execution to customer orders received from other broker-dealers arises only when an order is routed from the broker-dealer to the member for the purpose of order handling and execution. This duty is subject to the terms and conditions of the order which result in the transaction, as communicated to the member and persons associated with the member (for example, a recipient member is not responsible for complying with the terms and conditions of an order that are incorrectly communicated by the originating broker-dealer either because such order contains the wrong terms and conditions or fails to include certain terms and conditions).

Finally, members should understand that, in the context of debt, the term “quotation” in the reasonable diligence factor in IM-2320 as to the “accessibility of the quotations” will be considered by NASD as referring to either dollar (or other currency) pricing or yield pricing.<sup>3</sup>

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## Endnotes

- 1 See Securities Exchange Act Release No. 54339 (August 21, 2006), 71FR 50959 (August 28, 2006) (Order Approving Proposed Rule Change and Amendment Nos. 1-5; File No. SR-NASD-2004-026).
- 2 See *Notice to Members 01-22* (April 2001), which reiterates the best execution obligations that apply to member firms when they receive, handle, route for execution, or execute customer orders, and that also provides guidance to members concerning a broker-dealer's obligation, as articulated on numerous occasions by the SEC, to examine regularly and rigorously execution quality likely to be obtained from the different markets or market makers trading a security.
- 3 NASD notes, however, that accessibility is only one of the non-exhaustive reasonable diligence factors set out in Rule 2320. In the absence of accessibility, members are not relieved from taking reasonable steps and employing their market expertise in achieving the best execution of customer orders.

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## ATTACHMENT A

New language is underlined; deleted language is in brackets.

### 2320. Best Execution and Interpositioning

(a) In any transaction for or with a customer or a customer of another broker-dealer, a member and persons associated with a member shall use reasonable diligence to ascertain the best [inter-dealer] market for the subject security and buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions. Among the factors that will be considered in determining whether a member has used “reasonable diligence” are:

- (1) [T]he character of the market for the security, e.g., price, volatility, relative liquidity, and pressure on available communications;
- (2) the size and type of transaction;
- (3) the number of [primary] markets checked;
- (4) accessibility of the quotation[location and accessibility to the customer’s broker/dealer of primary markets and quotations sources.]; and
- (5) the terms and conditions of the order which result in the transaction, as communicated to the member and persons associated with the member.

(b) through (g) No change.

### IM-2320. Interpretive Guidance with Respect to Best Execution Requirements

Rule 2320(a) requires, among other things, that a member or person associated with a member comply with Rule 2320(a) when customer orders are routed to it from another broker/dealer for execution. This Interpretive Material addresses certain interpretive questions concerning the applicability of the best execution rule.

The term “market” has been in the text of Rule 2320 since its adoption, but it is an undefined term. For the purposes of Rule 2320, the term “market” or “markets” is to be construed broadly and it encompasses a variety of different venues, including, but not limited to, market centers that are trading a particular security. This expansive interpretation is meant to both inform broker/dealers as to the breadth of the scope of venues that must be considered in the furtherance of their best execution obligations and to promote fair competition among broker/dealers, exchange markets, and markets other than exchange markets, as well as any other venue that may emerge, by not mandating that certain trading venues have less relevance than others in the course of determining a firm’s best execution obligations.

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Rule 2320(a)(4) provides that one of the factors used to determine if a member has used reasonable diligence in exercising best execution is the “location and accessibility to the customer’s broker/dealer of primary markets and quotations sources.” In the context of the debt market, this means that, when quotations are available, NASD will consider the “accessibility of such quotations” when examining whether a member has used reasonable diligence. For purposes of debt securities, the term “quotation” refers to either dollar (or other currency) pricing or yield pricing. NASD notes, however, that accessibility is only one of the non-exhaustive reasonable diligence factors set out in Rule 2320. In the absence of accessibility, members are not relieved from taking reasonable steps and employing their market expertise in achieving the best execution of customer orders.

Lastly, NASD is clarifying that a member’s duty to provide best execution in any transaction “for or with a customer of another broker/dealer” does not apply in instances when another broker/dealer is simply executing a customer order against the member’s quote. Stated in another manner, the duty to provide best execution to customer orders received from other broker/dealers arises only when an order is routed from the broker/dealer to the member for the purpose of order handling and execution. This clarification is intended to draw a distinction between those situations in which the member is acting solely as the buyer or seller in connection with orders presented by a broker/dealer against the member’s quote, as opposed to those circumstances in which the member is accepting order flow from another broker/dealer for the purpose of facilitating the handling and execution of such orders.

# Notice to Members

OCTOBER 2006

## SUGGESTED ROUTING

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

## KEY TOPICS

Rule 5100  
Short Sales

## GUIDANCE

### Short Sales

SEC Approves Exemption to NASD Rule 5100 (Short Sale Rule) for Securities Included in the NASDAQ-100 Index;  
**Effective Date: October 9, 2006**

#### Executive Summary

On October 2, 2006, the Securities and Exchange Commission (SEC) approved an exemption to NASD Rule 5100 (Short Sale Rule) for securities included in the NASDAQ-100 Index.<sup>1</sup> Rule 5100, as amended, is set forth in Attachment A of this Notice. The rule becomes effective on October 9, 2006.

#### Questions/Further Information

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

#### Background and Discussion

On October 2, 2006, the SEC approved an exemption to Rule 5100 for securities included in the NASDAQ-100 Index. Rule 5100 provides that, with respect to trades reported to the Alternative Display Facility (ADF) or a Trade Reporting Facility (TRF), no member shall effect a short sale in a NASDAQ Global Market (NGM) Security (as defined in Rule 4200) otherwise than on an exchange at or below the current national best (inside) bid when the current national best (inside) bid is below the preceding national best (inside) bid.<sup>2</sup> All short sales in NGM securities effected otherwise than on an exchange must comply with Rule 5100 or qualify for an exception to or exemption from the rule. As amended, Rule 5100 provides an exemption, among others, for securities included in the NASDAQ-100 Index.

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The SEC also recently approved a similar rule change that exempts all securities included in the NASDAQ-100 Index from NASDAQ Exchange Rule 3350, which governs short sales in NGM securities executed on or reported to the NASDAQ Exchange.<sup>3</sup> To ensure uniform application of NASD Rule 5100 and NASDAQ Exchange Rule 3350 with respect to the new exemption for securities included in the NASDAQ-100 Index, the exemptions to both rules become effective on October 9, 2006.

## Endnotes

- 1 See Securities Exchange Act Release No. 54558 (October 2, 2006) (File No. SR-NASD-2006-076). A list of securities included in the NASDAQ-100 Index is available on NASDAQ's Web site: [www.nasdaq.com](http://www.nasdaq.com).
- 2 SR-NASD-2005-087 amended former Rule 3350 to renumber it as Rule 5100 and apply it uniformly to short sales of over-the-counter (OTC) transactions reported to the ADF or a TRF. SR-NASD-2005-087 became effective on August 1, 2006, the date upon which NASDAQ began operation as an exchange for NASDAQ-listed securities. See Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006).  
NASD also amended Rule 5100 to allow members to use, for a transitional period ending on November 3, 2006, the NASDAQ Exchange best (inside) bid rather than the national best (inside) bid for the purposes of the application of the rule. See Exchange Act Release No. 54203 (July 25, 2006), 71 FR 43256 (July 31, 2006) (SR-NASD-2006-089).
- 3 See Securities Exchange Act Release No. 54435 (September 13, 2006), 71 FR 55042 (September 20, 2006) (SR-NASDAQ-2006-031).

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## ATTACHMENT A

New language is underlined.

### 5100. Short Sale Rule

(a) - (b) No Change.

(c) The provisions of paragraph (a) shall not apply to:

(1) - (9) No Change.

(10) Sales of securities included in the Nasdaq-100 Index.

(d) - (l) No Change.

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# Notice to Members

OCTOBER 2006

## SUGGESTED ROUTING

Executive Representatives  
Legal & Compliance  
Operations  
Registered Representative  
Registration  
Senior Management

## KEY TOPICS

IARD<sup>SM</sup>  
Maintenance Fees  
Renewals  
Registration  
Web CRD<sup>®</sup>

## ACTION REQUIRED

### Broker-Dealer and Investment Adviser Renewals

Broker-Dealer, Investment Adviser Firm, Agent and Investment Adviser Representative Renewals for 2007;  
**Payment Deadline: December 8, 2006**

#### Executive Summary

The 2007 NASD Registration Renewal Program will begin on November 6, 2006, when online Preliminary Renewal Statements are made available to all firms on Web CRD/IARD. This annual program simplifies the registration renewal process for more than 27,000 broker-dealer (BD) and investment adviser (IA) firms, and over 800,000 registered representatives and investment adviser representatives with the payment of one amount to NASD by the published deadline. Beginning this year, other regulators may also choose to renew branch registrations via Web CRD/IARD.

Firms should note the following key dates in the 2007 renewal process:

- October 23, 2006** Firms may start submitting post-dated Forms U5 via Web CRD.
- November 1, 2006** Firms may start submitting post-dated Form BDW and BR Closing/Withdrawal filings via Web CRD, as well as Forms ADV-W via IARD.
  - \* Post-dated filings that are submitted by 11 p.m., Eastern Time (ET), November 3, 2006, will not appear on the firm's Preliminary Renewal Statement. December 31, 2006, is the only date that can be used for a post-dated form filing.
- November 6, 2006** Preliminary Renewal Statements available on Web CRD.
- December 8, 2006** Full payment of Preliminary Renewal Statements due.
- January 2, 2007** Final Renewal Statements available.

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Members are advised that failure to return full payment of their Preliminary Renewal Statement to NASD by the December 8, 2006, deadline could cause a member to become ineligible to do business in the jurisdictions effective January 1, 2007.

In addition to this *Notice to Members (NTM or Notice)*, member firms should review instructions posted on the NASD Web site ([www.nasd.com/renewals](http://www.nasd.com/renewals)), especially the 2007 Renewal Program Bulletin, the Investment Adviser Web site (if applicable) at [www.iard.com/renewals.asp](http://www.iard.com/renewals.asp) for the IARD Renewal Bulletin, and any mailed information to ensure continued eligibility to do business as of January 1, 2007. Any renewal processing changes, subsequent to the publishing of this *Notice*, will be provided to you in a *Special Notice*.

### Questions/Further Information

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

### Preliminary Renewal Statements

Beginning **November 6, 2006**, Preliminary Renewal Statements will be available for viewing and printing on Web CRD. The statements will include the following fees: Web CRD system processing fees; NASD branch office fees; NASD branch renewal processing fees; New York Stock Exchange (NYSE), American Stock Exchange (Amex), Chicago Board Options Exchange (CBOE), International Securities Exchange (ISE), Pacific Exchange (PCX), Philadelphia Stock Exchange (PHLX) and NASDAQ (NQX) maintenance fees; state agent renewal fees; state broker-dealer renewal fees; state BD branch fees and, if applicable, investment adviser firm and representative renewal fees, and investment adviser branch renewal fees. NASD must receive full payment of the Preliminary Renewal Statement **no later than December 8, 2006**.

If payment is not received by the **December 8, 2006**, payment due date, the firm will be assessed a *Renewal Payment Late Fee*. This late fee will be included as part of the firm's Final Renewal Statement and will be calculated as follows: 10 percent of a member firm's cumulative final renewal assessment or \$100, whichever is greater, with a cap of \$5,000. Please see *NTM 02-48* for details. Firms also risk failing to renew if fees are not received in time.

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## Fees

A fee of \$30 will be assessed for each person who renews his/her registration with any regulator through Web CRD. Firms can access a listing of agents for whom their firm will be assessed by requesting the Renewals – Firm Renewal Roster.

For 2007, any investment adviser fees that are assessed for state-registered investment adviser firms and investment adviser representatives (RA) by the North American Securities Administrators Association (NASAA) that renew through the IARD Program will be also be included on the Preliminary Renewal Statement.

The NASD branch office renewal fee of \$75 per branch, based on the number of active NASD branches as of December 31, 2006, will be assessed. One branch office assessment fee will be waived per firm.

The NASD branch renewal processing fee of \$20 per branch, based on the number of active NASD branches as of December 31, 2006, will be assessed. One branch renewal processing fee will be waived per firm.

NASD personnel assessment fees are not assessed through the annual Renewal Program. NASD will mail all NASD member firms a separate billing for this fee during the first quarter of 2007. Firms can access a listing of agents for whom the firm will be assessed the Personnel Assessment Fee by requesting the Renewals – Firm Renewal Roster.

Renewal fees for NYSE, Amex, CBOE, PCX, ISE, PHLX, NQX and state registrations are also assessed in the Preliminary Renewal Statement on Web CRD. NYSE, Amex, CBOE, PCX, ISE, PHLX and NQX maintenance fees and state renewal fees collected by NASD for firms that are registered with those exchanges and jurisdictions, as well as NASD renewal fees, are based on the number of NASD, NYSE, Amex, CBOE, PCX, ISE, PHLX and NQX and state-registered personnel employed by the member firm.

Branch office renewal fees will also be collected for those regulators who choose to renew branches registered with them via Web CRD/IARD.

Some participating states may require steps beyond the payment of renewal fees to NASD to complete the broker-dealer or investment adviser renewal process. Firms should contact each jurisdiction directly for further information on state renewal requirements. A regulator directory can be found at [www.nasaa.org/QuickLinks/ContactYourRegulator.cfm](http://www.nasaa.org/QuickLinks/ContactYourRegulator.cfm).

For detailed information regarding 2007 investment adviser renewals, see the investment adviser Web site, [www.iard.com](http://www.iard.com). A matrix of investment adviser renewal fees for states that participate in the 2007 IARD Investment Adviser Renewal Program is posted at [www.iard.com/pdf/rep\\_fee\\_sch.pdf](http://www.iard.com/pdf/rep_fee_sch.pdf).

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## Renewal Payment

Firms have four (4) payment methods available to pay 2007 renewal fees:

1. Web E-Pay
2. Check
3. Wire transfer
4. Request a transfer of the entire amount from the firm's daily to renewal account

**Note:** The entire amount of the payment must be available.

### Web E-Pay Instructions:

The Web E-Pay application is accessible from both the Preliminary and Final Renewal Statements and the NASD ([www.nasd.com/crd](http://www.nasd.com/crd)) or IARD ([www.iard.com](http://www.iard.com)) Web sites and allows firms to make an ACH payment from a designated bank account to their Web CRD/IARD renewal account. Please note that in order for funds to be posted to your firm's renewal account by December 8, 2006, payment must be submitted electronically, no later than **8:00 p.m., ET, on December 6, 2006.**

### Check Instructions:

The check should be drawn on the member firm's account, with the firm's CRD number included on the front of the check, along with "Renewal" in the memo line.

Firms should mail their renewal payment, **along with a print-out of the first page of their online renewal statement**, directly to:

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

*(Note: This box will not accept courier or overnight deliveries.)*

or

Express/Overnight Delivery  
NASD, CRD-IARD  
W8705  
701 Market Street 199-3490  
Philadelphia, PA 19106  
Telephone: (301) 869-6699

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Member firms should use the **blue, pre-addressed renewal payment envelope** that they are scheduled to receive in early November, or should use the **full address**, as noted in this *NTM*, to ensure prompt processing.

**Please note:** The addresses for renewal payments are **different** than the addresses for funding your firm's CRD or IARD Daily Account.

To ensure prompt processing of your renewal payment check:

- Include a printout of the first page of your Preliminary Renewal Statement with payment.
- Do **not** include any other forms or fee submissions.
- Write your firm's CRD number and "Renewal" on the check memo line.
- Be sure to send your payment either in the pre-addressed renewal payment envelope that will be mailed to you or write the address on the envelope exactly as noted in this *NTM*.

### Wire Payment Instructions:

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

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

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

- Remember to inform the bank that the funds are to be credited to the **NASD bank account**.
- Provide the firm's CRD number and "Renewal" as reference only.
- Record the confirmation number of the wire transfer provided by the bank.

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## Transfer of Funds Instructions:

Firms may also call the NASD Gateway Call Center at (301) 869-6699 and request that a transfer of the full renewal balance be transferred from the firm's daily account to its renewal account.

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

Members are advised that failure to return full payment of their Preliminary Renewal Statement to NASD by the December 8, 2006, deadline could cause a member to become ineligible to do business in the jurisdictions effective January 1, 2007.

## Renewal Reports

Beginning November 6, 2006, the renewal reports are available to request, print and/or download via Web CRD. Three reports are available for reconciliation with the Preliminary Renewal Statement and will also be available as downloads:

- **Firm Renewal Report** – applicable to broker-dealer and investment adviser firms. This report lists individuals included in the 2007 Renewal Program processing and includes billing codes if they have been supplied by the firm.
- **Branches Renewal Report** – applicable to broker-dealer and investment adviser firms. This report lists each branch registered with NASD and/or with any other regulators who renew branches registered with them through Web CRD/IARD and for which the firm is being assessed a fee. Firms should use this report to reconcile their records for renewal purposes.
- **Approved AG Reg Without NASD Approval Report** – applicable to NASD members. This report contains all individuals who are not registered with NASD but are registered with one or more jurisdictions. The report should be used throughout the year, including during the annual Renewal Program, as an aid for firms to reconcile personnel registrations. Firms should request this report as soon as possible to determine if any NASD registrations need to be requested or jurisdictions terminated prior to renewal processing for the Preliminary Renewal Statement available on November 6. Note, any post-dated termination filings submitted by 11 p.m., ET, on November 3, 2006, will not appear on the firm's Preliminary Renewal Statement.

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## Filing Form U5

**Firms may begin submitting post-dated U5 filings on October 23, 2006.** If Forms U5 (either full or partial) are filed electronically via Web CRD by 11 p.m., ET, on November 3, 2006, for agents (AGs)/investment adviser representatives (RAs) terminating in one or more jurisdiction affiliations, those individuals' renewal fees will not be included on the Preliminary Renewal Statement.

The deadline for electronic filing of Form U5 for firms that want to terminate an agent affiliation before year-end 2006, is 6 p.m., ET, on December 20, 2006. Firms may file both partial and full Forms U5 with a post-dated **termination date of December 31, 2006**. This is the only date that can be used for post-dated Forms U5. The deadline for submission of all EFT (electronic file transfer) filings is 2 p.m., ET, December 20, 2006.

## Post-Dated Form Filings

This functionality allows firms to file a termination form with a termination date of December 31, 2006. If a Form U5, BDW, BR Closing/Withdrawal or ADV-W indicates a termination date of **December 31, 2006**, an agent (AG), broker-dealer and/or investment adviser (firm) and investment adviser representative (RA) may continue doing business in the jurisdiction until the end of the calendar year without being assessed 2007 renewal fees. December 31, 2006, is the only date that can be used for a post-dated form filing.

Firms can begin electronically filing post-dated Forms U5 via Web CRD on October 23, 2006. Firms can begin electronically filing post-dated Forms BDW, ADV-W and BR Closing/Withdrawal via CRD/IARD on November 1, 2006. Firms that submit post-dated termination filings by 11 p.m., ET, on November 3, 2006, **will not** be assessed renewal fees for the terminated registrations on their Preliminary Renewal Statements. Firms that submit post-dated termination filings on, or after, November 6, 2006, will not be assessed renewal fees for the terminated jurisdictions on the Final Renewal Statement in January 2007. Those firms should see a credit balance on their Final Renewal Statements if the firm has not requested additional registrations during that time period to offset the credit balance.

Firms should query individual, branch and/or firm registrations after a termination filing has been submitted to ensure that electronic Forms U5, BDW, BR Closing/Withdrawal and ADV-W are filed by the renewal filing deadline date of 6 p.m., ET, on December 20, 2006.

Firms should exercise care when submitting post-dated Forms U5, BDW, BR Closing/Withdrawal and ADV-W. NASD will systematically process these forms as they are submitted and **cannot** withdraw a post-dated termination once submitted and processed. A firm that files a post-dated termination in error will have to file a new Form U4, BD Amendment, Form BR or Form ADV when Web CRD/IARD resume filing processing on January 2, 2007. New registration fees would be assessed as a result.

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## Filing Form BDW

The CRD Phase II Program allows firms requesting broker-dealer termination (either full or partial) to electronically file their Forms BDW via Web CRD. Firms that file either a full or partial Form BDW by 11 p.m., ET, November 3, 2006, will avoid the assessment of the applicable renewal fees on their Preliminary Renewal Statement, provided that the regulator is a CRD Phase II participant. Currently, there are only four regulators that participate in Web CRD renewals for agent fees, but **do not** participate in CRD Phase II:

- American Stock Exchange
- New York Stock Exchange
- Pacific Exchange
- Philadelphia Stock Exchange

Firms requesting termination with any of the above-listed regulators must submit a paper Form BDW directly to the regulator, as well as submit one electronically to Web CRD.

The deadline for electronic filing of Forms BDW for firms that want to terminate an affiliation before year-end 2006 is 6 p.m. ET, December 20, 2006. This same date applies to the filing of Forms BDW with regulators that are not Phase II participants.

## Filing Forms ADV to Cancel Notice Filings or Forms ADV-W to Terminate Registrations

Firms that file either a Form ADV Amendment, unmarking a state (generating the status of "Removal Requested at End of Year") or a full or partial Form ADV-W by 11 p.m., ET, November 3, 2006, will avoid the assessment of the applicable renewal fees on their Preliminary Renewal Statement.

The deadline for electronic filing of Form ADV Amendments or Forms ADV-W for firms that want to cancel a notice filing or terminate a state registration before year-end 2006 is 6 p.m. ET, December 20, 2006.

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## Removing Open Registrations

Throughout the year, firms have access to the "Approved AG Reg Without NASD Approval" report via Web CRD. This report identifies agents whose NASD registrations are either terminated or have been changed to a "purged" status due to the existence of a deficient condition (*i.e.*, exams or fingerprints) but still maintain an approved registration with a state. Member firms should use this report to terminate obsolete state registrations through the submission of Forms U5 or reinstate the NASD licenses through the filing of a Form U4 Amendment. This report should aid firms in the reconciliation of personnel registrations prior to year's end and should be requested as soon as possible. Requesting this report will enable firms to identify individuals who can be terminated by November 3, 2006, to avoid being charged for those individuals on their Preliminary Renewal Statement. The Approved AG Reg Without NASD Approval report will also advise a firm if there are no agents at the firm within this category.

## Final Renewal Statements

Beginning January 2, 2007, NASD will make available Final Renewal Statements via Web CRD and IARD. These statements will reflect the final status of broker-dealer, registered representative (AG), investment adviser firm and investment adviser representative (RA) registrations and/or notice filings as of December 31, 2006. Any adjustments in fees owed as a result of registration terminations, approvals, notice filings or transitions subsequent to the processing/posting of the Preliminary Renewal Statement will be made in the Final Renewal Statement on Web CRD and IARD.

- If a firm has more agents, branch offices or jurisdictions registered and/or notice filed at year-end than it did when the Preliminary Renewal Statement was generated, additional renewal fees will be assessed.
- If a firm has fewer agents, branch offices or jurisdictions registered and/or notice filed at year-end than it did when the Preliminary Renewal Statement was generated, a credit/refund will be issued. Please note that overpayments will be systemically transferred to firms' daily accounts as of January 2, 2007. Firms that have a credit (sufficient) balance in their daily account may request a refund by faxing or mailing a written request signed by the designated signatory to the Finance Department, 9509 Key West Avenue, Rockville, MD 20850, (301) 869-6699, Fax number: (240) 386-5344. The request should include a printout of the firm's credit balance as reflected on Web CRD.

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On or after January 2, 2007, NASD member firms and "joint" firms should access the Web CRD Reports function for the **Firm Renewal** report, which will list all renewed personnel with the NASD, NYSE, Amex, CBOE, PCX, ISE, PHLX, NQX and each jurisdiction. Agents and investment adviser representatives whose registrations are "approved" in any of these jurisdictions during November and December will be included in this roster. Registrations that are "pending approval" or are "deficient" at year's end will not be included in the 2007 Renewal Program. Firms will also be able to request the **Branches Renewal** report that lists all branches for which they have been assessed renewal fees. Versions of these reports will also be available for download.

Firms have until **February 2, 2007**, to report any discrepancies on the renewal reports. This is also the **deadline for receipt of final payment**. Specific information and instructions concerning the Final Renewal Statement and renewal reports will be available in a January 2007 *NTM*.

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# Notice to Members

OCTOBER 2006

## SUGGESTED ROUTING

Individual Investors  
Legal & Compliance  
Operations  
Registered Representatives  
Senior Management

## KEY TOPICS

Clearing Firms  
Customer Account Statements  
Introducing Firms  
NASD Rule 2340  
SIPA (Securities Investor Protection Act)  
SIPC (Securities Investor Protection Corporation)

## GUIDANCE

### Customer Account Statements

SEC Approves Amendments to Rule 2340 Requiring Customer Account Statements to Include a Statement Reminding Customers to Report Inaccuracies in Their Accounts in Writing; **Effective Date: March 6, 2007**

#### Executive Summary

The Securities and Exchange Commission (SEC) has approved amendments to Rule 2340 requiring customer account statements to include a statement advising customers to promptly report any inaccuracy or discrepancy in their account to the introducing firm and clearing firm (where these are different firms) and to re-confirm any oral communication in writing.<sup>1</sup>

The effective date of this rule change is March 6, 2007. Included with this Notice is Attachment A, the text of amended Rule 2340.

#### Questions/Further Information

Questions concerning this *Notice* may be directed to Susan DeMando, Associate Vice President, Financial Operations, Department of Member Regulation, at (202) 728-8411.

#### Background and Discussion

In May 2001, the GAO (the U.S. General Accounting Office, now known as the Government Accountability Office) issued a report in which it made recommendations to the SEC and the Securities Investor Protection Corporation (SIPC) about ways to improve the information available to the public about SIPC and the Securities Investor Protection Act (SIPA). Among other things, the GAO recommended that self-regulatory organizations, such as NASD, explore actions to include information on periodic statements to inform investors that they should document any unauthorized trading in writing.<sup>2</sup> This is important because, in the event a firm

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goes into SIPC liquidation, SIPC and the trustee generally will assume that the firm's records are accurate unless the customer is able to prove otherwise. In this regard, the SIPC Brochure states that if customers ever discover an error in a confirmation or account statement, they should immediately bring the error to the attention of the brokerage firm in writing and keep a copy of the writing.<sup>3</sup> The SIPC Brochure also advises customers that if there is something wrong with the brokerage firms' records, the customer will have to prove that the records are inaccurate, or the SIPC trustee will assume that the firm's records are correct.

Consistent with GAO's recommendation, NASD has amended Rule 2340 to require general securities firms to include in monthly account statements a statement advising each customer to report promptly any inaccuracy or discrepancy in that person's account to his or her brokerage firm. Where the customer's account receives services from both an introducing and clearing firm, the advisory should state that the reports should be made to both firms. This statement should also advise customers that any oral communications should be re-confirmed in writing to further protect the customer's rights, including rights under SIPA. Where account statements are delivered electronically, this statement may also be delivered electronically, provided it is on the same screen as the account statement, and the customer is not required to use a "click-through process" to bring it up on the screen. This statement will emphasize to customers the importance of promptly reporting, in writing, any suspected inaccuracy or discrepancy in their accounts and will remind customers of the importance of creating the written documentation that could prove helpful in the event of a SIPC liquidation to further evidence an assertion that the broker-dealer's records are incorrect.

The statement required by Rule 2340, as amended, does not impose any limitation whatsoever on a customer's right to raise concerns regarding inaccuracies or discrepancies in his or her account at any time, either in writing or orally, and to bring these concerns to his or her brokerage and/or clearing firm or, in the course of a liquidation proceeding, to SIPC. Further, although firms that issue account statements are required by this amendment to advise customers to "promptly" report their concerns to their firm(s) and reconfirm any conversations with their firms in writing, Rule 2340 does not impose any time limit during which customers may report inaccuracies in their accounts.

NASD reminds its members that an SEC interpretation requires them to include in each account statement the name and telephone number of a responsible individual at the clearing firm whom a customer can contact with inquiries regarding his or her account.<sup>4</sup> In addition, the SEC, in approving the rule change, noted that it would be more beneficial for firms to include on account statements both introducing and clearing firm contact information sufficient to allow investors to timely report unauthorized transactions or other account discrepancies to both firms (if the firms are different).<sup>5</sup>

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## Endnotes

- 1 See Exchange Act Release No. 54411 (Sept. 7, 2006) 71 FR 54105 (Sept. 13, 2006) (Order Granting Approval of Proposed Rule Change Relating to Rule 2340 Concerning Customer Account Statements; File No. SR-NASD-2004-171) (SEC Approval Order), as corrected by Exchange Act Release No. 54411A (Oct. 6, 2006).
- 2 See Securities Investor Protection: Steps Needed to Better Disclose SIPC Policies to Investors (GAO-01-653).
- 3 The SIPC Brochure, entitled *Understanding the Securities Investor Protection Corporation*, is published on SIPC's Web site. The Brochure provides a basic explanation of SIPC and SIPA and answers questions about SIPC liquidations.
- 4 In its November 24, 1992 release announcing "Final Rule Amendments" to its net capital rule, the SEC's Division of Market Regulation stated that it has interpreted the net capital rule and SEC Rule 15c3-3 to require that, among other things, clearing firms must issue account statements directly to customers, and that each statement must contain the name and telephone number of a responsible individual at the clearing firm whom a customer can contact with inquiries regarding the customer's account. See Exchange Act Release No. 31511 (Nov. 24, 1992), 57 FR 56973 (Dec. 2, 1992) (57-28-89). See also *supra* note 1, 71 FR at 54107, footnote 24, as corrected by Exchange Act Release No. 54411A.
- 5 See *supra* note 1, 71 FR at 54107. Firms that are members of both NASD and the New York Stock Exchange should also review the requirements of NYSE Rule 409 in the NYSE Interpretation Handbook at 4105, which states that "Statements of accounts to customers must clearly and prominently disclose on the front of the statement... the identity of the introducing and carrying organization and their respective phone numbers for service[.]" The Handbook further advises that the phone number of the carrying organization may appear on the back of the statement, but if it does, it must be in "bold" or "highlighted" letters.

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## ATTACHMENT A

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### 2340. Customer Account Statements

(a) General

Each general securities member shall, with a frequency of not less than once every calendar quarter, send a statement of account ("account statement") containing a description of any securities positions, money balances, or account activity to each customer whose account had a security position, money balance, or account activity during the period since the last such statement was sent to the customer. In addition, each general securities member shall include in the account statement a statement that advises the customer to report promptly any inaccuracy or discrepancy in that person's account to his or her brokerage firm. (In cases where the customer's account is serviced by both an introducing and clearing firm, each general securities member must include in the advisory a reference that such reports be made to both firms.) Such statement also shall advise the customer that any oral communications should be re-confirmed in writing to further protect the customer's rights, including rights under the Securities Investor Protection Act (SIPA).

(b) through (d) No change

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## Disciplinary and Other NASD Actions

### REPORTED FOR OCTOBER

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 September 2006.

#### **Firm Expelled, Individual Sanctioned**

**The Truman Group Inc. (CRD #10764, Delray Beach, Florida) and Kenneth Jason Saluk (CRD #2470891, Registered Representative, Lighthouse Point, Florida)** submitted an Offer of Settlement in which the firm was expelled from NASD membership and Saluk was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the firm and Saluk consented to the described sanctions and to the entry of findings that the firm, acting through Saluk, offered and sold shares of common stocks to public customers when there was no registration statement filed or in effect with the United States Securities and Exchange Commission (SEC) with respect to the common stocks, as Section 5 of the Securities Act of 1933 requires. The findings stated that the firm, acting through Saluk, made material misrepresentations or omitted material facts in the offer and sale of unregistered securities and failed to disclose the risks associated with investments in the stocks to customers. The findings also stated that the firm, acting through Saluk, failed to provide any prospectuses, offering memoranda, audited financial statements or other written materials regarding the securities because none existed. The findings also included that the firm, acting through Saluk, directed customers to send funds to the firm or another non-registered entity that they led customers to believe was the firm's clearing firm or bank, but the customers failed to receive any documentation that evidenced that stocks were purchased, and their funds were not returned. NASD found that the firm failed to register Saluk and others as General Securities Representatives while they were soliciting investors, and failed to register Saluk as a General Securities Principal while he was supervising the firm's operations and employees. NASD also found that Saluk failed to appear for an NASD on-the-record interview. (NASD Case #EFL2004000401)

## Firms Fined, Individuals Sanctioned

Asensio Brokerage Services, Inc. nka Integral Securities, Inc. (CRD# 31742, New York, New York) and Manuel Peter Asensio (CRD #1148811, Registered Principal, Miami, Florida). The firm was fined \$20,000 and Asensio was barred from association with any NASD member in any capacity. The National Adjudicatory Council (NAC) imposed the sanctions following appeal of an Office of Hearing Officers (OHO) decision. The sanctions were based on findings that the firm, acting through Asensio, issued research reports that failed to define the meaning of each rating and that failed to disclose the distribution of the firm's ratings. The findings stated that the firm, acting through Asensio, made statements in research reports that were unwarranted or misleading. The findings also stated that Asensio failed to fully respond to NASD requests for information during an on-the-record interview. (NASD Case #CAF20030067)

Tullett Liberty Brokerage, Inc. (CRD #19717, New York, New York), Richard Coppolino (CRD #2221016, Registered Principal, Holmdel, New Jersey) and Anthony S. Arcabascio (CRD #3248440, Registered Representative, Staten Island, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$40,000, \$20,000 of which was jointly and severally with Coppolino. Coppolino was suspended from association with any NASD member as a government securities principal for five business days, and Arcabascio was fined \$10,000 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the findings, the respondents consented to the described sanctions and to the entry of findings that the firm and Coppolino permitted Arcabascio, an associated person with the firm, to be engaged in trading activity involving government securities, which required registration, and the firm paid him transaction-based compensation even though he was not properly registered with NASD.

Coppolino's suspension in a government securities principal capacity was in effect from September 18, 2006 through September 22, 2006. Arcabascio's suspension in any capacity was in effect from September 18, 2006 through September 22, 2006. (NASD Case E1020040416-01)

## Firms and Individuals Fined

Brighton Securities Corp. (CRD #3875, Rochester, New York) and George Thomas Conboy, (CRD #1283395, Registered Principal, Rochester, New York) submitted a Letter of Acceptance, Waiver and Consent in which they were censured and fined \$15,000, jointly and severally. Without admitting or denying the findings, the firm and Conboy consented to the described sanctions and to the entry of findings that the firm, acting through Conboy, failed to ensure that it had a properly designated Limited Principal-Introducing Broker/Dealer Financial and Operations. The findings stated that the firm operated its business as an Introducing Firm and claimed an exemption under Section 15(c) of the Securities Exchange Act of 1934, and Rule 15c3-3(k)(2)(i) thereunder, which prohibits the receipt of customer funds and/or securities. The findings also stated that the firm, acting through Conboy, failed to comply with the claimed exemption in that it held public customers' funds in its general bank account. (NASD Case #E9B2005001701)

J.P.R. Capital Corp. (BD #38056, Syosset, New York) and Paul Jeffrey Umansky (CRD #1615489, Registered Principal, Rockville Centre, New York) submitted a Letter of Acceptance, Waiver and Consent in which they were censured and fined \$15,000, jointly and severally. Without admitting or denying the findings, the firm and Umansky consented to the described sanctions and to the entry of findings that the firm, acting through Umansky, conducted a securities business while under the minimum net capital requirement. (NASD Case #ELI2004009201)

MCL Financial Group, Inc. (CRD #41180, Littleton, Colorado) and Gary Lynn Flater (CRD #1049132, Registered Principal, Littleton, Colorado) submitted a Letter of Acceptance, Waiver and Consent in which they were censured and fined \$12,500, jointly and severally. Without admitting or denying the findings, the firm and Flater consented to the described sanctions and to the entry of findings that the firm, acting through Flater, utilized the instrumentalities of interstate commerce to engage in a securities business while failing to maintain the minimum required net capital. The findings stated that the firm, acting through Flater, failed to timely notify NASD regarding a 50 percent change in its ownership. (NASD Case #E3A2005004701)

**Shelbourne Securities, LLC (CRD #132972, Westford, Massachusetts) and Paul Samuel Ehrenstein (CRD #76229, Registered Principal, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which they were censured and fined \$25,000, jointly and severally. Without admitting or denying the findings, the firm and Ehrenstein consented to the described sanctions and to the entry of findings that the firm, acting through Ehrenstein, failed to accurately and timely report, or properly report, reportable municipal securities transactions to the MSRB without the firm being identified as the executing broker-dealer. (NASD Case #E9B2005018601)

**Shields & Company (CRD #11053, New York, New York) and John Patrick Hughes, Jr. (CRD #2486574, Registered Principal, Hasbrouck Heights, New Jersey)** submitted an Offer of Settlement in which they were censured and fined \$25,000, jointly and severally. Without admitting or denying the allegations, the firm and Hughes consented to the described sanctions and to the entry of findings that the firm, acting through Hughes, failed to have a properly registered municipal securities principal to supervise its municipal securities activities. The findings stated that Hughes was responsible for reviewing all municipal transactions the firm conducted, even though he was not registered as the municipal securities principal during that time. (NASD Case #E102004036901)

**Springboard Securities, Inc. (CRD #104458, Newport Beach, California) and Jonathan McKee Hansen (CRD #2277769, Registered Principal, Dana Pointe, California)** submitted a Letter of Acceptance, Waiver and Consent in which they were censured and fined \$15,000, jointly and severally. Without admitting or denying the findings, the firm and Hansen consented to the described sanctions and to the entry of findings that the firm, acting under Hansen's direction and control, participated in a contingency offering and did not transmit investor funds it raised in the offering to an unaffiliated bank to hold in escrow for the investors until the contingency occurred, and instead, transmitted the funds directly to a business account for the issuer at a bank where Hansen acted as the sole control person and signatory on the account. The findings stated that the firm, acting under Hansen's direction and control, solicited investments in the contingency offering through the use of a private placement memorandum

(PPM) that represented that all subscription monies raised would be deposited into a separate bank account and not transferred to the issuer's trading account unless the contingency was met, but Hansen released the investor funds to the issuer's control before the contingency was satisfied, rendering the foregoing representations in the PPM false and misleading. (NASD Case #E0220050147-02)

## **Firms Fined**

**Banc of America Investment Services, Inc. (CRD #16361, Charlotte, North Carolina)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$17,500 and required to revise its written supervisory procedures regarding accurate Trade Reporting and Compliance Engine (TRACE) reporting. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report the transactions in TRACE-eligible securities executed on a business day during TRACE system hours to TRACE within 45 minutes of execution time. The findings stated that the firm reported transactions in TRACE-eligible securities to TRACE that it was not required to report. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning accurate TRACE reporting. (NASD Case #20050001870-01)

**Banc of America Securities, LLC (CRD #26091, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$13,000 and ordered to certify in writing to NASD of its compliance with the filing requirements of MSRB Rule G-36, on a quarterly basis for one year, commencing with the third quarter of 2006. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it filed MSRB Forms G-36(OS) and (ARD) in an untimely manner, in that they were filed from one to five days late. The findings stated that the firm also failed to establish and maintain a supervisory system reasonably designed to achieve compliance with the filing requirements of MSRB Rule G-36. (NASD Case #E072005014801)

**BNP Paribas Investment Services, LLC (CRD# 44598, Miami, Florida)** 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 held customer checks without establishing a special reserve bank account for the exclusive benefit of customer funds, and failed to promptly deposit such checks with its clearing firm. The findings stated that the firm failed to prepare monthly reserve computations, which caused the firm to file inaccurate FOCUS reports. **(NASD Case #E072005007601)**

**Cohen Bros. & Company, LLC (CRD #104002, Philadelphia, Pennsylvania)** 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 timely report transactions in TRACE-eligible securities. The findings stated that the firm failed to establish, maintain and enforce written supervisory procedures reasonably designed to achieve compliance with its trade reporting obligations. **(NASD Case #E9A2005002501)**

**Daiwa Securities America Inc. (CRD #1576, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it submitted short interest reports to NASD that incorrectly reported that it held short positions in securities when it did not. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules related to short interest reporting under NASD Rule 3360. **(NASD Case #20041000237-01)**

**Ehrendrantz King Nussbaum, Inc. (CRD #113525, Woodbury, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$20,000 and required to revise its written supervisory procedures regarding the Order Audit Trail System<sup>SM</sup> (OATS<sup>SM</sup>). In light of the firm's financial status, the imposed fine was reduced to \$20,000. Without admitting or denying the findings, the firm consented to the described sanctions and to

the entry of findings that it failed to submit required information to OATS and failed to preserve, for a period of not less than three years, the first two in an accessible place, data required to be reported to OATS. The findings stated that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning OATS. **(NASD Case #20050000036-01)**

**Garden State Securities, Inc. (CRD #10083, Wall, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that, although it developed a written program of policies and procedures to comply with the customer identification program requirements of the Bank Secrecy Act, it failed to enforce those procedures. The findings stated that the firm had not conducted customer identification checks for the accounts it opened during a certain designated time period. **(NASD Case #E9B2005005701)**

**Goldman Sachs Execution & Clearing, L.P. (CRD #3466, Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$17,500. 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 through the Automated Confirmation Transaction Service<sup>SM</sup> (ACT<sup>SM</sup>) last sale reports in NASDAQ National Market (NNM) and SmallCap (SC) securities. The findings stated that the firm failed to report all required Reportable Order Events (ROEs) to OATS on behalf of corresponding member firms for which it had an obligation to report ROEs. **(NASD Case #20050000886-01)**

**Goldman Sachs Execution & Clearing, L.P. (CRD #3466, Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it submitted reports to OATS regarding equity securities traded on the NASDAQ Stock Market that were not in the NASD-prescribed electronic form, and were repairable. The findings stated that OATS rejected the

reports, and notice of such rejection was made available to the firm on the OATS Web site, but the firm failed to correct or replace many of the reports. The findings also stated that the firm submitted corrected reports to OATS without the required "Y" re-submit code. **(NASD Case #20050006507-01)**

**Hibernia Investments L.L.C. nka Capital One Investments, LLC (CRD #17526, New Orleans, Louisiana)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it made payments to a bank for distribution to bank branch employees, who were not associated persons of the firm, as an incentive to employees who made referrals of potential customers to the firm during certain designated time periods. **(NASD Case #E052005004101)**

**Intercoastal Financial Services Corp. (CRD #45557, Jupiter, Florida)** 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, within 90 seconds after execution, to transmit last sale reports of transactions in OTC equity securities that it was required to report through the NASDAQ Market Center, and failed to designate some of the reports as late. **(NASD Case #20050004902-01)**

**J.P. Morgan Securities Inc. (CRD #18718, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$45,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit last sale reports of transactions in OTC equity securities through ACT that it was required to report, and failed to designate some of them as late. The findings stated that the firm failed to report the correct execution time for last sale reports of transactions in NASDAQ National Market securities and NASDAQ SmallCap securities through the NASDAQ Market Center. The findings also stated that the firm transmitted last sale reports of transactions in NASDAQ securities through NASDAQ Market Center or Trade Reporting and Comparison Service (TRACS), and failed to designate them as reflecting a different price from

the current market, when the execution was based on a prior reference point in time and incorrectly designated these transactions as ".T." The findings also included that the firm failed, within 90 seconds after execution, to transmit last sale reports of transactions in NASDAQ securities through the NASDAQ Market Center or TRACS. NASD found that the firm made a report on the covered orders in national market system securities available that it received for execution from any person, and the report contained incorrect information as to the amount of total canceled shares. **(NASD Case #20050001137-01)**

**Kious and Company, Inc. (CRD #7065, Albuquerque, New Mexico)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$37,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it acted as a self-clearing firm, although it had been operating as a fully disclosed firm and clearing through a broker-dealer under the exemptive provision of SEC Rule 15c3-3, and failed to seek a change in its exemptive status from NASD. The findings stated that the firm, in connection with bearer bond transactions, failed to send account statements reflecting the transactions to the public customers selling the bearer bonds. The findings also stated that the firm failed to report any of the bearer bond transactions to the MSRB transaction reporting system, and failed to report sampled inter-dealer trades. The findings also included that the firm, in connection with municipal securities transactions, failed to make and keep current certain records for all customers setting forth the information required by MSRB Rule G-8(a)(xi), and failed to maintain a record organized by municipal security showing all positions the firm carried for its account. NASD found that the firm's supervisory system and procedures were inadequate with respect to how it would review and supervise its business, supervision of municipal underwriting activities, record retention, customer information requirements, oversight of bearer bond purchases and municipal trade reporting. NASD also found that the firm failed to develop and implement a written anti-money laundering (AML) program reasonable designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act and the regulations promulgated thereunder. In addition, NASD determined that the firm did not enforce its customer identification program, did not provide AML training to its registered representatives

and did not conduct independent AML testing. Moreover, the firm did not administer its firm element continuing education program in accordance with its annual evaluation and written plan. **(NASD Case #E3A2005001401)**

**Lehman Brothers Inc. (CRD #7506, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$50,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it submitted reports with respect to equity securities to OATS that were not in the NASD-prescribed electronic form, and were repairable. The findings stated that the OATS system rejected the reports, and rejection notices were made available to the firm on the OATS Web site, but the firm did not correct or replace numerous reports. **(NASD Case #20042000119-01)**

**Merriman Curhan Ford & Co. (CRD #18296, San Francisco, California)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it issued research reports concerning companies for which the firm managed or co-managed public offerings, and failed to include the disclosures NASD required in the reports. The findings stated that the firm's supervisory procedures were not reasonably designed to achieve compliance with NASD rules concerning the allocation of required disclosures clearly and effectively, and did not include provisions for a retrospective review of previously issued reports to monitor the firm's compliance. **(NASD Case #E0120050054-01)**

**Mony Securities Corporation (CRD #4386, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it permitted individuals to act in a capacity requiring registration with NASD when they were not registered. The findings stated that the firm failed to establish, maintain and enforce a supervisory system reasonably designed to achieve compliance with NASD rules that require persons who function as representatives to be registered as such with NASD. **(NASD Case #E1020040703-01)**

**Morgan Stanley DW Inc. (CRD #7556, Purchase, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$100,000 and required to provide a report describing the steps it has taken to enhance the operations of its Financial Advisor Heightened Supervision Review Committee to NASD. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that its Financial Advisor Heightened Supervision Review Committee had failed to review financial advisors who met the criteria for heightened supervision. The findings stated that the committee did not review the firm's financial advisors until at least 100 days after meeting the review threshold. **(NASD Case #E9B20050107-02)**

**Rafferty Capital Markets, LLC, (CRD #23682, Garden City, New York)** 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 to timely report its TRACE-eligible inter-dealer transactions to TRACE. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to TRACE reporting. The findings also stated that the firm failed to preserve, for a period of not less than three years—with the first two in an accessible place—the memoranda of brokerage orders of a random sample of corporate bond transactions NASD reviewed. **(NASD Case #ELI20050038-01)**

**Scottrade, Inc. (CRD #8206, St. Louis, Missouri)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$27,500 and required to revise its written supervisory procedures regarding the One Percent Rule, anti-intimidation, OATS clock synchronization, and books and records. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to submit a Combined Order/Route report for orders received and fully routed in the same day, and failed to submit a Route Report to OATS following customer modification of a previously electronically routed order. The findings stated that the firm incorrectly included a notation disclosing it was a market maker in the security on customer confirmations. The findings also stated that the firm failed to notify customers at least annually in writing that a written copy of the

quarterly report on the firm's routing of non-directed orders in covered securities would be furnished on request. The findings also included that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning the One Percent Rule, anti-intimidation, OATS clock synchronization, and books and records. **(NASD Case #20050023240-01)**

**Shepherd Trading Limited (CRD #39591, Tortola, British Virgin Islands)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report municipal transactions to the MSRB. The findings stated that the firm effected transactions of debt securities that were reportable TRACE transactions, but failed to report them to TRACE. The findings also stated that the firm failed to establish, maintain and enforce written supervisory procedures reasonably designed to achieve compliance with applicable NASD rules related to TRACE reporting. **(NASD Case #E072005006501)**

**Sterne Agee Capital Markets, Inc. (CRD #23952, Birmingham, Alabama)** 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 timely report Reportable Order Events (ROEs) to OATS. The findings stated that the firm failed to enforce its written supervisory procedures dealing with OATS. **(NASD Case #20050000227-01)**

**SunTrust Investment Services, Inc. (CRD #17499, Atlanta, Georgia)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$150,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to retain emails in compliance with the three-year retention requirement of Section 17(a) of the Securities Exchange Act of 1934 and SEC rule 17a-4. **(NASD Case #EAF0401290001)**

**Susquehanna Capital Group (CRD #29337, Bala Cynwyd, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$38,000. Without admitting or

denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit last sale reports of transactions in NASDAQ securities and eligible securities through ACT, and failed to designate some of them as late. The findings stated that the firm failed to report the correct prior reference point in time in last sale reports of transactions in NASDAQ securities designated as ".PRP" through ACT, and failed to report the correct execution time in late last sale reports of transactions in eligible securities through ACT. The findings also stated that the firm incorrectly designated last sale reports of transactions in eligible securities reported to NASDAQ Market Center within 90 seconds of execution as ".SLD". The findings also included that the firm failed to report the correct symbol indicating whether transactions were buy, sell, sell short, sell short exempt or cross for transactions in eligible securities to the NASDAQ Market Center; failed to report the time, or the correct time, of execution in late last sale reports of transactions in NASDAQ securities through the NASDAQ Market Center; failed to report last sale reports of transactions in NASDAQ securities through the NASDAQ Market Center or TRACS; reported last sale reports of transactions in NASDAQ National Market or SmallCap securities through NASDAQ Market Center or TRACS that it was not required to report; and failed to submit a Route report for a portion of an order executed as agent to OATS. NASD found that the firm transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data. NASD also found that the firm submitted reports with respect to equity securities traded on the NASDAQ Stock Market to OATS that were not in the NASD-prescribed electronic form, and were repairable. NASD also found that the OATS system rejected the reports, and notice of the rejection was made available to the firm on the OATS Web site, but the firm failed to correct or replace most of the reports. **(NASD Case #20042000223-01)**

**US Trading LLC (CRD #37426, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it accepted customer short sale orders in certain securities and, for each order, failed to make an affirmative determination that the firm would receive delivery of the security on the customer's behalf, or that

the firm could borrow the security on the customer's behalf for delivery by the settlement date. The findings stated that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning trade report input. **(NASD Case #20050005327-01)**

**Vanguard Capital (CRD #22081, La Jolla, California)** submitted an Offer of Settlement in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to establish and maintain a system reasonably designed to supervise the activities of a registered representative and a branch office, and failed to maintain an appropriately registered principal in an Office of Supervisory Jurisdiction (OSJ) for a time period, in contravention of NASD Rule 3010(a)(4). **(NASD Case #E052003017102)**

## Individuals Barred or Suspended

**Humberto Daniel Advincula (CRD #4158129, Registered Representative, Midvale, Utah)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Advincula received \$20,000 from public customers for investment purposes, but failed to invest the customers' funds as intended or return the funds to the customers. The findings stated that Advincula engaged in outside business activities and failed to provide prompt written notice to his member firm. The findings also stated that Advincula failed to respond to NASD requests for information. **(NASD Case #2005001178801)**

**Jeffrey Leonard Adell (CRD #2638760, Registered Representative, Fishers, Indiana)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Adell created false letters of instructions purportedly created and signed by a public customer directing his member firm to liquidate funds from the customer's securities account and to send the proceeds to a third-party address, which was actually Adell's home address. The findings stated that Adell falsely certified to his member firm that the forged signatures on the letters were authentic. The findings also stated that Adell converted \$29,460 from the customer's securities account through the use of the

forged letters of authorization and used the funds for his personal benefit without the customer's knowledge or consent. The findings also included that Adell failed to respond to NASD requests for information. **(NASD Case #20050003867-01)**

**Bret Raab Bailey (CRD #5046471, Associated Person, Flossmoor, 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. The fine must be paid before Bailey reassociates with any NASD member following the suspension, or before requesting relief from any statutory disqualification. Without admitting or denying the findings, Bailey consented to the described sanctions and to the entry of findings that he failed to disclose material facts on his Uniform Application for Securities Industry Registration or Transfer (Form U4).

The suspension in any capacity is in effect from September 18, 2006 through September 17, 2007. **(NASD Case #2006004274601)**

**Howard Brett Berger (CRD #2284367, Registered Principal, Roslyn Heights, New York)** 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 Berger failed to appear for NASD on-the-record interviews.

Berger has appealed this action to the SEC. **(NASD Case #C9B20040069)**

**Richard Craig Brief (CRD #1286384, Registered Representative, Warren, New Jersey)** 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 10 business days. Without admitting or denying the findings, Brief consented to the described sanctions and to the entry of findings that he sold equity indexed annuities to a relative and received \$15,512.59 in commissions. The findings stated that Brief's member firm did not approve the transactions, and Brief failed to provide his firm with prompt written notice of the transactions and the compensation he received.

The suspension in any capacity was in effect from September 18, 2006 through September 29, 2006. **(NASD Case #2005002268401)**

**Gregory Lloyd Burdett (CRD #4288895, Registered Principal, Naperville, Illinois)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Burdett consented to the described sanction and to the entry of findings that he willfully failed to disclose material information on his Form U4. **(NASD Case #2006004208101)**

**Wilfredo Arrabis Carbonquillo (CRD #4162709, Registered Representative, Westmont, 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 60 days. The fine must be paid before Carbonquillo reassociates with any NASD member following the suspension, or before requesting relief from any statutory disqualification. Without admitting or denying the findings, Carbonquillo consented to the described sanctions and to the entry of findings that he affixed a public customer's signature on a bank signature card without the customer's knowledge or consent.

The suspension in any capacity will be in effect from September 18, 2006 through November 16, 2006. **(NASD Case #2005002032201)**

**Christopher Sungho Choi (CRD #1944531, Registered Representative, North Wales, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Choi consented to the described sanction and to the entry of findings that he received \$192,000 from a public customer to purchase a certificate of deposit, but instead, deposited the funds into his personal bank account and converted them to his own use and purposes. **(NASD Case #2006005078901)**

**Michael Lee Clofine (CRD #2410059, Registered Supervisor, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Clofine consented to the described sanction and to the entry of findings that he failed to respond to an NASD request to appear for an on-the-record interview. **(NASD Case #20060041171-01)**

**Kevin Edward Davis (CRD #1643435, Registered Principal, Baltimore, Maryland)** submitted an Offer of Settlement in which he was fined \$10,000, suspended from association with any NASD member in the capacity of financial and operations principal (FINOP) for 12 months and required to requalify as a FINOP within 90 days from the date his suspension ends. Without admitting or denying the allegations, Davis consented to the described sanctions and to the entry of findings that, while acting on his member firm's behalf, he conducted a securities business while the firm's net capital was below the minimum net capital requirement.

The suspension in a FINOP capacity will be in effect from September 5, 2006 through September 4, 2007. **(NASD Case #E1020050283-01)**

**Robert Allen Dorman (CRD #2466337, Registered Representative, Indianapolis, Indiana)** submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. The fine must be paid before Dorman reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Dorman consented to the described sanctions and to the entry of findings that he completed and affixed a public customer's signature on a firm securities replacement form, even though his member firm's written supervisory procedures stated that registered representatives were not permitted to sign a customer's name or add the customer's initials to any document even pursuant to the customer's request.

The suspension in any capacity is in effect from September 5, 2006 through November 3, 2006. **(NASD Case #2005001091801)**

**Kirk Glenn Eddy (CRD #2076401, Registered Representative, Grand Blanc, 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, Eddy consented to the described sanction and to the entry of findings that he accepted checks from public customers made payable to him for investment purposes and instead misused the funds by not investing them in the manner the customers intended. The findings stated that Eddy failed to respond to NASD requests for information. **(NASD Case #20050024945-01)**

**Leonel Federico (CRD #2198659, Registered Representative, Phoenix, 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, Federico consented to the described sanction and to the entry of findings that he borrowed \$55,000 from public customers in contravention of his member firm's written procedures prohibiting registered representatives from borrowing money from customers. The findings stated that Federico failed to respond to NASD requests for information. **(NASD Case #20050018579-01)**

**Craig Tyson Feltz (CRD #2447886, Registered Principal, Smithtown, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Feltz consented to the described sanction and to the entry of findings that he refused to appear and provide testimony to NASD. **(NASD Case #20050012141-02)**

**David Matthew Garrity (CRD #1905680, Registered Principal, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 45 days. Without admitting or denying the findings, Garrity consented to the described sanctions and to the entry of findings that he purchased and/or sold securities of companies that he was covering as a research analyst within the time period NASD prescribed. The findings stated that Garrity failed to disclose in a research report that he had a financial interest in the securities of the company. The findings also stated that Garrity failed to notify his member firms, promptly and in writing, that he had opened accounts at other member firms and likewise, failed to notify these firms when he became associated with his member firms.

The suspension in any capacity is in effect from September 18, 2006 through November 1, 2006. **(NASD Case #20050017487-01)**

**Ivan Cid Gonzalez (CRD #2598229, Registered Principal, Northridge, California)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$7,925.15, which includes \$2,925.12 in disgorgement of commissions, and suspended from association with any NASD member in any capacity for

30 days. The fine must be paid before Gonzalez reassociates with any NASD member following the suspension, or before requesting relief from any statutory disqualification. Without admitting or denying the findings, Gonzalez consented to the described sanctions and to the entry of findings that he recommended securities transactions to public customers without having reasonable grounds for believing that the recommendations and resulting transactions were suitable for them based on their financial situation, investment objectives and needs.

The suspension in any capacity was in effect from September 5, 2006 through October 4, 2006. **(NASD Case #E0220040700-01)**

**Michelle Holton (ID #11023370, Associated Person, Philadelphia, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Holton consented to the described sanction and to the entry of findings that, without her member firm's knowledge or authorization, she prepared checks totaling \$13,500 made payable to herself that were drawn against the firm's checking account. The findings stated that Holton forged, or caused to be forged, the signature of a firm officer on the checks, negotiated the checks and used the funds for her own benefit. The findings also stated that Holton notified NASD that she would not respond to an NASD request for information. **(NASD Case #2006004691101)**

**Richard Michael Hughes (CRD #2783806, Registered Principal, Lynbrook, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Hughes consented to the described sanction and to the entry of findings that he refused to appear and give testimony to NASD. **(NASD Case #20050012141-03)**

**Bruce Paul Knopp (CRD #272570, Registered Representative, Naperville, Illinois)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Knopp reassociates with any NASD member firm following the suspension, or before requesting relief from any statutory

disqualification. Without admitting or denying the findings, Knopp consented to the described sanctions and to the entry of findings that he participated in outside business activities and failed to provide prompt written notification to his member firm.

The suspension in any capacity will be in effect from September 5, 2006 through December 4, 2006. (NASD Case #2005000119301)

**Carl David Maxwell (CRD #601141, Registered Principal, Lake Barrington, Illinois)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the findings, Maxwell consented to the described sanctions and to the entry of findings that he executed transactions in the securities account of a public customer without the customer's knowledge or consent, and in the absence of written or oral authorization to exercise discretion in the account.

The suspension in any capacity was in effect from August 14, 2006 through August 25, 2006. (NASD Case #E8A2004065701)

**Henry Paccelle Mendoza (CRD #4774325, Registered Representative, West New York, 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, Mendoza consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. (NASD Case #2006004173301)

**Juan Carlos Murillo (CRD #2608646, Registered Representative, Hialeah, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the findings, Murillo consented to the described sanctions and to the entry of findings that he engaged in outside business activities without providing prompt written notice to his member firm.

The suspension in any capacity is in effect from September 18, 2006 through October 17, 2006. (NASD Case #2005001916001)

**Matthew Robert Nall (CRD #2528568, Registered Principal, Indianapolis, 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 60 days. Without admitting or denying the findings, Nall consented to the described sanctions and to the entry of findings that he completed Change of Broker/Dealer and/or Representative Authorization Forms by changing the broker of record for variable annuities owned by public customers from another broker Nall's member firm previously employed, to Nall. The findings stated that Nall affixed the customers' signatures on the forms without their knowledge or consent.

The suspension in any capacity is in effect from September 5, 2006 through November 3, 2006. (NASD Case #2005001028601)

**Donald Jay Neil (CRD #1253671, Registered Representative, Amherst, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was suspended from association with any NASD member in any capacity for 30 days. In light of Neil's financial status, no monetary sanctions have been imposed. Without admitting or denying the findings, Neil consented to the described sanction and to the entry of findings that he exercised discretion in public customers' accounts without obtaining written authorization from them, and his member firm's acceptance of the accounts as discretionary.

The suspension in any capacity will be in effect from September 18, 2006 through October 17, 2006. (NASD Case #20050026429-01)

**Cesar Roel Perez (CRD #3091992, Registered Representative, Olmito, Texas)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Perez consented to the described sanction and to the entry of findings that he converted \$125,000 from public customers by executing phony promissory notes and making withdrawals from their variable annuity accounts without their knowledge, authorization or consent. The findings stated that Perez failed to respond to NASD requests for information and to provide on-the-record testimony. (NASD Case #C0620050019)

**Daniel Keith Poland (CRD #1230652, Registered Representative, Houston, Texas)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the findings, Poland consented to the described sanctions and to the entry of findings that he engaged in an outside business activity without providing prompt written notice to his member firm.

The suspension in any capacity is in effect from September 18, 2006 through November 16, 2006. (NASD Case #2005003207201)

**Arthur Daryll Pryor (CRD #1998728, Registered Representative, Highlands Ranch, Colorado)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 45 days. Without admitting or denying the findings, Pryor consented to the described sanctions and to the entry of findings that he engaged in an outside business activity and failed to provide prompt written notice to his member firm.

The suspension in any capacity is in effect from September 18, 2006 through November 1, 2006. (NASD Case #2005000553701)

**Kathy Hurst Seyle (CRD# 4449187, Registered Representative, Bardstown, Kentucky)** submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Seyle reassociates with any NASD member following the suspension, or before requesting relief from any statutory disqualification. Without admitting or denying the findings, Seyle consented to the described sanctions and to the entry of findings that she falsified a Rollover Election, Deposit and Certification Form in order to facilitate the opening of a client's rollover IRA account by copying the client's signature from another form and affixing it to the document.

The suspension in any capacity is in effect from September 5, 2006 through March 4, 2007. (NASD Case# 2005003297601)

**Everett Haliburton Toms, Jr. (CRD #5123248, Associated Person, Richmond, Virginia)** 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 Toms reassociates with any NASD member firm following the suspension, or before requesting relief from any statutory disqualification. Without admitting or denying the findings, Toms consented to the described sanctions and to the entry of findings that he willfully failed to disclose material information on his Form U4.

The suspension in any capacity will be in effect from September 5, 2006 through March 4, 2007. (NASD Case #2006005180501)

**Stephen Jon Toussaint (CRD #2132990, Registered Representative, Wellesley, Massachusetts)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Toussaint consented to the described sanction and to the entry of findings that he signed a public customer's signature on checks totaling \$365,000, cashed the checks, which were made payable to him, and subsequently misappropriated the funds. The findings stated that Toussaint failed to respond, or respond completely, to NASD requests for information, and failed to appear for an NASD on-the-record interview. (NASD Case #2005001088401)

**Anthony Charles Troia (CRD #2592032, Registered Representative, Yorktown Heights, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Troia consented to the described sanction and to the entry of findings that he convinced a public customer to liquidate a fixed annuity, and then he took control of the proceeds and misused some of the customer's funds. The findings stated that Troia failed to respond to NASD requests for documents. (NASD Case #2005002250301)

**Rebecca Denise Violette (CRD #1458577, Registered Representative, San Jose, California)** submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$10,000 and suspended from association

with any NASD member in any capacity for six months. The fine must be paid before Violette reassociates with any NASD member following the suspension, or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Violette consented to the described sanctions and to the entry of findings that she received \$2,000 from a public customer to open an investment account, but failed to open the account and deposit the funds into it. The findings stated that Violette misled the customer as to why the money had not appeared in his investment account and the status of the account, and forwarded the customer's funds on to her member firm to be deposited into the customer's investment account at a later date.

The suspension in any capacity is in effect from September 18, 2006 through March 17, 2007. (NASD Case #20050021474-01)

**Jeffrey S. Weick (CRD #4293526, Registered Representative, Margate, Florida)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Weick executed unauthorized trades in multiple public customer accounts and overbought trades in a pattern of knowing misconduct without the customers' prior knowledge and authorization. (NASD Case #E072004078401)

**Lawrence Michael Weinberg (CRD #461751, Registered Principal, Muttontown, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$47,999, which includes disgorgement of transaction profit of \$37,999, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the findings, Weinberg consented to the described sanctions and to the entry of findings that he opened or maintained accounts with other member firms without notifying, in writing, his member firm of the accounts, or the other member firms of his association. The findings stated that Weinberg purchased shares in "hot issue" initial public offerings for accounts in which he had a beneficial interest.

The suspension in any capacity was in effect from September 5, 2006 through September 18, 2006. (NASD Case #E1020040813-01)

**Kevin John White (CRD #2219143, Registered Principal, Hudson, 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 six months and ordered to disgorge \$32,000 in commissions in partial restitution to public customers. The fine and restitution amounts must be paid before White reassociates with any NASD member firm following the suspension, or before requesting relief from any statutory disqualification. Without admitting or denying the findings, White consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to, or obtaining prior written approval from, his member firm.

The suspension in any capacity will be in effect from September 5, 2006 through March 4, 2007. (NASD Case #2005003211201)

## Decisions Issued

The Office of Hearing Officers (OHO) has issued the following decisions, which have been appealed to or called for review by the NAC as of September 1, 2006. The NAC may increase, decrease, modify or reverse the findings and sanctions imposed in the decisions. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notice to Members*.

**John Douglas Audifferen (CRD #2053214, Registered Representative, Brooklyn, New York)** was fined \$17,500 and barred from association with any NASD member in any capacity. The fine shall be paid before Audifferen seeks reinstatement in the securities industry. The sanction was based on findings that Audifferen caused his member firm to make an unlawful credit extension to a public customer and willfully received the beneficial use of such credit extension, in violation of Regulation T. The findings stated that Audifferen allowed "free-riding" by the customer and shared in profits from the customer's account. The findings also stated that Audifferen willfully caused his member firm to extend credit to himself and received the beneficial use of such extension in violations of Regulations T and X. The findings also included that Audifferen failed to disclose material information on his Form U4. (NASD Case #C1020030095)

**James Wade Browne (CRD #1189996, Registered Representative, Dallas, Texas) and Kevin P. Calandro (CRD #1459109, Registered Representative, Dallas, Texas).** Browne was fined \$25,000 and suspended from association with any NASD member in any capacity for six months, and Calandro was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The sanctions were based on findings that the respondents participated in private securities transactions, for compensation, and failed to provide written notice to, and obtain written approval from, their member firm.

This decision has been appealed to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C0520050015)

**Daniel William Bukovcik (CRD #1684170, Registered Representative, Dewitt, Michigan)** was fined \$50,000 and suspended from association with any NASD member in any capacity for 18 months. The sanctions were based on findings that Bukovcik affixed public customers' signatures on numerous account documents relating to the customers' purchases of mutual funds, variable products, annuities, and 529 plans without their prior written authorization.

This decision has been called for review by the NAC, and the sanctions are not in effect pending consideration of the review. (NASD Case #C8A20050055)

**Ronald Pellegrino (CRD #832857, Registered Principal, Spokane, Washington)** was suspended from association with any NASD member in any capacity for six months. The sanction was based on findings that Pellegrino inadequately supervised registered representatives when he failed to sufficiently respond to a red flag indicating sales abuses by the representatives in the sale of unsuitable proprietary investment products. The findings stated that Pellegrino delegated responsibility for compliance and supervision to an individual who lacked experience and the tools to perform the job, but failed to replace the individual in a timely manner.

This decision has been appealed to the NAC, and the sanction is not in effect pending consideration of the appeal. (NASD Case #C3B20050012)

**Douglas John Toth (CRD #2332079, Registered Principal, Skillman, New Jersey)** was suspended from association with any NASD member in any capacity for one year. The sanction was based on findings that Toth willfully failed to disclose material information on his Form U4.

This decision has been appealed to the NAC and the sanction is not in effect pending consideration of the appeal. (NASD Case #E9A2004001901)

## Complaints Filed

NASD issued the following complaints. Issuance of a disciplinary complaint represents NASD's initiation of a formal proceeding 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.

**Mark Allen Borsky (CRD #2492069, Registered Principal, Medford, New Jersey)** was named as a respondent in an NASD complaint alleging that he knowingly and falsely reported a transaction report to ACT indicating a fictitious trade. The complaint alleges that Borsky failed to provide, or caused the failure to provide, truthful information in writing to NASD in response to an NASD request for information. The complaint also alleges that Borsky intentionally provided false information to NASD during a telephone call. (NASD Case #2005000078501)

**Carolyn Sue Everhard (CRD# 2344119, Registered Representative, Cincinnati, Ohio)** was named as a respondent in an NASD complaint alleging that she received \$6,400 from a public customer for investment purposes and converted the funds for her own use and benefit, or for the benefit of someone other than the customer, without the customer's knowledge or consent. The complaint alleges that Everhard failed to fully respond to NASD requests for documents and information. (NASD Case #20050025930-01)

**Kathy Lynn Gallagher (CRD #2189903, Associated Person, Williams Air Force Base, Arizona)** was named as a respondent in an NASD complaint alleging that she misused \$188,558 in public customers' funds intended to be invested on the customers' behalf, and rather than depositing the funds into the customers' accounts as instructed, Gallagher caused the funds to be deposited into a bank account she controlled, without the customers' knowledge, authorization or consent. The complaint alleges that Gallagher forged, or caused to be forged, the signatures of public customers and a registered representative on other customer investment distribution forms, causing \$57,933 to be wired from the customers' accounts to accounts under her control, without the customers' knowledge or authorization to conceal her misuse of funds. The complaint also alleges that Gallagher falsified books and records, and forged documents and customers' signatures in order to conceal her misuse. (NASD Case #2005000863701)

**Michael Steven Thannert (CRD #4452543, Registered Representative, Richfield, Minnesota)** was named as a respondent in an NASD complaint alleging that he received \$3,591.36 from public customers for payments on insurance policies and did not use the funds as instructed. The complaint alleges that Thannert failed to respond to NASD requests for information. (NASD Case #20050033391-01)

**Public Securities, Inc. (CRD #15211, Spokane, Washington)** was named as a respondent in a NASD complaint alleging that the firm, by the use of any means or instrumentality of interstate commerce or of the mails, knowingly or recklessly engaged in manipulative or deceptive devices or contrivances in connection with the purchase or sale of securities, and knowingly or recklessly effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive or other fraudulent devices or contrivances. The complaint also alleges that the firm, acting through one of its equity traders, rendered substantial assistance to an individual in the market manipulation of a stock in that the firm either knowingly or recklessly ignored the red flags or suspicious events associated with the trading of the stock that should have alerted the firm to the individual's improper conduct. The complaint also alleges that the firm, acting through its president, failed

to establish and implement AML policies and procedures reasonably designed to detect and cause the reporting of suspicious transactions and manipulative trades, and reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations promulgated thereunder. The complaint further alleges that the firm failed to provide independent testing for AML compliance by firm personnel or by a qualified outside party. In addition, the complaint alleges that the firm, acting through its president, failed to establish and maintain a system reasonably designed to adequately supervise the trading and market making activity the firm conducted, and failed to establish, maintain and enforce written procedures reasonably designed to supervise the firm's wholesale trading and market making business, and its registered representatives' actions. (NASD Case #2005000094001)

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

**Benson York Group, Inc.**  
Melville, New York  
(September 27, 2006)

**Sunstate Equity Trading, Inc.**  
Tampa, Florida  
(September 27, 2006)

**The Malachi Group, Inc.**  
Atlanta, Georgia  
(September 7, 2006)

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

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

(The date the suspension commenced is listed after the entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.)

**Firm Suspended for Failure to Supply Financial Information**

Financial Design, Inc.  
Baton Rouge, Louisiana  
(September 7, 2006)

Seaway Investment Company  
Muskegon, Michigan  
(September 7 - October 2, 2006)

**Firm Suspended Pursuant to NASD Rule 9553 for Failure to Pay Arbitration Fees**

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

Amerifinancial fka Fareri Financial Services, Inc.  
Boca Raton, Florida  
(August 2, 2006)

**Individual Suspended Pursuant to NASD Rule 9553 for Failure to Pay Arbitration Fees**

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

Kevin Kreig Herridge  
Somerville, New Jersey  
(September 7, 2006 to September 13, 2006)

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

Joseph John Bieniek  
Chicago, Illinois  
(September 12, 2006)

Stephane Jacques Coupleux  
New York, New York  
(September 12, 2006)

Lyn Jeanne Flanagan  
San Diego, California  
(September 8, 2006)

Anthony Graham Gilchrist  
Providence, Rhode Island  
(September 25, 2006)

Angel Ann Huzarski  
Center Line, Michigan  
(September 21, 2006)

**Individual 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.)

Robert Lawrence Benton  
Clearwater, Florida  
(September 20, 2006)

Shannon Durham  
Carrollton, Texas  
(September 18, 2006)

Matthew Jason Hamm  
Spartansburg, South Carolina  
(September 20, 2006)

John M. Meyers  
Coram, New York  
(September 20, 2006)

Margie Emilia Minnalez  
Seattle, Washington  
(September 13, 2006)

Daniel Edward Schott-Bardol  
Hickory, North Carolina  
(September 11, 2006)

Seth Abraham Strader  
Santa Cruz, California  
(September 5, 2006)

Omar Rene Valqui  
Pembroke Pines, Florida  
(September 11, 2006)

Cass Lamar Weldon  
Bossier City, Louisiana  
(September 26, 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.)

**Gerald Glenn Cobb**  
Hanahan, South Carolina  
(September 28, 2006)

**Will Cordery**  
Las Vegas, Nevada  
(June 30, 2005 - September 11, 2006)

**Christopher Jones**  
Chaska, Minnesota  
(September 28, 2006)

**Dimitry Metelkin**  
Brooklyn, New York  
(December 8, 2005 - September 15, 2006)

**Franklyn Ross Michelin**  
Boca Raton, Florida  
(September 28, 2006)

**Joseph F. Rudd, III**  
Arlington, Texas  
(September 28, 2006)

**Lary Lee Speakman**  
Lakewood, Colorado  
(September 28, 2006)

**Jeffrey S. Weick**  
Margate, Florida  
(September 28, 2006)

### **NASD Fines Morgan Stanley Firms \$2.9 Million for Widespread Violations of NASD Rules**

#### **Number and Scope of Violations Indicate Extensive Reporting Problems at Both Firms**

NASD imposed fines totaling \$2.9 million against Morgan Stanley & Co., Inc. (MSCO) and Morgan Stanley DW Inc. (MSDW) for extensive violations dealing with reporting obligations, best execution, short sales and a range of other NASD, Securities and Exchange Commission (SEC) and Municipal Securities Rulemaking Board (MSRB) rules.

In addition to the fines, both firms will provide reports to NASD detailing the corrective actions completed and the ongoing corrective actions being taken to ensure that each firm has adequate policies, procedures, systems and training necessary to ensure regulatory compliance.

"MSCO and MSDW had numerous types of reporting violations, and the scope of those violations indicated a failure to adequately address compliance needs of the firms," said NASD Executive Vice President Tom Gira. "But MSCO and MSDW also undertook independent, internal reviews to determine the causes and extent of their trade reporting problems, provided their findings to NASD, and were otherwise highly cooperative with NASD's investigation. The firms' cooperation is reflected in the sanctions."

NASD found that MSCO and MSDW each committed numerous violations of federal securities laws, NASD rules and MSRB rules during the seven-year period from 1999 to 2006. Among the most significant was a series of violations of OATS reporting requirements, which resulted from MSCO's pervasive inability to properly track and report OATS data. Additionally, MSDW had numerous regulatory violations involving the firm's failure to adequately price, sell and report corporate and municipal bond transactions, and will make nearly \$30,000 in restitution payments to affected customers. NASD also found that both MSCO and MSDW failed to implement effective supervisory systems and written supervisory procedures necessary to ensure compliance with federal securities laws, NASD rules and MSRB rules.

NASD also found a variety of other regulatory violations at both firms. NASD found that MSCO:

- failed to timely report or incorrectly reported thousands of transactions through the NASDAQ Market Center in NASDAQ National Market securities, OTC Equity securities and listed securities;
- executed thousands of short sales transactions without ensuring that the firm could deliver or arrange to borrow the securities by the settlement date;
- failed to execute hundreds of customer trades at the best available price, and will make nearly \$5,000 in restitution payments to affected customers;
- failed to report or incorrectly reported thousands of transactions in corporate bonds; and
- created locked and crossed market conditions in hundreds of instances.

NASD found that MSDW:

- failed to send, or failed to send in a timely manner, required documents to hundreds of customers in connection with municipal bond transactions;
- failed to report or incorrectly reported thousands of transactions in corporate and municipal bonds; and
- failed to enforce the firm's written supervisory procedures with respect to municipal bonds.

In settling these matters, MSCO and MSDW neither admitted nor denied the charges, but consented to the entry of NASD's findings.

## **NASD Charges NevWest Securities Corporation and Principals with Violating Anti-Money Laundering Rules**

### **Firm Failed to File Suspicious Activity Reports Despite Suspicious Sales Of Hundreds of Billions of Shares of Sub-Penny Stock by Customer**

NASD has charged NevWest Securities Corporation of Las Vegas and two of its top officers—President Sergey Rummyantsev and Vice President Antony M. Santos—with violating NASD's Anti-Money Laundering Rule.

In its complaint, NASD charges that the firm failed to adequately implement and enforce procedures to detect and report suspicious transactions that the firm had reason to suspect involved possible securities fraud. Specifically, the complaint charges that the firm failed to conduct adequate due diligence and file appropriate Suspicious Activity Reports (SARs) in connection with highly suspicious transactions by a customer of the firm. NASD alleges that, during the relevant period, the customer opened 32 accounts at NevWest and sold more than 250 billion shares of a sub-penny stock, which generated total sales proceeds of over \$53 million. NASD alleged that NevWest earned commission revenue on the sales totaling \$2.5 million—36 percent of the firm's total revenues during the relevant period.

"Suspicious Activity Reports provide law enforcement with information that's critical for investigating and prosecuting money laundering, terrorist financing and other financial crimes," said James S. Shorris, NASD Executive Vice President and Head of Enforcement. "Broker-dealers have an obligation to investigate 'red flags' indicating suspicious activity and, where appropriate, to file SARs. Despite a multitude of very obvious red flags, NevWest chose to look the other way, earning millions for itself in the process."

NASD's complaint charges that between January 2003 and May 2005, NevWest, through Rummyantsev and Santos, failed to adequately perform due diligence, file SARs or cease trading in multiple accounts controlled by one of NevWest's customers in connection with more than 500 sale transactions. The transactions involved a sub-penny stock issued by CMKM Diamonds, Inc. (CMKM) that traded in the Pink Sheets until the Securities and Exchange Commission (SEC) revoked the stock's registration in 2005. The complaint further charges that the firm and its officers ignored numerous

red flags which reasonably should have caused them to suspect that the customer was violating federal securities laws. The complaint charges that the firm should have filed suspicious activity reports with the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN).

Those red flags included:

- the massive volume of CMKM stock that was being sold through NevWest by this customer, which constituted as much as 36.7% of CMKM's total outstanding shares;
- publicly available information about CMKM's financials indicated that CMKM had almost no assets. CMKM's last quarterly report, filed with the SEC on Nov. 18, 2002, showed that for the quarter ending September 2002, it had total assets of only \$344 cash and total liabilities of \$1,672;
- CMKM's failure to file annual reports with the SEC for the fiscal years 2002, 2003 and 2004;
- information showing a relationship between the NevWest customer engaging in the suspicious transactions and a former officer of CMKM; and
- the SEC's temporary suspension of over-the-counter trading in CMKM securities from March 3, 2005 through March 16, 2005 and the SEC's action on May 10, 2005 to revoke the registration of each class of CMKM stock. From March 17, 2005 until May 11, 2005, NevWest continued to sell at least 22 billion shares for its customer's account.

NASD also alleges that NevWest, through Santos, failed to comply with escrow account requirements and contingency offering terms, in violation of the federal securities laws and NASD rules; failed to timely report customer complaints and disclosure events pursuant to NASD rules, and failed to establish and maintain a supervisory system and procedures that were reasonably designed to detect and prevent these violations.

Under NASD rules, a firm or individual named in a complaint can file a response and request a hearing before an NASD disciplinary panel. Possible remedies

include a fine, censure, suspension, or bar from the securities industry, disgorgement of gains associated with the violations, and payment of restitution. The 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 this complaint is unadjudicated, interested persons may wish to contact the respondent before drawing any conclusions regarding the allegations in the complaint.

### **NASD Fines Three MetLife Securities Firms \$5 Million for Providing Inaccurate, Misleading Information in Late Trading Inquiry**

#### **Firms Allowed Late Trading, Failed To Produce Emails in Timely Manner**

NASD has imposed a \$5 million fine against MetLife Securities, Inc. (MSI) of New York, New England Securities, Inc. (NES) of Boston and Walnut Street Securities, Inc. (WSS) of St. Louis—all owned by MetLife, Inc.—for providing inaccurate and misleading information to NASD, allowing late trading of mutual funds, failing to produce emails in a timely fashion and other conduct that violates NASD's rules.

NASD found that in response to an NASD inquiry in September 2003 concerning late trading of mutual funds, MSI, NES and WSS (the MetLife Securities Firms) provided inaccurate and misleading responses despite having learned information raising serious questions about the accuracy of those responses. The responses were coordinated by a working group consisting of employees from the three firms, staff from various departments of MetLife Group, Inc., and an outside law firm. Further, the MetLife Securities Firms learned additional facts over the next several months that contradicted their original responses, but failed until December 2004—14 months after they had originally responded—to provide NASD with corrected information.

"NASD relies on firms to respond accurately and promptly to requests for information on matters of regulatory concern," said James S. Shorris, Executive Vice President and Head of Enforcement. "Part of the problem in this case stemmed from the decision by the MetLife firms to respond to a regulatory inquiry by

relying upon a committee without clear lines of authority or specifically identified individuals responsible for the adequacy and accuracy of information that was provided. The MetLife Securities Firms' subsequent failure to correct the inaccurate information about the firms' mutual fund trading practices and procedures—a failure that lasted for more than a year—compounded an already unacceptable situation. Ultimately, this case should send a strong message that NASD expects firms to provide accurate information to regulatory inquiries in a timely manner—and that failures to provide accurate information will draw severe sanctions.”

In October 2003, each of the MetLife Securities Firms responded to the NASD requests by stating that upon reasonable inquiry, the firms were not aware of any late trading transactions; that each firm had policies and procedures in place that required all orders placed by customers after 4 p.m. Eastern Time to be executed the following day, and that each firm's policies and procedures included “safeguards built-in to the computerized order-taking system utilized by [the firm] and its representatives.”

While the firms made these affirmative statements, the group had information that each of these statements was inaccurate or misleading.

NASD found that while the specially created working group was preparing the original responses, there was internal disagreement within the group about the level of inquiry that needed to be undertaken to respond to the regulatory inquiry. For instance, statements by the MetLife firms that upon reasonable inquiry they were not aware of any late trades were made even though the group had decided against obtaining a list of mutual fund transactions from the firm's clearing firm.

Although the MetLife Securities Firms did not know at the time they sent their responses whether late trading transactions had actually occurred, in April 2004, the firms' internal auditors learned of 19,000 potential late trades. Examining a subset of these trades, the auditors determined in June 2004 that some of the orders were in fact received and the trades executed after 4 p.m. with that day's closing price, a finding that was conveyed to the firms' legal department in mid-July. Rather than advise NASD, however, the MetLife Securities Firms retained an outside law firm and conducted a second audit. It was only after this second

audit, in December 2004, that NASD was advised that the prior responses were inaccurate. NASD investigators determined that approximately 800 late trades were allowed to take place.

The working group also learned that contrary to its original responses, the MetLife Securities Firms did not have procedures that would require all orders placed after 4 p.m. to be executed at the next day's closing price. In fact, the working group also knew that the firms did not have adequate procedures to monitor, detect or prevent late trading.

NASD also found that the MetLife Securities Firms failed to produce responsive e-mails in a timely fashion during NASD's investigation of this case. NASD found that the MetLife Securities Firms violated federal securities laws, Securities and Exchange Commission rules and NASD regulations by executing approximately 800 late trades; submitting inaccurate and misleading responses to regulatory inquiries; failing for many months to update, supplement or correct those responses; failing to establish and maintain adequate supervisory systems and written procedures to prevent or detect late trading; failing to capture the time of customer mutual fund orders; failing to produce responsive emails in a timely fashion, and failing to retain emails for the required three-year period. In settling these matters, the MetLife Securities Firms neither admitted nor denied the charges, but consented to the entry of NASD's findings.

### **NASD Fines Securities America \$2.5 Million, Orders \$13.8 Million in Restitution in Investment Scheme Aimed at Exxon Retirees**

#### **NASD Charges Broker David McFadden with Fraud**

NASD has fined Securities America, Inc. of Omaha, NE, \$2.5 million for failing to adequately supervise a broker who NASD alleges lured long-term employees of Exxon Corporation into retiring prematurely with unreasonable and exaggerated promises of high returns from reinvested funds from their company retirement plans. Securities America must also pay \$13.8 million in restitution to 32 former Exxon employees. Securities America also agreed to hire a consultant who will conduct a comprehensive review of the firm's seminar presentations, advertising, and systems and procedures relating to retirement planning and investment recommendations for retirees.

The broker, David L. McFadden, has been charged by NASD in a separate complaint with securities fraud.

“Deciding when to retire is one of the most important and difficult decisions employees make, and it must be based on thoughtful advice and reasonable assumptions about the investment returns of one’s retirement account,” said James S. Shorris, NASD Executive Vice President and Head of Enforcement. “In this case, Securities America’s lack of supervision resulted in Exxon employees being fraudulently induced into retiring early based upon false and misleading projections of future investment returns on their nest eggs. Together, these unsuspecting investors lost millions of dollars of life savings after following advice that benefited no one other than Securities America and its representative.”

In connection with the announcement, NASD is releasing a new Investor Alert called *Look Before You Leave: Don’t Be Misled By Early Retirement Pitches That Promise Too Much*.

As referenced in the settlement with Securities America, and as alleged in NASD’s complaint against McFadden, NASD found that McFadden developed and presented seminars directed at long-term Exxon employees who were generally between the ages of 50 and 60. At those seminars, he told attendees that they could retire early by liquidating the assets of their company-sponsored 401(k) plans and pension plans, depositing those assets in accounts with Securities America, and making investments recommended by McFadden. Attendees were told that returns on those investments would allow them to replace their current salary income with systematic monthly withdrawals from the new accounts.

NASD found that McFadden recommended and sold variable annuities, Class B or Class C mutual fund shares and exchange-traded funds (ETFs) for his program. Most of the customers who opted to follow the program entrusted McFadden with the entire cash proceeds of their company-sponsored retirement accounts—and thus forfeited their right to receive a lifetime monthly benefit under their pension plan.

NASD found that McFadden’s seminar materials included a slide showing projections of account values over 20 years with rates of return ranging from 5 percent to 18 percent—for a hypothetical customer having retirement savings of \$600,000 who made

annual withdrawals starting at \$58,000 per year (9.67 percent of the initial balance) after one year. Withdrawals were also shown as increasing by \$6,000 every five years. The slide depicted the investment compounding steadily over time and included no explanation that investments offering the potential for higher rates of return also involve a higher degree of risk to principal. McFadden referred to his own program as “managed money” for which he illustrated returns of 11 percent to 14 percent—rates that would be necessary to sustain the promised annual withdrawals.

In a letter to one customer and his wife, McFadden indicated that they could maintain annual withdrawals of \$60,000 per year, or 8.34 percent of their estimated \$718,600 in retirement savings:

“Since you indicated the need for \$60,000 in today’s dollars to retire, we can conclude that everything is OK from a financial perspective if you retire at 55.”

McFadden wrote to another customer suggesting that it might be advisable to make withdrawals greater than about 7.85 percent of his savings:

“Is your monthly income providing you enough cash to do the things you want? ... If the \$6,000 is enough, I would keep it there, but if things are tight, you should take more since we can’t change for 5 years.”

Customers who followed McFadden’s program, however, could not maintain the recommended withdrawal amounts without depleting their retirement accounts to levels that threatened their incomes. NASD found that as account values declined due to withdrawals and market losses, McFadden continued to suggest to customers that he could achieve rates of return ranging in some cases from 11.5 percent to 18 percent, the minimum necessary to sustain the withdrawals he told the retirees they could take. In an effort to achieve these returns, McFadden engaged in discretionary, and in some cases unauthorized, variable annuity sub-account exchanges and mutual fund switches. The 32 customers at issue in this case deposited cash and securities totaling more than \$22.2 million for the purchase of variable annuities, mutual funds and ETFs for their retirement programs.

Under the settlement, Securities America will also pay the customers restitution of more than \$13.8 million—more than \$11.6 million to compensate for actual losses

and \$2.2 million in interest. This amount corresponds to the compensatory damage and interest component of a May 15, 2006 arbitration award that was challenged by Securities America and McFadden and upheld by a federal judge.

Securities America also agreed to hire a consultant who will conduct a comprehensive review of the firm's seminar presentations, advertising, and systems and procedures relating to retirement planning and investment recommendations for retirees.

In settling these matters, Securities America neither admitted nor denied the charges, but consented to the entry of NASD's findings.

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

The 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 this complaint is unadjudicated, interested persons may wish to contact the respondent before drawing any conclusions regarding the allegations in the complaint.